City of Denton

Meeting Agenda

City Council

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Tuesday, February 17, 2026 **2:00 PM** **Council Work Session Room & Council Chambers**

WORK SESSION BEGINS AT 2:00 P.M. IN THE COUNCIL WORK SESSION ROOM

CLOSED MEETING BEGINS IMMEDIATELY FOLLOWING THE WORK SESSION IN THE COUNCIL WORK SESSION ROOM

REGULAR MEETING BEGINS AT 6:30 P.M. IN THE COUNCIL CHAMBERS

REGISTRATION GUIDELINES FOR ADDRESSING THE CITY COUNCIL

Individuals may speak during a Council meeting under one of the following categories:

Open Microphone:

At regular meetings only, individuals can speak on any topic that is not on the agenda for no longer than four (4) minutes per individual. This portion of the meeting occurs immediately after the start of the regular meeting session. Please note, Council members cannot engage in a discussion on topics presented during this portion and there are limited slots available for this portion of the meeting.

Comments on Agenda Items:

Public comments can be given for any item considered by the Council, EXCEPT work session reports or closed meetings. Individuals are only able to comment one time per agenda item and cannot use more than one method to comment on a single agenda item. Public comments are limited to three (3) minutes per citizen.

Public Hearing Items:

Individuals are limited to four (4) minutes per public hearing item.

Individuals may participate by using one of the following methods:

1. **In Person for Regular or Consent Agenda Items:**

   To provide in-person comments on consent agenda items, individuals must be present at the Work Session portion of the meeting. To provide in-person comments on individual consideration items, individuals must be present at the Regular or Special Session portion of the meeting. In both instances, individuals must also submit a speaker card (available at the meeting location) to the City Secretary prior to the item being called.

2. **In Person for Public Hearing Items:**

For public hearing items, speaker cards are encouraged but not required.

3. eComment:

The agenda is posted online at www.cityofdenton.com/publicmeetings. Once the agenda is posted, a link to make virtual comments using the eComment module will be made available next to the meeting listing on the Upcoming Events Calendar. Using eComment, Individuals may indicate support or opposition and submit a brief comment about a specific agenda item. eComments may be submitted up until the start of the meeting at which time the ability to make an eComment will be closed. eComments will be sent directly to members of the City Council immediately upon submission and recorded by the City Secretary into the Minutes of the Meeting.

After determining that a quorum is present, the City Council of the City of Denton, Texas will convene in a Work Session on Tuesday, p.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

WORK SESSION

1. Citizen Comments on Consent Agenda Items

This section of the agenda allows citizens to speak on any item listed on the Consent Agenda prior to its consideration. Each speaker will be given a total of three (3) minutes to address any item(s). Any person who wishes to address the City Council regarding these items may do so by submitting a completed speaker card (available at the meeting location) to the City Secretary at the commencement of the Work Session meeting. Registration is required prior to the time the City Council considers this item.

2. Requests for clarification of agenda items listed on this agenda for public hearing and individual consideration.

This section allows members of the City Council to ask questions on items listed on this agenda for public hearing and individual consideration. Responses to questions on items listed under the consent agenda that are received prior to the meeting are available by clicking on Exhibit 1 below. The responses will be available prior to the start of the meeting, when applicable. Any handouts distributed at the meeting will also be uploaded to the below link by 12:00 p.m. on the business day following the meeting. Members of the Council may remove items from the consent agenda. When items are removed from the consent agenda and placed on the regular agenda by members of the council, the removed items shall be taken up in the order of removal right after the consent agenda.

A. ID 26-0059 Meeting Questions, Responses & Handouts

Attachments: Exhibit 1 - Agenda Information Sheet

3. Work Session Reports

A. ID 25-2151 Receive a report, hold a discussion, and give staff direction regarding Audit Project 047-Employee Performance Management.

[Estimated Presentation/Discussion Time: 30 minutes]

Attachments: Exhibit 1 - Agenda Information Sheet.pdf
Exhibit 2 - Audit of Employee Performance Management - REVISED
Exhibit 3 - Presentation - REVISED

B. ID 25-2296 Receive a report, hold a discussion, and give staff direction regarding the City's utility billing process for electric service.

[Estimated Presentation/Discussion Time: 30 minutes]

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Presentation

C. ID 25-2291 Receive a report, hold a discussion, and give staff direction on the update to the Mosquito Surveillance and Response Plan.

[Estimated Presentation/Discussion Time: 30 minutes]

Attachments: Exhibit 1-Agenda Information Sheet
Exhibit 2-Draft Mosquito Surveillance and Response Plan
Exhibit 3-Current Mosquito Surveillance and Response Plan
Exhibit 4-Presentation

Following the completion of the Work Session, the City Council will convene in a Closed Meeting in the Council Work Session Room to consider specific item(s) when these items are listed below under the Closed Meeting section of this agenda. The City Council reserves the right to adjourn into a Closed Meeting on any item on its Open Meeting agenda consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law.

1. Closed Meeting:

A. ID 25-1581 Deliberations regarding Economic Development - Under Texas Government Code Section 551.087.

Receive a report and hold a discussion regarding the potential offer of a financial or other incentive to two business prospects code-named Project Nook and Project Chocolate which the City seeks to have locate, stay, renovate, or expand in or near the territory of the City and with which the City is conducting economic development negotiations. This discussion shall include commercial and financial information, including an economic development incentive request the City has received from Project Nook and Project Chocolate.

B. ID 26-0227 Consultation with Attorneys - Under Texas Government Code Section 551.071

Consult with the City's attorneys on the legal status, strategy, and options for responding to Public Information Requests, reference number(s) R002227-100125, R002226-100125, and D050272-112525, related to Police Department records. Consultation with City's attorney regarding issues associated with the aforementioned matter where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton under Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas or would jeopardize the City's legal position in any

administrative or potential litigation.

Any final action, decision, or vote on a matter deliberated in a Closed Meeting will only be taken in an Open Meeting that is held in compliance with Texas Government Code, Chapter 551, except to the extent such final decision, or vote is taken in the Closed Meeting in accordance with the provisions of Section 551.086 of the Texas Government Code (the 'Public Power Exception'). The City Council reserves the right to adjourn into a Closed Meeting or Executive Session as authorized by Texas Government Code, Section 551.001, et seq. (The Texas Open Meetings Act) on any item on its open meeting agenda or to reconvene in a continuation of the Closed Meeting on the Closed Meeting items noted above, in accordance with the Texas Open Meetings Act, including, without limitation Sections 551.071-551.086 of the Texas Open Meetings Act.

NOTE: Any item for which a formal action at the Regular Meeting has been taken by Council may be subject to a request for a motion for reconsideration at any time during the meeting, at the Concluding Items Section, or after the meeting. In order to comply with the Texas Open Meetings Act, a request for a motion for reconsideration made during, at the end of, or after a Council meeting will be placed on the agenda and considered at the next official meeting of the City Council.

Following the Closed Meeting, the City Council will reconvene in Open Meeting to take action, if any, on matters discussed in closed session.

AFTER DETERMINING THAT A QUORUM IS PRESENT, THE REGULAR MEETING OF THE CITY OF DENTON CITY COUNCIL WILL CONVENE AT 6:30 P.M. IN THE COUNCIL CHAMBERS AT CITY HALL, 215 E. MCKINNEY STREET, DENTON, TEXAS AT WHICH THE FOLLOWING ITEMS WILL BE CONSIDERED:

1. PLEDGE OF ALLEGIANCE

A. U.S. Flag
B. Texas Flag

"Honor the Texas Flag – I pledge allegiance to thee, Texas, one state under God, one and indivisible."

2. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

A. Review of procedures for addressing the City Council.

B. Reports from members of the public shall be received through the following two (2) methods. A total of up to seven (7) speakers are permitted to provide public comment and may include any combination of prior registration and open microphone speakers.

1) Pre-registration. This section of the agenda permits any person who has registered in advance to make a citizen report regarding a public business item he or she wishes to be considered by the City Council. Each speaker is allowed a maximum of four (4) minutes to present their report. At the conclusion of each report, the City Council may pose questions to the speaker or may engage in discussion. If the City Council believes that a speaker's report requires a more detailed review, the City Council will give the City Manager or City Staff direction to place the item on a future work session or regular meeting agenda and advise staff as to the background materials to be desired at such meeting.

A. ID 26-0186 Ms. Tracy Duckworth regarding homelessness.

B. ID 26-0223 Mr. London Golding regarding ICE and Police.

2) Open Microphone. This section of the agenda permits any person who has not registered in advance for a citizen report to make comments about public business items not listed on the agenda. Such person(s) shall have registered using the "Virtual White Card" or "By Phone" process outlined by the City on its website or meeting notice.

During open microphone reports under this section of the agenda, the Council may listen to citizens speak. However, because notice of the subject of the open microphone report has not been provided to the public in advance, the Texas Open Meetings Act limits any deliberation or decision by the Council to: a proposal to place the item on a future agenda; a statement of factual information; or a recitation of existing policy. Council Members may not ask the open microphone speakers questions or discuss the items presented during open microphone reports.

NOTE: If audio/visual aids during presentations to Council are needed, they must be submitted to the City Secretary 24 hours prior to the meeting.

3. CONSENT AGENDA

Each of these items is recommended by Staff or a board, commission, and committee. Approval thereof will be strictly on the basis of those recommendations. Approval of the Consent Agenda authorizes the City Manager or his designee to implement each item in accordance with the Staff recommendations. The City Council has received background information and has had an opportunity to raise questions regarding these items prior to consideration.

For those items recommended by a specific board, commission, or committee, the agenda item will reference that recommendation. To view the video of the related board, commission, or committee meeting, as applicable, a link can be found within the applicable supporting documentation (Exhibit 1).

Listed below are bids, purchase orders, contracts, and other items to be approved under the Consent Agenda (Agenda Items A –Q). This listing is provided on the Consent Agenda to allow Council Members to discuss or withdraw an item prior to approval of the Consent Agenda. If no items are pulled, the Consent Agenda Items will be approved with one motion. If items are pulled for separate discussion, they may be considered as the first items following approval of the Consent Agenda.

A. ID 26-0031 Consider approval of the minutes of the February 3, 2026 Regular Meeting.

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 – February 3, 2026 Regular Meeting Minutes

B. ID 25-2381 Consider approval of a resolution of the City of Denton, Texas, ratifying an amendment of the bylaws for Denton City Public Facility Corporation; and providing an effective date.

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Resolution and Bylaws
Exhibit 3 - Bylaws with Redlines
Exhibit 4 - Draft Minutes

C. ID 26-0013 Consider adoption of an ordinance of the City of Denton ratifying the submission of an application to the Texas Department of Transportation (TXDOT) for the 2027 General Traffic Safety Grant Program in the amount of $115,000 which would require City's matching funds in an amount not to exceed $28,750 and a total project cost of $143,750

to provide blood draw services at the City of Denton Jail; and providing for an effective date.

Attachments: Exhibit 1 – Agenda Information Sheet
Exhibit 2 - Ordinance

D. ID 26-0080 Consider adoption of an ordinance of the City of Denton approving and authorizing the execution of City Council Contingency Fund donation agreements between the City of Denton and Denton Black Film Festival ($567), Project Hope Denton ($567), Greater Denton Arts Council ($566), and authorizing the transfer of $900 from the Council Contingency Fund to the Parks and Recreation Department to build and install a sign at the Girl Scout Troop 2302 Pollinator Garden in Avondale Park, all of which benefit nonprofit organizations located within the City of Denton and designated for donations by individual council members; providing a severability clause; and providing an effective date. The Community Partnership Committee recommends approval (2-0).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Council Contingency Support Criteria
Exhibit 3 - Ordinance

E. ID 26-0109 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract extension between the City of Denton and WSP USA Inc., for program management services for the Denton Municipal Electric Capital Improvement Plan projects; and declaring an effective date (RFQ 6862 - extending a contract with WSP USA Inc., until project completion). The Public Utilities Board recommends approval (6 - 0).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Original Ordinance, Contract, Amendment 1, Extension, and Assignm
Exhibit 3 - Ordinance and Amendment 2

F. ID 26-0110 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract extension between the City of Denton and CJA Enterprises LLP through January 25, 2027, to continue the purchase of construction materials for the City of Denton Streets, Water, Wastewater, and various other departments; and declaring an effective date (IFB 7841 - extending a contract with CJA Enterprises LLP, to January 25, 2027). The Public Utilities Board recommends approval (6 - 0).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Original Ordinance and Contract
Exhibit 3 - Ordinance and Amendment 1

G. ID 26-0111 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Freese and Nichols, Inc., for planning services for the Water Utilities Financial Planning and Support Project for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date

(RFQ 8213-012 - Professional Services Agreement for planning services awarded to Freese and Nichols, Inc., in the not-to-exceed amount of $1,049,620.00). The Public Utilities Board recommends approval (6 - 0).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Ordinance and Contract

H. ID 26-0112 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive proposals under IFB 8903 for Heat Exchanger Replacement for the Pecan Creek Water Reclamation Plant for the Water Utilities Department; and providing an effective date (IFB 8903). The Public Utilities Board recommends approval (6 - 0).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Ordinance

I. ID 26-0114 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Gage & Cade Construction, LLC, for the Public Disposal Facility Repairs for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8915 - awarded to Gage & Cade Construction, LLC, in the not-to-exceed amount of $579,952.00). The Public Utilities Board recommends approval (6 - 0).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Pricing Evaluation
Exhibit 3 - Ordinance and Contract

J. ID 26-0115 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with AMS Group LLC, for power transformer disposal (scrap) services for Denton Municipal Electric; providing for the sale of obsolete assets; and providing an effective date (IFB 8971 - awarded to AMS Group LLC, in the revenue amount of $401,777.00). The Public Utilities Board recommends approval (6 - 0).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Bid Tabulation
Exhibit 3 - Ordinance and Contract

K. ID 26-0116 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Construction Manager at Risk Preconstruction Agreement between the City of Denton and Archer Western Construction, LLC, amending the contract approved by City Council on September 30, 2025 in the not-to-exceed amount of $1,500,000.00; said first amendment to acquire and assemble the equipment for the required pilot study for the Ray Roberts Water Treatment Plant Expansion Project; providing for the expenditure of funds therefor; and providing an effective date (RFP 8590 - providing for an additional first amendment expenditure amount not-to-exceed $1,315,293.00, with the total contract amount not-to-exceed $2,815,293.00). The Public Utilities Board recommends approval (6-0).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Original Ordinance and Contract
Exhibit 3 - Ordinance and Amendment 1

L. ID 26-0117 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Northstar Construction, LLC, for the Bowling Green Park Construction for the Parks and Recreation Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8635 - awarded to Northstar Construction, LLC, in the not-to-exceed amount of $1,847,984.25).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Pricing Evaluation
Exhibit 3 - Ordinance and Contract

M. ID 26-0118 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Longhorn Incorporated, for the purchase of irrigation systems, supplies, parts, and accessories to be stocked in the City of Denton Warehouse; providing for the expenditure of funds therefor; and providing an effective date (RFP 8950 - awarded to Longhorn Incorporated, for one (1) year, with the option for two (2) additional one (1) year extensions, in the total three (3) year not-to-exceed amount of $500,000.00).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Pricing Evaluation
Exhibit 3 - Ordinance and Contract

N. ID 26-0119 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Ennis-Flint, Inc. dba Ennis Traffic Safety Solutions, for the purchase of pavement markings for the Traffic Department to be stocked in the City of Denton Warehouse; providing for the expenditure of funds therefor; and providing an effective date (IFB 8952 - awarded to Ennis-Flint, Inc. dba Ennis Traffic Safety Solutions, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $475,000.00).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Bid Tabulation
Exhibit 3 - Ordinance and Contract

O. ID 26-2460 Consider adoption of an ordinance of the City of Denton granting a noise exception for the 2026 Run Different special event run series: Western Invasion, Rubiks Cube, Rose Run, Instant Classic, Run 4 Babies, Haunting Experience, and Black Friday Turkey Trot which will be held on Sunday, March 22, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, April 25, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, May 9, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, September 5, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, October 10, 2026, from 6:00 a.m. to 11:00 a.m., Friday, October 30, 2026, from 5:00

p.m. to 9:00 p.m., Friday, November 27, 2026, from 6:00 a.m. to 11:00 a.m., at North Lakes Park (2001 W. Windsor Dr.); and providing an effective date.

Attachments: Exhibit 1- Agenda Information Sheet
Exhibit 2- Ordinance
Exhibit 3- Site Map

P. ID 26-2461 Consider the adoption of an ordinance of the City of Denton granting The Greater Denton Arts Council, a noise exception for the Video Art Night event on Friday, March 6, 2026, from 6:00 p.m. to 10:00 p.m. at Quakertown Park; and providing an effective date.

Attachments: Exhibit 1- Agenda Information Sheet
Exhibit 2- Ordinance

Q. ID 26-0181 Consider approval of a resolution of the City of Denton, Texas authorizing the filing of a Certificate of Formation for the creation of Denton Destination Management and Marketing Organization as a Texas nonprofit corporation; approving the initial bylaws of the corporation; and providing an effective date.

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Resolution with Exhibits

4. ITEMS FOR INDIVIDUAL CONSIDERATION (prior to Public Hearings)

A. A25-0005 Consider adoption of an ordinance of the City of Denton, Texas, regarding a Municipal Services Agreement, pursuant to Tex. Loc. Govt. Code Sec. 43.0672, between the City of Denton and Victor and Leticia Lopez for the provision of city services to approximately 2.00 acres of land, approximately located 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road; approving a schedule of annexation; authorizing the City Manager to execute the agreement; and providing an effective date. (A25-0005, 5811 Mills Rd Annexation, Angie Manglaris)

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Draft Municiapl Services Agreement and Annexation Schedule
Exhibit 4 - Presentation

B. A25-0003 Consider adoption of an ordinance of the City of Denton, Texas, regarding a Municipal Services Agreement, pursuant to Tex. Loc. Govt. Code Sec. 43.0672, between the City of Denton and Victor Lopez for the provision of city services to approximately 1.03 acres of land, generally located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road; approving a schedule of annexation; authorizing the City Manager to execute the agreement; and providing an effective date. (A25-0003, Mills Rd Annexation, Ashley Ekstedt)

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Draft Municipal Services Agreement and Annexation Schedule Ordin
Exhibit 4 - Presentation

C. A25-0004 Consider adoption of an ordinance of the City of Denton, Texas, regarding a Municipal Services Agreement, pursuant to Tex. Loc. Govt. Code Sec. 43.0672, between the City of Denton and J. Doss Phillips for the provision of city services to approximately 1.09 acres of land, generally located 740 feet south of Edwards Road and 290 feet west of Swisher Road; approving a schedule of annexation; authorizing the City Manager to execute the agreement; and providing an effective date. (A25-0004, Swisher Road Annexation, Bryce Van Arsdale)

Attachments:
Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Draft Municipal Services Agreement and Annexation Schedule Ordin
Exhibit 4 - Presentation

5. PUBLIC HEARINGS

A. A25-0005a Hold a public hearing and consider a petition for voluntary annexation of approximately 2.00 acres of land, approximately located 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road, into the City of Denton, Denton County, Texas; providing for a correction to the City map to include the annexed land; and providing for a savings clause and an effective date. (A25-0005a, 5811 Mills Rd Annexation, Angie Manglaris)

Attachments:
Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Presentation

B. A25-0003a Hold a public hearing and consider a petition for voluntary annexation of approximately 1.03 acres of land, generally located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road, into the City of Denton, Denton County, Texas. (A25-0003a, Mills Rd Annexation, Ashley Ekstedt)

Attachments:
Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Presentation

C. A25-0004a Hold a public hearing and consider a petition for voluntary annexation of approximately 1.09 acres of land, generally located 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road, into the City of Denton, Denton County, Texas. (A25-0004a, Swisher Road, Bryce Van Arsdale)

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Presentation

D. CA25-0005a Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, regarding a Comprehensive Plan Amendment from the Agriculture and Low Residential Future Land Use Designations to the regional mixed use future land use designation on approximately 24.941 acres generally located at the northwest and northeast corners of the intersection of West University Drive (US 380) and Golden Hoof Drive, in the City of Denton, Denton County, Texas; adopting an amendment to the City's Official Future Land Use Map; providing for a penalty in the maximum amount of $2,000.00 for violations thereof; providing a severability clause and an effective date. The Planning and Zoning Commission voted (5-1) to recommend approval of the request. Motion for approval by Commissioner Ketchersid and second by Commissioner Dyer. (CA25-0005a, Hickory Grove Commercial, Mia Hines)

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Staff Analysis
Exhibit 3 - Site Location Map
Exhibit 4 - Existing Future Land Use Map
Exhibit 5 - Proposed Future Land Use Map
Exhibit 6 - Project Narrative
Exhibit 7 - Existing Thoroughfare Map
Exhibit 8 - Existing ESA and Floodplain Map
Exhibit 9 - Notfication Map and Sign Posting
Exhibit 10 - Draft Ordinance
Exhibit 11 - Presentation

E. Z25-0022a Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, regarding a change in the zoning district and use classification from Residential 2 (R2) District to Suburban Corridor (SC) District on approximately 24.941 acres of land generally located at the northwest and northeast corner of the intersection of West University Drive (US 380) and Golden Hoof Drive, in the City of Denton, Denton County, Texas; adopting an amendment to the City's Official Zoning Map; providing for a penalty in the maximum amount of $2,000.00 for violations thereof; providing a severability clause and an effective date. The Planning and Zoning Commission voted (5-1) to recommend approval of the request. Motion for approval by Commissioner Ketchersid and second by Commissioner Riggs. (Z25-0022a, Hickory Grove Commercial, Mia Hines)

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Staff Analysis
Exhibit 3 - Site Location Map
Exhibit 4 - Existing Zoning Map
Exhibit 5 - Proposed Zoning Map
Exhibit 6 - Future Land Use Map
Exhibit 7 - Project Narrative
Exhibit 8 - Comparison of Permitted Uses
Exhibit 9 - Notification Map and Sign Posting
Exhibit 10 - Fiscal Impact Summary
Exhibit 11 - Draft Ordinance
Exhibit 12 - LLC Members List
Exhibit 13 - Presentation

6. ITEMS FOR INDIVIDUAL CONSIDERATION (continued)

A. A25-0005b Conduct the first of two readings of an ordinance of the City of Denton, Texas annexing approximately 2.00 acres of land, approximately located 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road; approving a schedule of annexation; authorizing the City Manager to execute the agreement; and providing an effective date. (A25-0005b, 5811 Mills Rd Annexation, Angie Manglaris)

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Draft Annexation Ordinance
Exhibit 6 - Presentation

B. A25-0003b Conduct the first of two readings of an ordinance of the City of Denton, Texas annexing approximately 1.03 acres of land, generally located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road, into the City of Denton, Denton County, Texas; providing for a correction to the City map to include the annexed land; and providing for a savings clause and an effective date. (A25-0003b, Mills Rd Annexation, Ashley Ekstedt)

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Draft Annexation Ordinance
Exhibit 6 - Presentation

C. A25-0004b Conduct the first of two readings of an ordinance of the City of Denton, Texas annexing

approximately 1.09 acres of land, generally located 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road, into the City of Denton, Denton County, Texas; providing for a correction to the City map to include the annexed land; and providing for a savings clause and an effective date. (A25-0004b, Swisher Road, Bryce Van Arsdale)

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Draft Annexation Ordinance
Exhibit 6 - Presentation

7. CONCLUDING ITEMS

A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the City Council or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

B. Possible Continuation of Closed Meeting topics, above posted.

C E R T I F I C A T E

I certify that the above notice of meeting was posted on the official website (https://tx-denton.civicplus.com/242/Public-Meetings-Agendas) and bulletin board at City Hall, 215 E. McKinney Street, Denton, Texas, on February 11, 2026, in advance of the three (3) business day posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

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OFFICE OF THE CITY SECRETARY

NOTE: THE CITY OF DENTON'S DESIGNATED PUBLIC MEETING FACILITIES ARE ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE ACCOMMODATION, SUCH AS SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED, IF REQUESTED AT LEAST TWO (2) BUSINESS DAYS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 940-349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATION CAN BE ARRANGED.

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: City Secretary's Office

CM: Sara Hensley

DATE: February 17, 2026

SUBJECT

Meeting Questions, Responses & Handouts

BACKGROUND

City Councilmembers direct questions related to items on the agenda to City staff. The questions are assigned to applicable departments and corresponding responses are compiled to a Question & Answer Report (Q&A) which is placed in a file directory for the applicable meeting. Selecting the link above will gain access to the final version of the Q&A for this meeting, which will be available prior to the start of the meeting.

Periodically during a meeting, handouts are distributed to members of the City council. Any information distributed at this meeting will also be added to the directory by 12:00 p.m. on the business day following the meeting.

EXHIBITS

Exhibit 1 – Agenda Information Sheet

Respectfully submitted:

Ingrid Rex
City Secretary

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: **City Auditor's Office**

CITY AUDITOR: **Madison Rorschach**

DATE: **February 17, 2026**

SUBJECT
Receive a report, hold a discussion, and give staff direction regarding Audit Project 047—Employee Performance Management.

STRATEGIC ALIGNMENT
This action supports Key Focus Area: Pursue Organizational Excellence and Collaborative and Respectful Leadership.

BACKGROUND
City of Denton Charter Article VI, Section 6.04 states, the City Internal Auditor is responsible for providing an independent appraisal of City operations as directed that the City's vendors are managed efficiently, effectively, equitably, and in compliance with applicable regulations throughout the procurement lifecycle by the City Council. These audits are conducted in accordance with *Generally Accepted Government Auditing Standards* promulgated by the US Government Accountability Office.

Per *Government Auditing Standards*, internal auditors should make audit reports available to the public and should communicate results to the parties who can ensure that the results are given due consideration. In order to meet these *Government Auditing Standards*, the City of Denton's Internal Audit Procedures Manual requires finalized audit reports to be presented to the City Council. Once presented, all published reports can be found on the City of Denton's Internal Audit Webpage.

DISCUSSION
This audit project is intended to provide assurance that the City's performance management program was transparent and consistent for all employees; increased employee performance accountability; and provided all employees with feedback on how their performance contributed to the City's success. Since 2020, the City has added about 200 budgeted positions and plans to employ almost 2,000 people in FY2026. These employees' performance must be managed to ensure the City achieves its goals. Initial, detailed findings from this audit project are presented in the attached Audit of Employee Performance Management report.

RECOMMENDATION
Staff recommends closing Audit Project 047—Employee Performance Management until a follow-up review is conducted to assess the implementation of the 11 issued recommendations likely in Fiscal Year 2027-28.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

Sep. 17, 2024: Fiscal Year 2024-25 Annual Internal Audit Plan Adopted
Feb. 18, 2025: Fiscal Year 2024-25 Annual Internal Audit Plan Amended
May 20, 2025: Fiscal Year 2024-25 Annual Internal Audit Plan Amended
Sep. 30, 2025: Fiscal Year 2025-26 Annual Internal Audit Plan Adopted

EXHIBITS

1. Agenda Information Sheet
2. Audit of Employee Performance Management
3. Presentation

Respectfully submitted:
Madison Rorschach, 940-349-7228
City Auditor


Image Courtesy of Denton HR Dept.

Audit of Employee Performance Management

Supervisors generally establish relevant performance expectations, but additional specificity and more formal communication would help further ensure performance management is transparent and consistent for all employees. Supervisors generally monitor employee performance holistically and regularly communicate feedback, improving accountability. While underperformance interventions are generally standardized, recognition for high-performance is generally limited, and centralized tracking of personnel actions could be improved. Employee performance is formally rated annually, but duplicative competencies and supervisor rating practices may limit the usefulness of ratings as a performance feedback mechanism.

Audit Team

City Auditor
Madison Rorschach, CIA, CGAP

Audit Staff
Jenesa Halter, MA, CFE

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Audit at a Glance

Why we did this Audit:

Since 2020, the City has added about 200 budgeted positions and plans to employ almost 2,000 people in FY2026. These employees' performance must be managed to ensure the City achieves its goals. This audit project was included in the City's fiscal year 2024-25 Audit Plan as approved by the City Council.

What we Recommend:

Recommendations 1, 9, & 10
Create guidance for supervisors on establishing and communicating performance expectations, using annual rating results, and evaluating staff performance.

Recommendations 2, 4, 5, 6, 7, & 8
Improve documentation of centralized HR performance management processes including, verifying merit-based pay increases, tracking corrective actions, retaining appeals recommendations, determining which employees to include in the standardized program, and following up on incomplete annual ratings.

Recommendation 3
Consider reimplementing an organization-wide recognition program.

Recommendation 11
Review employee rebuttal comments.

What we Found:

This audit generally evaluated if the City's performance management program was transparent and consistent for all employees; increased employee performance accountability; and provided all employees with feedback on how their performance contributed to the City's success. Our findings are summarized below:

Performance Expectations. Limited guidance on establishing and communicating performance expectations has been developed. Supervisors generally establish relevant expectations; additional specificity and more formal communication would help further ensure performance management is transparent and fair for all employees.

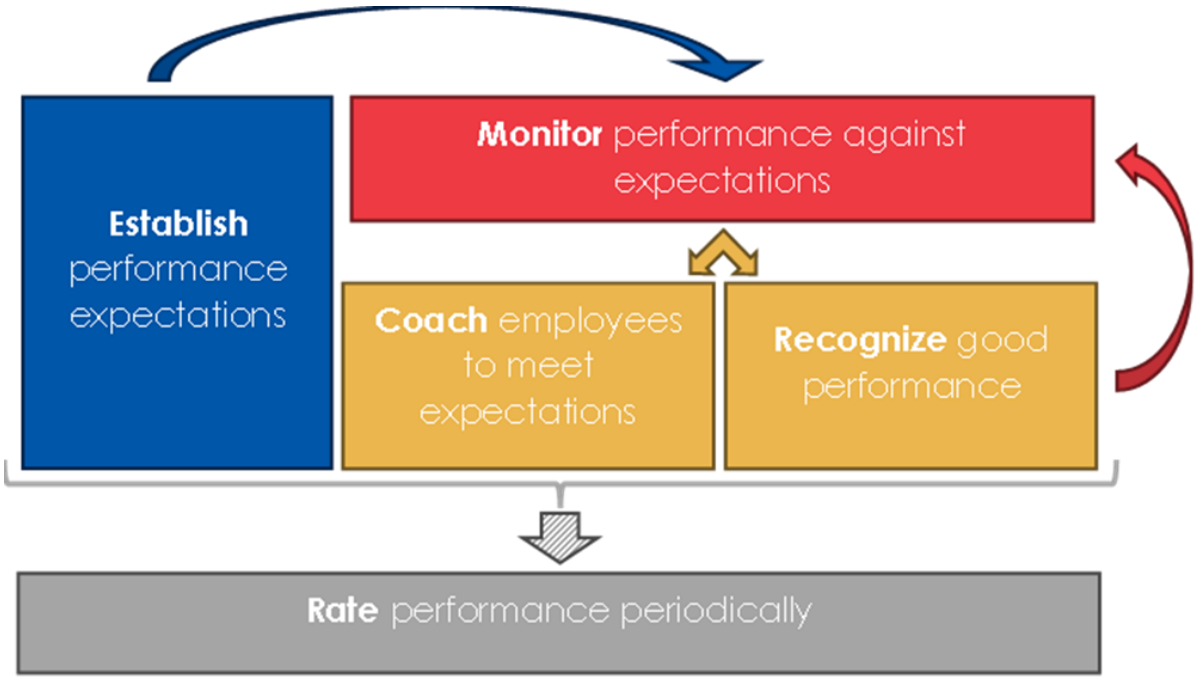
Performance Coaching. Despite limited training on performance monitoring, most supervisors have developed relatively mature methods of monitoring employee performance against expectations and regularly provide employees with feedback, improving accountability. Most recognition for high-performance is informal, due to limited formal avenues. Formal underperformance interventions are generally standardized to promote consistent application, and an appeals process is available, but centralized tracking could be improved.

Performance Rating. Employee performance is formally rated annually; the standardized rating competencies may be duplicative and overly burdensome for some supervisors. Underperformance interventions are not clearly reflected in performance ratings; aggregate rating data is generally not used by departments or HR to identify employee development opportunities.

Detailed Findings & Analysis

Employees drive an organization's success. Employee performance management aims to achieve this success by aligning individual employee objectives with departmental and organization-wide priorities. As illustrated in Figure 1, employee performance management is generally a continuous cycle where performance expectations are established, performance is monitored, employees are coached to meet those expectations as needed, and good performance is recognized; some organizations also periodically rate performance to collect data on the workforce as a whole.

Figure 1: Continuous Performance Management Cycle



Performance should be rated and expectations established at least annually, but performance monitoring, support, and acknowledgement should occur continually throughout the cycle. Employee performance management is primarily the responsibility of supervisors. However, organizations often establish organization-wide performance management programs to ensure employee performance is managed fairly across varying positions and supervisors; these programs are typically managed by human resources departments.

This audit focused on the City of Denton's performance management program for non-civil service, non-seasonal employees, including evaluating if the program was transparent and fair for all employees; increased employee performance accountability; and provided all employees with performance feedback on how they contributed to the City's success.

Employees Performance Expectations Could Be More Clearly Communicated by Supervisors

The core of employee performance management is establishing and clearly communicating performance expectations for each employee. While there are different structures, industry standards generally agree that performance expectations should be measurable, defined, and relevant to the organization's goals and the employee's role. In addition, employees should have the opportunity to provide input on non-essential performance expectations to ensure that they are realistic, attainable, and clearly understood to increase employee motivation and commitment.

Further, since employees performing the same job should generally be held to the same performance expectations centralized performance management programs typically include training on establishing performance expectations and monitoring employee performance to promote consistency among supervisors.

What We Found

- Guidance for supervisors on establishing performance expectations has only recently been developed.
    - Per City policy, an employee's current performance levels should be measured against established criteria. Based on a review of the guidance provided to supervisors and employees for the 2023 and 2024 performance management cycles, the City's Human Resources—or HR—Department included references to supervisors and employees holding a "goal setting" meeting at the beginning of the performance management cycle. However, additional information on how to establish employee performance expectations or hold these goal-setting meetings was not available.
    - As part of the 2025 performance management guidance, HR highly recommended that supervisors set performance expectations, or goals, for their employees, and a document providing tips on establishing goals was made available, including encouraging collaboration between the employee and their supervisor, and establishing goals that are Specific, Measurable, Attainable, Relevant, and Time Bound.
    - The City's human resources management system includes a tool that allows supervisors to create and assign "goals" to employees. This tool allows supervisors to add comments to the goal and track goal progress based on milestones. HR previously created a Performance Management User Guide for managers that provides technical

instructions to supervisors on how to create goals for employees using this tool, but this was not readily available for all performance management cycles.

- While supervisors indicate they almost always establish and share relevant performance expectations with their staff, these may not always provide needed specificity.
    - Based on 67 responses to a survey of 258 supervisors from 18 of the 23 departments across the city,[1] about 90 percent described performance expectations that appeared to be generally relevant to the City's goals and objectives and the employee's role. Responses that were not clearly relevant typically focused on general behavioral expectations such as professionalism, honesty, and ownership, which, while important, are not clearly related to the City's goals and create additional subjectivity when monitoring performance.
    - About 58 percent of responses indicated that performance expectations were defined through a policy, standard operating procedure, manual, or training, and about 52 percent of responses indicated that their performance expectations were measurable based on due dates, milestones, metrics, or other data sources. Well-defined and measurable expectations help increase impartiality and aid both employees and supervisors in comparing actual performance to expectations.
- Performance expectation clarity may be complicated by supervisors' communication methods.
    - About 76 percent of responses indicated that individualized expectations are communicated verbally to employees, typically during periodic one-on-one meetings, but only 22 percent of responses indicated that these individualized expectations were communicated in writing. These responses suggest that about 20 percent of employees may not be receiving regular communication on their individual performance expectations as outlined in Table 1.

[1] A survey was administered to 258 supervisors to gauge employee performance management practices and received responses from 67 supervisors from 18 of 23 City departments. These results provide a 10.3 percent margin of error and were generally representative of City operations, indicating that the results are statistically valid. The five departments that did not provide responses were mostly administrative or executive functions.

Table 1: Performance Expectation Communication Practices[2]

	Individualized	General
Communicated Verbally	76%	57%
Communicated In Writing	22%	31%
Not Communicated	21%	33%

  - Still, supervisors may communicate general performance expectations to employees through group meetings, training, policies, procedures, and manuals. Only one of the 67 responses indicated that the supervisor was not sharing either individualized or general performance expectations verbally or in writing.

- Since most supervisors communicate individualized performance expectations either verbally or in writing, most employees are likely to have opportunities to provide feedback on established performance expectations due to frequent discussions.

Why It Matters

Clear performance expectations are essential to aligning an employee's efforts with an organization's goals and ensuring that employees feel like they are treated fairly. The City's supervisors appear to be frequently communicating performance expectations to their employees. However, training and additional guidance from HR on how to clearly establish performance expectations would promote consistency among the City's supervisors and help ensure that all employees understand their expectations, including how their individual performance advances the City's goals.

Recommendation:

1. Create training or guidance to assist supervisors in establishing and clearly communicating performance expectations. The training should also stress the need for supervisors to communicate expectations routinely through open communication.

   ***Human Resources Comments**: An Organizational Development initiative to enhance the Performance Management and Development Program was started January 1, 2025 and was intended to strengthen supervisor training on establishing and communicating performance expectations. Due to budgetary constraints and staffing limitations in 2025, progress on this initiative was paused. At this time, there are no dedicated Organizational*

[2] Some supervisors indicated that they communicated expectations through text, messaging software, or a follow-up email. As these communication methods are generally informal and used as though they are verbal communication tools, they were considered verbal communication practices for this analysis.

Development staff; however, Human Resources continues to provide guidance and support to department leadership as capacity allows and will incorporate audit findings when resources permit.

Supervisors Monitor Performance Holistically; Recognition for High-Performance is Limited; HR's Tracking of Interventions is Informal

Supervisors are responsible for coaching, providing feedback, and supporting employee development through ongoing performance monitoring. Industry standards generally suggest that supervisors identify key performance indicators—or KPIs—to monitor employee performance. KPIs should be measurable and directly related to the employee's role and responsibilities; a mix of quantitative data, such as the number of work orders completed, and qualitative information, such as collaborator feedback, should be used to ensure all aspects of an employee's performance are considered.

Based on this monitoring, industry standards suggest that employees who meet or exceed expectations should be recognized to encourage continued similar performance, and employees who underperform should be promptly addressed to support performance improvement. Common types of formal and informal recognition and interventions are outlined in Table 2.

Table 2: Common Performance-Based Recognitions and Interventions

	Informal	Formal
Recognition	➢ Verbal Recognition ➢ Written Praise ➢ Nominal Benefits (e.g., lunch) ➢ Scheduling Flexibility	➢ Honorary Awards (e.g., plaques) ➢ Cash Bonuses[3] ➢ Merit-Based Pay Increase ➢ Promotion
Intervention	➢ Verbal Coaching ➢ Memo of Expectations ➢ Assigned Training	➢ Performance Improvement Plan ➢ Written Reprimand ➢ Suspension Without Pay ➢ Involuntary Demotion ➢ Termination

Formal recognition is usually managed through organization-wide programs to ensure consistent application, and, due to its significance, centralized performance management programs generally provide supervisors with training and guidance on when and how performance-based interventions should be issued to employees. Formal performance management actions should be documented in an employee's personnel folder within the formal human

[3] Cash bonuses are typically offered in the private sector, but not in public organizations.

resources system, and best practices suggest employees should be able to appeal major personnel actions.

What We Found

- Training for supervisors on continually monitoring employee performance against expectations has generally not been developed.
    - Per the City's policy, an employee's current performance levels should be measured against established criteria. Based on a review of the guidance provided to supervisors and employees for the 2023 and 2024 performance management cycles, information on monitoring employee performance against expectations was generally not provided. Still, during the 2024 performance management cycle, supervisors were required to hold mid-year check-ins with their employees during which any questions, concerns, or goals, if set, could be discussed.
    - As part of the 2025 performance management guidance, HR provided a guidance document for employees on "Maximizing Mid-Year Check-Ins" as well as a short training video for leaders on preparing for mid-year check-ins. Guidance typically focused on preparing for the meeting, offering and asking for needed support, and identifying areas for growth, including following up on any goals.
    - The City's human resources management system includes a tool that allows supervisors and employees to document notes about an employee's performance throughout the performance cycle. This tool allows these notes to be tagged to the City's standardized performance competencies or assigned goals to facilitate performance monitoring and rating. This tool was available for use during the 2023 and 2024 performance cycles, but guidance on using it was not provided until 2025 due to staffing limitations.

- Most supervisors appear to have developed relatively mature methods of monitoring employee performance against expectations, despite conflicting training and guidance experiences.
    - Based on 67 responses to a survey of 258 supervisors, about two-thirds of supervisors collect KPIs to monitor performance, and an additional 18 percent of supervisors rely on self-collected qualitative information. Still, about 15 percent of supervisors' responses either indicated that they did not collect information to monitor employee performance against expectations or that they rely on information provided by the employee.

  - Supervisors' responses to the survey indicated that most felt they had received guidance on how to evaluate employee performance from either HR or their department's management; however, the other 42 percent of supervisors felt that they had not received any training or guidance and relied on their own experience. A few respondents indicated that HR previously provided training on evaluating employees' performance that was useful, but more recent training focused on the technical aspects of using the new human resources management system.

- The City provides some formal avenues for recognizing employees who meet or exceed performance expectations but has developed limited guidance on informally recognizing employees.
  - As detailed in Table 3, for the 2023 and 2024 performance cycles, merit pay increases were awarded to employees with an annual evaluation rating of "Meets Expectations" or higher. For the 2025 performance management cycle, all pay increases were eliminated regardless of an employee's performance rating due to budget constraints.
  - While HR has not created written guidance on how to verify that only eligible employees receive a merit-based pay increase, a sample review of 100 completed 2024 evaluations found that merit raises appeared to have been awarded accurately.

Table 3: Summary of Merit-Based Pay Increases

Final Rating	2023		2024	
	Merit Increase	Percent of Employees	Merit Increase	Percent of Employees
1 – Unsatisfactory	0.00%	0.1%	0.00%	0.0%
2 – Needs improvement	0.00%	1.5%	0.00%	1.9%
3 – Meets Expectations	1.75%	63.6%	2.00%	72.4%
4 – Exceeds Expectations	2.25%	32.0%	2.50%	25.7%
5 – Role Model	2.75%	2.9%	N/A	N/A

  - HR previously developed an organization-wide honorary award program and held an annual employee appreciation event, but, due to budget constraints, these events were eliminated for Fiscal Year 2026. Some employees are recognized for their longevity of service each year.
  - The City does not currently allow supervisors to recognize employees who meet or exceed their performance expectations through promotion. Instead, almost all open positions are filled through a competitive recruitment process.

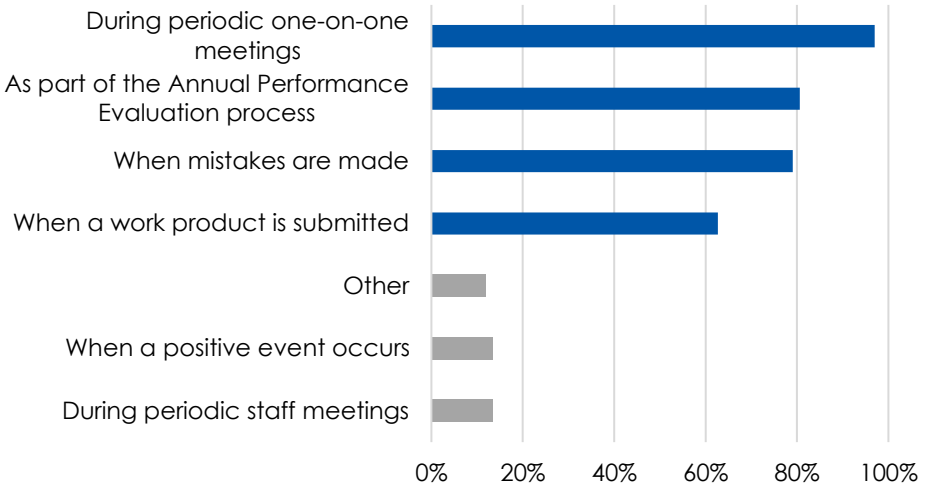
  - HR has generally not released any guidance for supervisors on recognizing employees for exceeding or meeting performance expectations informally.

- Supervisors generally provide informal recognition for employees meeting or exceeding expectations.
  - Based on 67 responses to a survey of 258 supervisors, all but one supervisor indicated that they provided at least some sort of recognition to employees who meet or exceed performance expectations. Specifically, 94 percent of supervisors indicated that they offer verbal recognition to their employees, either privately or in team meetings, when they are performing well, and 48 percent indicated that they provide written recognition through email, commendation letters, or as part of the annual performance rating process.
  - About ten percent of supervisors expressed concerns about limitations on their ability to provide recognition for quality performance, which may indicate some employees who are exceeding expectations may not be receiving enough recognition.
  - Further, about seven percent of supervisors indicated that they recognize employees who are exceeding expectations with additional responsibilities, which is not generally considered valid recognition by industry standards. For context, only three percent of supervisors indicated that they considered promoting high-performing employees (i.e., paying employees to perform additional responsibilities), but that providing promotions was difficult.

- Supervisors regularly provide performance feedback to employees, likely ensuring that underperformance is promptly addressed.
  - Based on 67 responses to a survey of 258 supervisors, about 90 percent communicate feedback on how employees meet their performance expectations using more than one method, with 97 percent indicating that feedback is provided during periodic one-on-one meetings with their employees. Further, about 79 percent of supervisors indicated that they provide feedback immediately when a mistake is made. Only one supervisor did not indicate that they provide feedback during one of these times, meaning almost all employees are likely receiving prompt intervention when they underperform. Survey responses are summarized in Figure 2.[4]

[4] Survey respondents were provided a fill-in-the-blank "Other" option for feedback timing; these responses are summarized in grey.

Figure 2: Performance Feedback Timing



  - Still, almost 20 percent of supervisors indicated that they did not provide performance feedback as part of the annual performance rating process, indicating that some supervisors do not view this process as a useful method of providing feedback.

- HR has created some written guidance to assist supervisors in addressing underperformance.
  - HR has created general guidance for supervisors on underperformance interventions, which generally defines and explains the difference between three intervention methods: (1) coaching, (2) performance improvement plans—or PIPs—and (3) corrective actions. The guidance instructs supervisors to contact the appropriate HR business partner for additional assistance.
  - HR has created written tips on how to conduct verbal coaching and templates for documenting informal interventions through same-day-summaries or memos of expectation. Templates for issuing formal corrective actions, including performance improvement plans, written reprimands, suspensions, involuntary demotions, and terminations, have also been created.
  - While templates for informal interventions are easily accessible by supervisors, templates for formal interventions are only provided after discussion with the department's HR business partner to help ensure that these actions are properly supported and deployed consistently by supervisors.

- Supervisors may not be using available formal underperformance intervention methods most effectively.

- Based on 67 responses to a survey of 258 supervisors, 96 percent of supervisors indicated they address underperformance with verbal coaching. Only two responses specifically indicated that the supervisor would reach out to HR if performance issues continued, but 13 percent discussed using a PIP and 16 percent mentioned taking some type of corrective action, which would require HR involvement.
- As shown in Table 4, during the 2023 and 2024 performance cycles, only seven PIPs were issued, making this the least-used intervention tool apart from demotions, despite PIPs being designed to improve performance issues.

Table 4: 2023 & 2024 Corrective Actions

	2023	2024
Formal	**100**	**151**
Termination	10	18
Demotion	2	0
Suspension	29	38
Reprimand	57	90
PIP	2	5
Informal	**57**	**100**
Total:	157	251

- The City has created a process for employees to appeal formal underperformance interventions which includes a neutral group of leaders conducting a second review.
  - The City has adopted an Appeals policy that provides employees with an opportunity to appeal suspensions, involuntary demotions, and terminations. This policy was most recently updated in June of 2025.[5]
  - Appeals are reviewed by a three-member committee, composed of one supervisor, one manager, and one director who are not in the employees' direct line of supervision. The appeal committee provides a second review of the circumstances surrounding the corrective actions and may recommend an alternative course of action. However, the final decision regarding the corrective action appeal is made by the City Manager.
  - Although no standard operating procedure has been created, HR has developed templates for each step of the appeal process, including response letters and the notice to the appeal committee. Appeal guidelines are also provided to the committee members, which

[5] Per City policy 109.03, appeals can be rejected without any review due to a late appeal request, employment of less than one year, or due to the employment action proved not to be arbitrary or capricious.

reiterate the need for the committee to provide its recommendation in writing.

- The tracking of appeal committee members is informal via a spreadsheet, and the specific selection process is not documented. Final committee members are selected by Human Resources management, but the employee who requested the appeal may object to the selection.

- HR's documentation of performance-based interventions is informal and inconsistent.
  - HR staff log corrective actions in a spreadsheet by fiscal year. However, the log lacks employee ID numbers, and includes preferred first names and occasional misspellings, decreasing the usability of the information.
  - The documentation of all types of corrective actions is informal, and there are no written standard operating procedures regarding what information should be recorded for any corrective action or where this documentation should be saved. Some formal personnel action-related materials are not retained in the employee's personnel file.
  - Documentation of formal underperformance interventions are inconsistently retained. Specifically, out of the seven PIPs issued during 2023 and 2024, only one of the initial notification letters was available, hindering verification of each plan's steps. Further, documentation of employee appeals was not always centrally retained, particularly the Appeal Committee's written report, as detailed in Table 5. HR located the misplaced documents and transferred the items to the central storage location during the audit. Additionally, no appeal documentation was retained in the employee's personnel record.

Table 5: Appeal Process Documentation

Documentation	Percent Retained
Emp.'s Written Appeal	88%
HR's Response Letter	88%
Committee's Appeal Report	58%
City Mgr. Response Letter	92%

Why It Matters

Regular, useful performance feedback is critical to preserving and building a high-performance culture. To do this effectively, the performance management program should help bridge the gap between staff members and management by monitoring performance and providing feedback regularly.

Departments' use of one-on-one meetings or frequent staff meetings provides an opportunity to provide more frequent feedback than the annual performance rating process, which may be why the rating process is not seen by all supervisors as a feedback opportunity.

Recognizing individual successes is a critical part of a quality performance management program, as it helps ensure high-performing employees remain with an organization. In 2023 and 2024, merit-based pay increases were provided based on annual performance ratings. Still, some supervisors expressed concerns about limitations on their ability to provide recognition, particularly for those employees who are exceeding expectations. This increases the risk of quality workers leaving the organization. Given the structure of local government, individual departments are limited in their ability to provide monetary recognition for performance that exceeds expectations; however, Human Resources could provide guidance on recognizing employees informally or create additional formal recognition opportunities for supervisors to use, such as reimplementing an honorary award program.

HR does not have a standard operating procedure for documenting and verifying all employees who received a merit-based pay increase. While merit-based pay increases are not currently available, a standard operating procedure should be created, and all applicable staff should be trained, to ensure they are documented and applied consistently if they are reinstated.

HR has developed multiple formal intervention templates and has provided general guidance for supervisors on coaching employees. Still, PIP usage is limited throughout the City and does not appear to correlate to improved employee performance. This pattern of PIP results may suggest to current employees that PIPs are a step towards termination, and not a means of performance improvement. Further refinement of guidance for addressing performance concerns, including the potential benefits of PIPs, could be provided in supervisor training on assessing employee performance.

Additionally, documentation regarding performance-based interventions could be improved with a formalized system and standard operating procedures, explaining how corrective actions should be documented, tracked, and retained.

The appeal process generally provides a fair and neutral approach for staff to have corrective actions reviewed. However, HR does not consistently retain all documentation related to appeals in the employee's personnel file. The lack of formalized documentation requirements limits the ability to verify all details regarding an appeal, including the committee's recommendations.

Recommendations:

2. If merit increases are reinstated, Human Resources should formalize the process for verifying and documenting the individuals awarded a merit-based pay increase.

   ***Human Resources Comments**: Human Resources agrees with the recommendation. The current HR Administration initiative to complete a Comprehensive Human Resources Process Library includes documenting standardized processes across HR functions and has been underway for approximately 18 months, reflecting the need to establish formal processes where none previously existed. As part of this effort, Human Resources will work with Total Rewards to formalize documentation related to verification and recordkeeping for merit-based pay actions, should merit increases be reinstated.*

   In addition, a Total Rewards initiative beginning in FY 2026, Implement a Multi-Year Compensation Strategy to Maintain Pay Plans, includes the development of a Compensation Handbook. The Compensation Handbook will align with and supplement the Process Library by clearly documenting compensation-related processes, including merit-based pay actions, to support consistency, transparency, and audit compliance.

3. Consider reimplementing an organization-wide recognition program to aid supervisors in retaining high-performing employees, including creating promotional opportunities.

   ***Human Resources Comments**: Human Resources acknowledges the recommendation. Development of an organization-wide reward program is addressed through multiple defined HR initiatives that are planned to be implemented over the next several years. When developed comprehensively, such programs require sustained financial resources and staffing capacity; currently, the organization does not have dedicated Organizational Development staff.*

   Relevant initiatives include Enhancing the Performance Management and Development Program, Implementing a Multi-Year Compensation Strategy, and incorporating non-monetary recognition and retention elements through Measuring and Building Bench Strength (Succession Planning) and Establishing Executive and Peer-to-Peer Coaching Programs. Collectively, these initiatives are intended to support retention by reinforcing performance expectations, career development, and growth opportunities for employees within the City, as resources allow.

4. Develop written guidance and documentation for all corrective actions including Performance Improvement Plans. Ensure the saved documentation provides completion status of any required actions by employees.

   ***Human Resources Comments**: A current HR initiative to Enhance the Corrective Action Process is recently defined and started which includes developing written guidance and training, establishing consistency in corrective actions and Performance Improvement Plans, and implementing a tracking method to ensure appropriate follow-through and completion of required actions.*

   In addition, the ongoing Ensure Records Management Compliance and Best Practices initiative includes identifying standardized file shells for documentation across HR functions, working with each HR function to appropriately file documentation outside the standard file shell, establishing regular auditing procedures for HR records, and completing an audit of all current employee files. This initiative will clarify where documentation is stored and what records are appropriately maintained in personnel files, supporting compliance and consistency.

5. Ensure all appeal documentation including the committee's written report is retained within the employees' official personnel records.

   ***Human Resources Comments**: The ongoing Ensure Records Management Compliance and Best Practices initiative includes identifying standardized file shells for documentation across HR functions, working with each HR function to appropriately file documentation outside the standard file shell, establishing regular auditing procedures for HR records, and completing an audit of all current employee files. This initiative will clarify where appeal documentation, including committee reports, is stored and ensure such records are appropriately maintained within employees' official personnel files, supporting compliance and consistency.*

All Required Employees Receive a Performance Rating; Ratings may not Provide Useful Feedback

In addition to ongoing performance monitoring and coaching, industry standards generally suggest that employee performance be periodically rated to provide employees and the organization with clear documentation of how an employee has met their performance expectations over a certain period. Organizations generally provide this formal performance rating annually—often referred to as "the annual performance evaluation." Industry standards suggest that this formal feedback be focused only on the critical performance elements

of an employee's position—with preferably seven or fewer unique elements—to ensure relevance.

One of the benefits of a performance rating in a performance management program is the ability to analyze performance across the organization. For these reasons, qualitative rating results should be used to help create targeted employee development plans, such as what training is needed, where learning or development programs should be focused, and if employees are in the right positions. This type of analysis should occur at both the departmental- and organizational-level to address trends or knowledge gaps. Completing the performance rating process in a human resource management system facilitates this analysis and helps ensure all employees receive feedback timely.

Still, industry standards emphasize that performance rating methods, and performance management in general, should be adapted to the needs and the habits of an organization's workforce. Recently, some organizations have begun eliminating the annual evaluation to instead focus on continuous feedback practices.

What We Found

- The City of Denton has established a formal performance rating process that has recently been redesigned.
    - The City of Denton has adopted a policy that requires all supervisors to annually review each employee's job performance.
    - HR's most recently redesigned the performance evaluation process for the 2023 performance review cycle, including transitioning to a centralized human resources management system, streamlining data collection, improving tracking abilities, and allowing for trend analysis.[6] The program was further modified in 2024 and generally aligns with industry standards. Prior to 2023, HR made several attempts at creating a more efficient employee review process, including designing multiple manual review formats.

- The City generally requires supervisors to rate employee performance annually as part of a centralized performance management program. Some position classification limitations in the City's enterprise resource management system complicate the annual performance rating process.
    - Per the City's policy, every employee should know how they are doing on the job. To achieve this goal, the City has established an annual

[6] The performance management cycle begins in October and ends in September—aligning with the City's fiscal year.

performance evaluation process, whereby employee performance is formally rated. In 2023, the City moved this process to a human resources management system and adopted standard competencies for all applicable employees.

- Not all employees are included in the centralized performance management program. Specifically, HR indicated five employee groups that generally do not participate because they are regularly evaluated through different processes: (1) City Council appointees; (2) firefighters and police officers; (3) employees who participate in Denton Municipal Electric's power-line apprenticeship program[7]; (4) Denton Municipal Electric's craft employees, or those who have completed an apprenticeship or similar training; and (5) seasonal and temporary employees.
- While these exclusions are generally clear, the way some employees are classified in the City's human resource management system has caused some employees to be treated inconsistently. Specifically, (1) Assistant and Deputy Police and Fire Chiefs were included in the standard review process, but there is no documentation clarifying if they should be covered under the City's standard performance review process; (2) 20 Craft employees were included in the standard review program in 2024; and (3) some employees classified as "seasonal" occasionally work year-round and should be included in the standard review program, but were not due these positions being incorrectly setup in the financial system. Further, while Craft employees were historically excluded from the standard annual review program, a craft-only performance evaluation form was launched within the centralized performance management system in 2024 to help improve performance documentation. However, it is not clearly documented by HR why these employees should receive a different annual evaluation than other non-civil service employees.
- HR staff have created some written technical instructions on how to run the performance rating process in the City's human resources management system, including assigning employees to a performance rating cycle, launching the annual evaluation process, and testing the annual rating form.

- All required staff are generally being annually rated on time, despite undocumented tracking methods. However, there are some concerns about

[7] Apprentices of Denton Municipal Electric are evaluated ever six months based on U.S. Department of Labor approved criteria. Once these employees transition into a craft position their performance is continuously monitored and since 2024 are documented annually within the centralized performance management system.

the lack of formalized procedures for handling delayed evaluations for those employees out on leave during the standard time cycle.

- There are no standard operating procedures regarding the tracking of annual rating completions, including how long after the completion due date HR staff should continue following up. Specifically, this may impact any staff out on leave who did not receive their evaluation at the time HR staff stop tracking, potentially causing that employe not to receive a formal rating upon their return to work.
- Generally, all required employees received an annual rating in 2023 and 2024. Of the roughly 1,500 employees that should have been rated during these two cycles, only three employees did not have a completed annual evaluation. One of the three appeared to have multiple leaves of absence, but two employees did not separate from the City until months after the performance cycle ended.
- As detailed in Table 7, annual ratings were generally completed before the end of the evaluation cycle with slightly more timely results in 2023.

Table 7: Annual Rating Completion Timeliness[8]

Year	Total Employees	Completed by Due Date	Completed by Year End
2023	1,290	94.5%	5.0%
2024	1,462	83.2%	15.0%

- The number of standardized competencies creates redundancy and muddles the connection between the rating process and the City's organizational goals.
  - The performance management program's number of competencies exceeds what is recommended by industry standards. As outlined in Figure 2, HR's written guidance outlines ten standard competencies for all employees and an additional five "supervisory" competencies.
  - However, based on a review of completed annual ratings, only four supervisor competencies were actually assessed for 2023 and 2024, calling into question if these competencies are all considered critical. Specifically, the "Critical Thinking" competency was removed; HR staff indicated this removal was due to system limitations but they were unsure why "Critical Thinking" was chosen for removal.

[8] Employees on leave during the rating period may be rated after the deadline; however, the review was unable to confirm if all delayed ratings were due to leaves of absence.

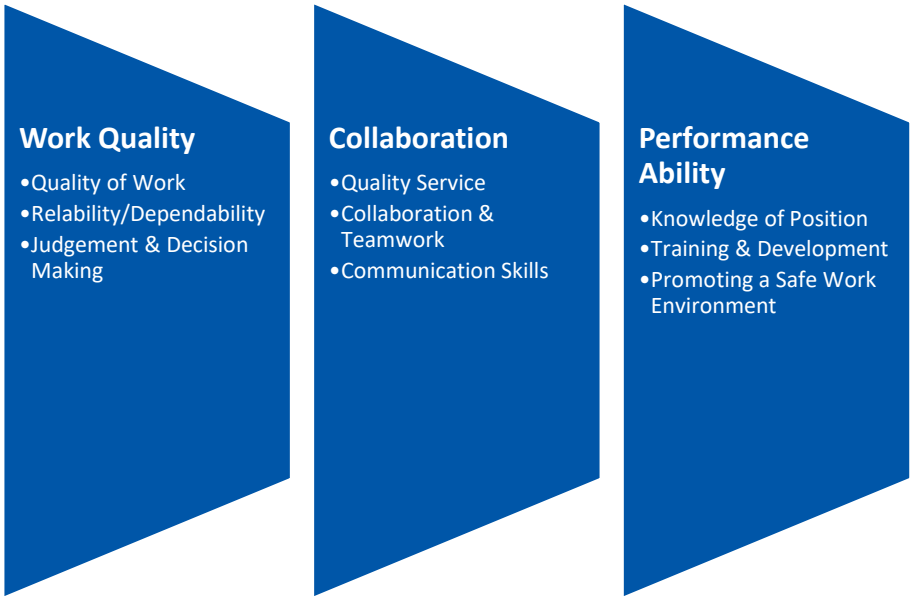
Figure 2: Performance Rating Standardized Competencies



- Multiple competencies had similar themes based on HR's written guidance and could likely be merged. In particular, based on word cloud analysis, three major themes emerged based on the example employee behavior available from HR's written guidance: (1) work quality, focused on if the employee meets deadlines and minimizes errors; (2) collaboration, focused on if the employee communicates with and meets the needs of others; and (3) performance ability, focused if the employee has the knowledge needed to perform. The competencies associated with each major theme are illustrated in Figure 3.[9] These major themes were also supported by a review of annual rating comments provided by supervisors, indicating that staff may be duplicating their efforts due to the number and similarity of competencies.

[9] Example behaviors for the "Initiative & Flexibility" competency were not provided in HR's written guidance, so this competency was excluded from the word cloud analysis.

Figure 3: Standard Competencies Themes



- The five supervisory competencies generally appear to be unique except for "Leadership," which encompasses major aspects of the "Inclusion" and "Strategic Focus" competencies.
- About 8.5 percent of raters for the 2023 and 2024 performance management cycle were responsible for providing feedback to more than ten employees. While these supervisors may be the appropriate people to evaluate these employees' performance, having between ten and 14 competencies that should be rated for each employee creates a large, potentially burdensome amount of work and reduces the likelihood that specific feedback is provided as part of the annual rating. HR has provided template feedback language for all but one of the competencies to aid supervisors with this burden.
- The standard competencies for all employees do not clearly align with the City's core values. Specifically, the City's has adopted five core values: Inclusion, Collaboration, Quality Service, Strategic Focus, and Fiscal Responsibility. While the 14 standard competencies for supervisors appear to incorporate all of these values, the ten standard competencies for all employees only incorporate two of these values as shown by the values being underlined in Figure 2. This potentially creates a disconnect between the annual evaluation criteria and the City's organizational goals.
- Further, specific training or guidance was generally not provided to supervisors to help them translate ongoing performance monitoring and coaching efforts of each employee's established expectations to

the standard competencies. Instead, training generally focuses on the technical knowledge needed to input ratings into the human resources management system.

- Underperformance interventions are not clearly reflected in performance ratings, and rating comments do not always reflect an employee's unique performance.
    - Specifically, a sample review of 80 employees with a recorded corrective action in 2023 or 2024 found that a corrective action does not equate to a sub-3 annual evaluation rating, nor did it often equate to a 'Needs Improvement' rating on any single competency suggesting that departments may not be using the annual rating to document a comprehensive picture of an employee's performance throughout the year.
    - Similarly, comparison of all 2023 and 2024 ratings that had a total score of less than 3.0 to the list of Human Resource's recorded corrective actions found that just because an employee received a lower total rating, they did not always receive a recorded corrective action or PIP, even when they scored less than 2.5 which would suggest performance issues were either severe or long-standing.
    - A review of all ratings, including individual competency feedback, completed by 55 supervisors, found 16 did not show consistent rating practices or lacked unique comments. Of those 16, 11 were associated with either generally high- or low-rating departments.
    - A review of 68 positions from 23 departments found that supervisors are not always ranking employees using the same expectations, even among the same job positions where presumably the expectations are either identical or very similar. Further, supervisors generally seem to be dependent on template feedback language, limiting the usefulness of this information.
    - Supervisors' annual ratings seem consistent with general department ratings. Specifically, department-level ratings remained consistent for both 2023 and 2024, with the highest-average rating department remaining the same, while two departments remained the lowest-rating departments for both years. Further, 69 percent of supervisors with unclear rating practices were associated with high- or low-ranking departments, suggesting that some of these consistent ranking departments may not always be providing accurate information on their employees' performances. Generally, most departments' average total ranking was 'meets expectations,' so a consistently high

or low rating department may indicate that the department's performance expectations are too low or high, respectively.

- HR's usage of the required annual evaluation results limits the usefulness of the performance rating data obtained.
    - Annual rating results are not shared with departments and are generally not available to department leaders in the centralized human resources management system, hindering comprehensive performance review or analysis.
    - Human Resources staff do not review annual rating results to ensure useful feedback is provided to employees, identify potential performance management program issues, or develop learning plans to address City-wide performance ability needs.
    - Further, while employees are not permitted to appeal their annual performance rating, the system allows the employee to add comments when providing their final signature, such as a written rebuttal. However, there is no formal process for HR to review these comments. Similarly, employees are expected to sign their completed evaluation to verify receipt, though they may refuse; however, the system does not currently provide a report of employees who refused to sign, hindering review of these evaluations by HR to ensure any related performance issues are appropriately addressed.

Why It Matters

Periodic performance ratings allow an organization to capture standardized data on employee performance across the entire organization. For this process to be effective, all employees should be rated, and rated performance elements should be standardized and tied to the organization's values and goals.

While all required employees generally receive a performance rating timely, the overall lack of written guidance and standard operating procedures regarding the rating process increases the risk of inconsistent practices. Specifically, some system issues complicate ensuring all employees are rated and a relatively informal tracking process creates opportunities for some employees to be missed.

As suggested by best practices and survey responses, the number and similarities of the City's standard competencies appear to create redundancies, creating unnecessary burden on supervisors.

Finally, the annual rating data is not used to its fullest. Specifically, the lack of any comprehensive review, whether within a single department or by Human Resources, limits the usefulness of the performance data or feedback collected from the process. These evaluations should help link the organization's strategic goals to both the department's direct mission and the employees' actions. By not using the results of the rating process, the usefulness of annual performance evaluation is minimized.

Recommendations:

6. Develop written guidance to ensure internal practices remain consistent when handling the few civil service employees and long-term seasonals who should receive the standard performance evaluation. Ensure all employees are correctly classified in the financial system, including those currently classified as "seasonal" who occasionally work all year.

   ***Human Resources Comments**: The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library both support the development of written guidance to ensure consistent internal practices when evaluating select civil servants and long-term seasonal employees who receive standard performance evaluations. These initiatives include the development of standard operating procedures, process maps, and manager and employee guidance, as well as ongoing research, development, and improvement of the overall performance review process to promote consistency and compliance.*

   Progress on these initiatives is dependent on available staffing and resources. Due to significant staffing limitations within Organizational Development, implementation timelines may be delayed as Human Resources prioritizes work based on operational needs and capacity.

7. Develop written guidance and requirements for tracking evaluations including check-ins and specific instructions and follow-up practices for delayed evaluations (i.e., for employees out on leave during the annual evaluation window).

   ***Human Resources Comments**: The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library both support the development of written guidance and requirements for tracking performance evaluations, including documented check-ins, follow-up practices, and specific instructions for managing delayed evaluations (such as when employees are on leave*

during the annual evaluation window). These initiatives include the development of standard operating procedures, process maps, and manager and employee guidance, as well as ongoing research, development, and improvement of the overall performance review process to promote consistency and compliance.

Progress on these initiatives is dependent on available staffing and resources. Due to significant staffing limitations within Organizational Development, implementation timelines may be delayed as Human Resources prioritizes work based on operational needs and capacity.

8. If DME and HR leadership determine that it is appropriate for craft employees to receive a simplified evaluation form, define, formalize, and share written guidance and performance expectations with these employees.

***Human Resources Comments**: The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library will support the development and formalization of written guidance and performance expectations for these employees. These initiatives include the development of standard operating procedures, process maps, and manager and employee guidance, as well as ongoing research, development, and improvement of the overall performance review process to promote consistency, transparency, and compliance.*

Progress on these initiatives is dependent on available staffing and resources. Due to significant staffing limitations within Organizational Development, implementation timelines may be delayed as Human Resources prioritizes work based on operational needs and capacity.

9. Provide qualitative evaluation results and guidance on how to use these results to department leaders.

***Human Resources Comments:** The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library support the development of written guidance on how qualitative evaluation results are summarized, shared with department leadership, and appropriately utilized to inform performance discussions, coaching, and development efforts. These initiatives include the development of standard operating procedures, process maps, and manager guidance to promote consistent interpretation and use of qualitative evaluation data.*

Progress on these initiatives is dependent on available staffing and resources. Due to significant staffing limitations within Organizational Development, implementation timelines may be delayed as Human Resources prioritizes work based on operational needs and capacity.

10. Implement training on evaluating staff performance to assist supervisors in establishing methods of monitoring performance conducive to each department's operations, including how to translate employee performance throughout the cycle to the annual evaluation.

***Human Resources Comments**: The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library support the development of methods to assist departments in defining, documenting, and evaluating critical performance elements of job positions. These initiatives include the development of standard operating procedures, process maps, and manager guidance, as well as training focused on evaluating staff performance, establishing appropriate tracking methods aligned with departmental operations, and reinforcing the importance of routine, open communication of performance expectations, including strategies for addressing employee resistance to performance feedback.*

Implementing these changes represents a necessary organizational culture shift and will require sustained commitment and engagement across the organization. Progress on these initiatives is dependent on available staffing and resources; due to significant staffing limitations within Organizational Development, implementation timelines may be delayed as Human Resources prioritizes work based on operational needs and capacity.

11. If the current evaluation form is used, implement a process to review employee rebuttal evaluation comments to ensure no major concerns, such as discrimination claims, need to be further reviewed.

***Human Resources Comments:** The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library support the development of written guidance and procedures to ensure employee rebuttal comments on performance evaluations are reviewed for potential concerns requiring further assessment, including allegations of discrimination or other policy-related issues. These initiatives include the development of standard operating procedures, process maps, and manager and employee guidance to promote consistent handling, escalation, and documentation of rebuttal reviews.*

Implementation timelines are subject to available staffing and resources, and significant staffing limitations within Organizational Development may delay progress on these initiatives.

Audit Project Background

The City Auditor's Office is responsible for providing: (a) an independent appraisal of City operations to ensure policies and procedures are in place and complied with, inclusive of purchasing and contracting;[10] (b) information that is accurate and reliable; (c) assurance that assets are properly recorded and safeguarded; (d) assurance that risks are identified and minimized; and (e) assurance that resources are used economically and efficiently and that the City's objectives are being achieved.

Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Management Responsibility

City management is responsible for ensuring that resources are managed properly and used in compliance with laws and regulations; programs are achieving their objectives; and services are being provided efficiently, effectively, and economically.

Objectives, Scope, and Methodology

The City Auditor's Office has completed an audit of the City's employee performance management program for non-civil service, non-seasonal employees, to provide assurance that the program was transparent and consistent for all employees; increased employee performance accountability; and provided all employees with feedback on how their performance contributed to the City's success.

Audit fieldwork was conducted during October, November, December 2025. The scope of review varied depending on the procedure being performed. The following list summarizes major procedures performed during this time:

- Reviewed documentation to develop criteria, including documented policies, industry standards, City requirements, and best practices;
- Developed process narratives to identify current control activities in the annual performance evaluation and performance intervention processes;

[10] The City of Denton Internal Auditor's Office is considered structurally independent as defined by generally accepted government auditing standard 3.56.

- Interviewed staff from the Human Resources and Denton Municipal Electric departments;
- Reviewed historic performance evaluation guidance to assess how the evaluation process has been updated in recent years.
- Evaluated 67 responses received on a survey administered to 258 supervisors, managers, and directors throughout the City to obtain information related to employee performance management practices;
- Verified that merit-pay increases were accurately provided to a randomly selected sample of 100 evaluations completed in 2024 to assess if appropriate merit raises were provided;
- Verified that all applicable employees received an annual evaluation for the 2023 and 2024 performance cycles;
- Assessed the performance rating standard competencies for general patterns and potential adjustments;
- Reviewed a random sample of 80 employees' annual evaluations, who had received a documented performance intervention, and all documented PIP and Memo of Expectation performance interventions to determine if the need for a performance intervention was reflected in the evaluation score;
- Determined if employees with an annual rating below 3.0 had any documented performance concerns during the corresponding performance cycle;
- Reviewed the annual ratings completed by 55 supervisors who appeared to have rated all employees similarly (i.e., were likely not providing unique feedback on each employee's performance);
- Reviewed the annual ratings for 68 positions that had more than one employee to determine if supervisors appeared to be rating employees using consistent performance expectations; and
- Averaged employees' annual ratings by department to identify departments that consistently scored their employees above or below "Meets Expectations."

Appendix A: Management Response Summary

The following summarizes the recommendations issued throughout this report. The auditors found that staff and the Department were receptive and willing to make improvements to controls where needed. Management has provided their response to each recommendation.

1	Create training or guidance to assist supervisors in establishing and clearly communicating performance expectations.	**Partially Agree**

Explanatory Comments: An Organizational Development initiative to enhance the Performance Management and Development Program was started January 1, 2025 and was intended to strengthen supervisor training on establishing and communicating performance expectations. Due to budgetary constraints and staffing limitations in 2025, progress on this initiative was paused. At this time, there are no dedicated Organizational Development staff; however, Human Resources continues to provide guidance and support to department leadership as capacity allows and will incorporate audit findings when resources permit.

Responsibility:	**Organizational Development**	Expected Completion:	**TBD**

2	If merit increases are reinstated, Human Resources should formalize the process for verifying and documenting the individuals awarded a merit-based pay increase.	**Agree**

Explanatory Comments: Human Resources agrees with the recommendation. The current HR Administration initiative to complete a Comprehensive Human Resources Process Library includes documenting standardized processes across HR functions and has been underway for approximately 18 months, reflecting the need to establish formal processes where none previously existed. As part of this effort, Human Resources will work with Total Rewards to formalize documentation related to verification and recordkeeping for merit-based pay actions, should merit increases be reinstated.

In addition, a Total Rewards initiative beginning in FY 2026, Implement a Multi-Year Compensation Strategy to Maintain Pay Plans, includes the development of a Compensation Handbook. The Compensation Handbook will align with and supplement the Process Library by clearly documenting compensation-related processes, including merit-based pay actions, to support consistency, transparency, and audit compliance.

Responsibility:	**Total Rewards**	Expected Completion:	**FY 2027**

3	Consider reimplementing an organization-wide reward program to aid supervisors in retaining high-performing employees, including creating promotional opportunities.	**Partially Agree**

Explanatory Comments: Human Resources acknowledges the recommendation. Development of an organization-wide reward program is addressed through multiple defined HR initiatives that are planned to be implemented over the next several years. When developed comprehensively, such programs require sustained financial resources and staffing capacity; currently, the organization does not have dedicated Organizational Development staff.

Relevant initiatives include Enhancing the Performance Management and Development Program, Implementing a Multi-Year Compensation Strategy, and incorporating non-monetary recognition and retention elements through Measuring and Building Bench Strength (Succession Planning) and Establishing Executive and Peer-to-Peer Coaching Programs. Collectively, these initiatives are intended to support retention by reinforcing performance expectations, career development, and growth opportunities for employees within the City, as resources allow.

Responsibility:	**Organizational Development**	Expected Completion:	**TBD**

4	Develop written guidance and documentation for all corrective actions including Performance Improvement Plans.	**Agree**

Explanatory Comments: A current HR initiative to Enhance the Corrective Action Process is recently defined and started which includes developing written guidance and training, establishing consistency in corrective actions and Performance Improvement Plans, and implementing a tracking method to ensure appropriate follow-through and completion of required actions.

In addition, the ongoing Ensure Records Management Compliance and Best Practices initiative includes identifying standardized file shells for documentation across HR functions, working with each HR function to appropriately file documentation outside the standard file shell, establishing regular auditing procedures for HR records, and completing an audit of all current employee files. This initiative will clarify where documentation is stored and what records are appropriately maintained in personnel files, supporting compliance and consistency.

Responsibility:	**Employee Relations**	Expected Completion:	**FY 2027**

5	Ensure all appeal documentation including the committee's written report is saved within the employees' official personnel records.	**Agree**

Explanatory Comments: The ongoing Ensure Records Management Compliance and Best Practices initiative includes identifying standardized file shells for documentation across HR functions, working with each HR function to appropriately file documentation outside the standard file shell, establishing regular auditing procedures for HR records, and completing an audit of all current employee files. This initiative will clarify where appeal documentation, including committee reports, is stored and ensure such records are appropriately maintained within employees' official personnel files, supporting compliance and consistency.

Responsibility:	**Employee Relations**	Expected Completion:	**FY 2027**

6	Develop written guidance to ensure internal practices remain consistent when handling the few civil service employees and long-term seasonals who should receive the standard performance evaluation. Ensure all employees are correctly classified in the financial system, including those currently classified as "seasonal" who occasionally work all year.	**Partially Agree**

Explanatory Comments: The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library both support the development of written guidance to ensure consistent internal practices when evaluating select civil servants and long-term seasonal employees who receive standard performance evaluations. These initiatives include the development of standard operating procedures, process maps, and manager and employee guidance, as well as ongoing research, development, and improvement of the overall performance review process to promote consistency and compliance.

Progress on these initiatives is dependent on available staffing and resources. Due to significant staffing limitations within Organizational Development, implementation timelines may be delayed as Human Resources prioritizes work based on operational needs and capacity.

Responsibility:	**Organizational Development**	Expected Completion:	**TBD**

7	Develop written guidance and requirements for tracking evaluations including check-ins and specific instructions and follow-up practices for delayed evaluations (i.e. for employees out on leave during the annual evaluation window).	**Partially Agree**

Explanatory Comments: The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library both support the development of written guidance and requirements for tracking performance evaluations, including documented check-ins, follow-up practices, and specific instructions for managing delayed evaluations (such as when employees are on leave during the annual evaluation window). These initiatives include the development of standard operating procedures, process maps, and manager and employee guidance, as well as ongoing research, development, and improvement of the overall performance review process to promote consistency and compliance.

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Responsibility:	**Organizational Development**	Expected Completion:	**TBD**

8	If DME and HR leadership determine that it is appropriate for craft employees to receive a simplified evaluation form, define, formalize, and share written guidance and performance expectations with these employees.	**Partially Agree**

Explanatory Comments: The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library will support the development and formalization of written guidance and performance expectations for these employees. These initiatives include the development of standard operating procedures, process maps, and manager and employee guidance, as well as ongoing research, development, and improvement of the overall performance review process to promote consistency, transparency, and compliance.

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Responsibility:	**Organizational Development**	Expected Completion:	**TBD**

9	Provide qualitative evaluation results and guidance on how to use these results to department leaders.	**Partially Agree**

Explanatory Comments: The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library support the development of written

guidance on how qualitative evaluation results are summarized, shared with department leadership, and appropriately utilized to inform performance discussions, coaching, and development efforts. These initiatives include the development of standard operating procedures, process maps, and manager guidance to promote consistent interpretation and use of qualitative evaluation data.

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Responsibility:	**Organizational Development**	Expected Completion:	**TBD**

10	Implement training on evaluating staff performance to assist supervisors in establishing methods of monitoring performance conducive to each department's operations, including how to translate employee performance throughout the cycle to the annual evaluation.	**Partially Agree**

Explanatory Comments: The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library support the development of methods to assist departments in defining, documenting, and evaluating critical performance elements of job positions. These initiatives include the development of standard operating procedures, process maps, and manager guidance, as well as training focused on evaluating staff performance, establishing appropriate tracking methods aligned with departmental operations, and reinforcing the importance of routine, open communication of performance expectations, including strategies for addressing employee resistance to performance feedback.

Implementing these changes represents a necessary organizational culture shift and will require sustained commitment and engagement across the organization. Progress on these initiatives is dependent on available staffing and resources; due to significant staffing limitations within Organizational Development, implementation timelines may be delayed as Human Resources prioritizes work based on operational needs and capacity.

Responsibility:	**Organizational Development**	Expected Completion:	**TBD**

11	If the current evaluation form is used, implement a process that ensures employees' rebuttals evaluation comments are reviewed to ensure no major concerns,	**Partially Agree**

such as discrimination claims, need to be further reviewed.

Explanatory Comments: The Enhance Performance Management and Development Program and the initiative to complete a Comprehensive Human Resources Process Library support the development of written guidance and procedures to ensure employee rebuttal comments on performance evaluations are reviewed for potential concerns requiring further assessment, including allegations of discrimination or other policy-related issues. These initiatives include the development of standard operating procedures, process maps, and manager and employee guidance to promote consistent handling, escalation, and documentation of rebuttal reviews.

Implementation timelines are subject to available staffing and resources, and significant staffing limitations within Organizational Development may delay progress on these initiatives.

Responsibility:	**Organizational Development**	Expected Completion:	**TBD**

Audit of Employee Performance Management

Madison Rorschach
City Auditor
City Auditor's Office
February 17, 2026

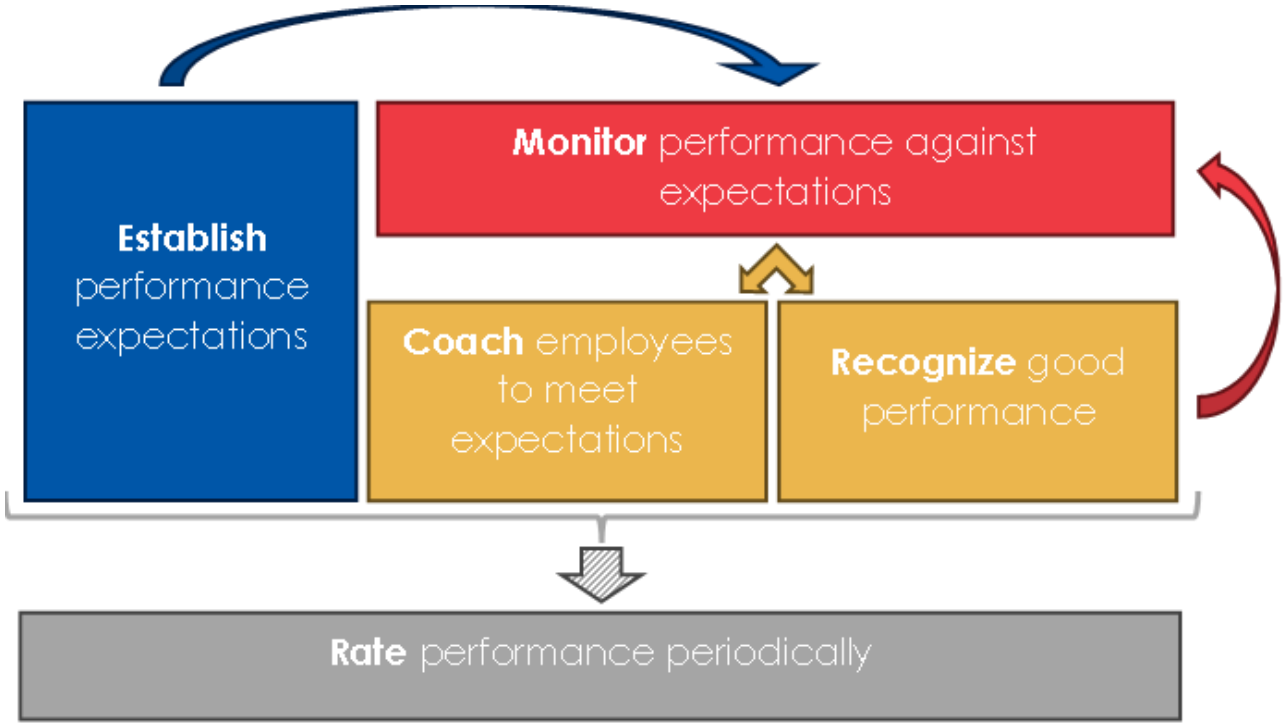


Purpose of the Audit

- Since 2020, the City has added about 200 budgeted positions and plans to employ almost 2,000 people in FY2026.

- Audit evaluated if the City's performance management program was transparent and consistent for all employees, increased employee performance accountability, and provided all employees with feedback on how their performance contributed to the City's success.

Continuous Performance Mgmt. Cycle



Employees Performance Expectations could be more Clearly Communicated

- Guidance for supervisors on establishing performance expectations previously existed but was removed; new guidance has only recently been developed.
- Performance expectations generally appear to be relevant but could be more specific.
- Performance expectation clarity may be complicated by supervisor communication methods.

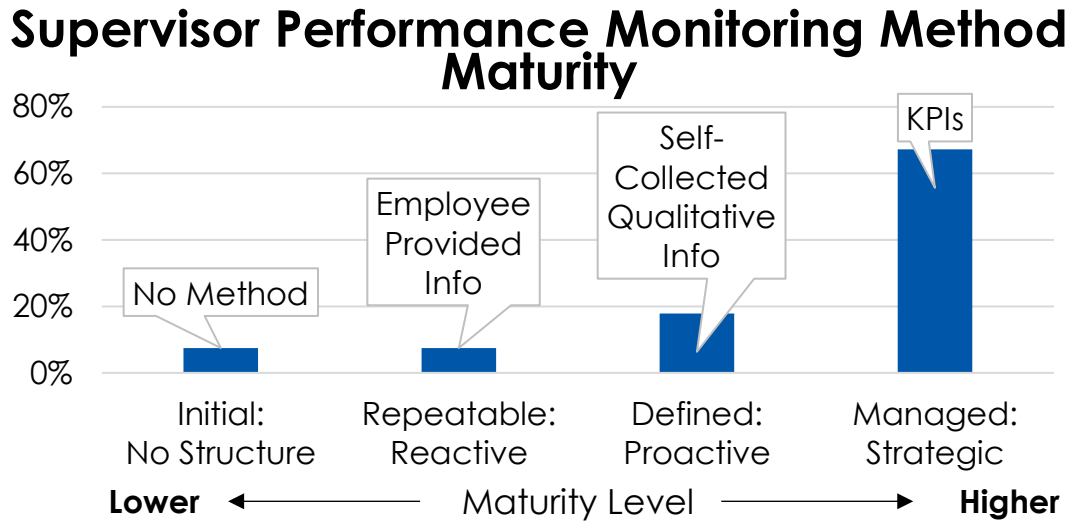
Performance Expectation Communication Practices*

	Individualized	General
Communicated Verbally	76%	57%
Communicated in Writing	22%	31%
Not Communicated	21%	33%

*Based on 67 responses to a survey of 258 supervisors; the survey provides a ±10% margin of error. and responses were generally representative of City departments and operations.

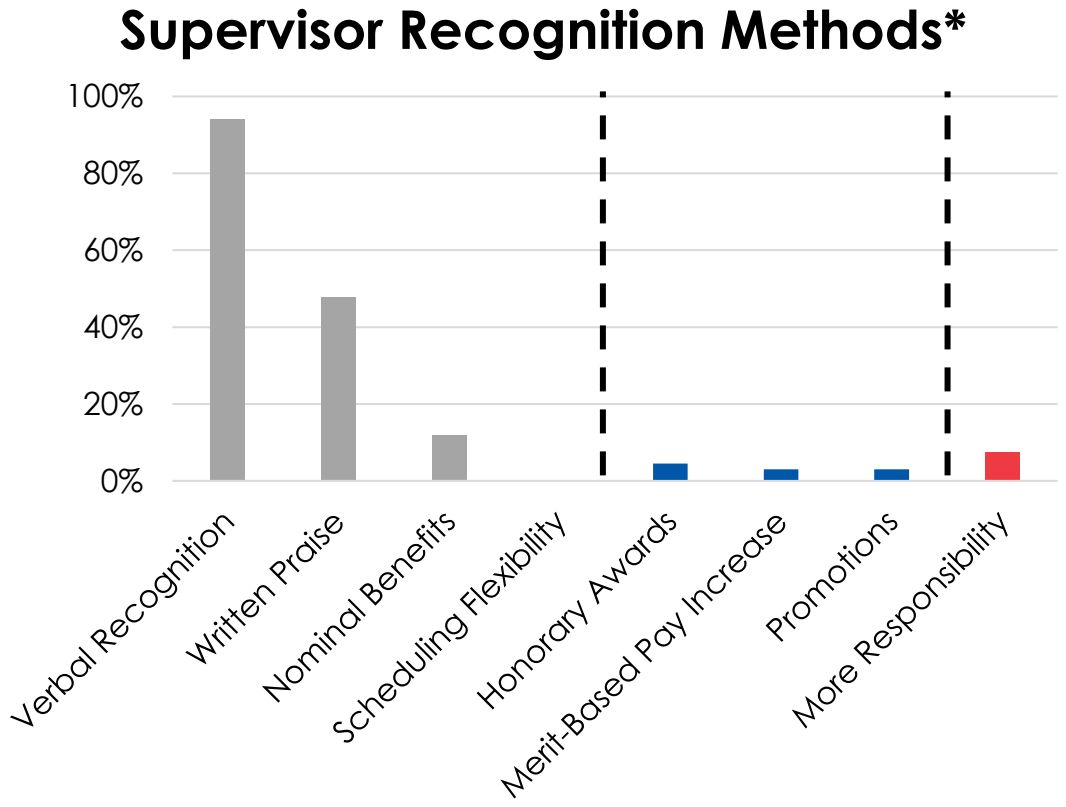
Supervisors Monitor Performance Holistically

- Training on continually monitoring employee performance has generally not been developed.
- Most supervisors appear to have developed relatively mature methods of monitoring employee performance.



Recognition for High-Performance is Limited

- Some formal avenues for recognizing employees are available.
  - Budget constraints recently eliminated these programs.
  - Promotion-based recognition options are not currently provided.
- Most supervisors use informal recognition despite limited guidance.

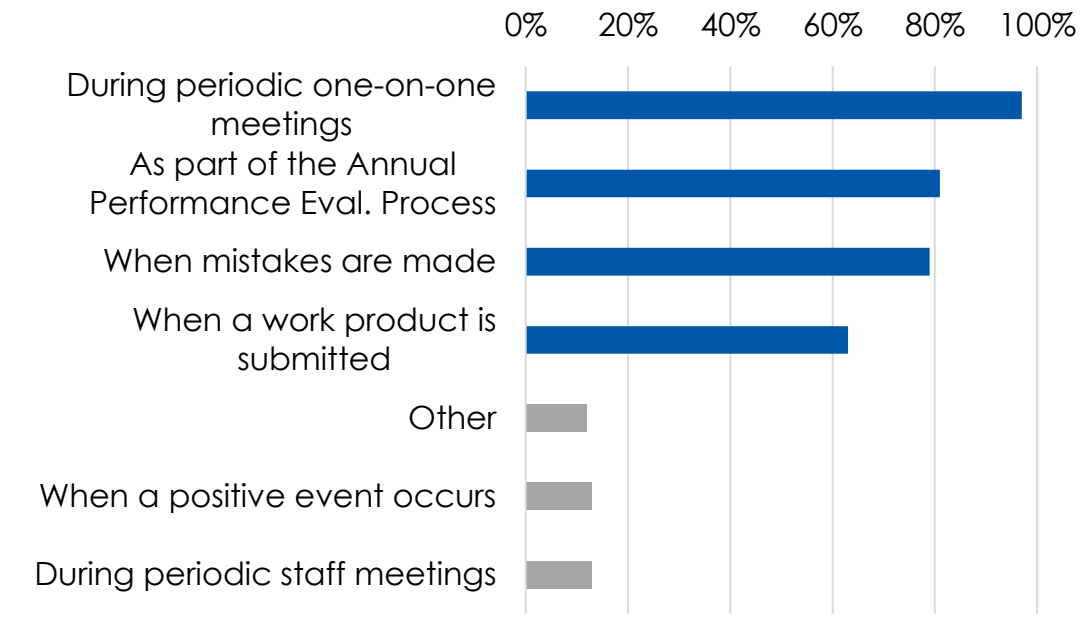


*Informal recognitions are in grey; formal recognition is in blue; red items are generally not considered a valid recognition by industry stnds.

HR's Tracking of Interventions is Informal

- Supervisors regularly provide performance feedback.
- Guidance for addressing underperformance is available but may not be used most effectively.
  - Formal interventions can be appealed.
- Documentation of performance-based interventions is informal & inconsistent.

Performance Feedback Timing*



*Survey respondents were provided with a fill-in-the blank "Other" option for feedback timing; these responses are summarized in grey.

Summary of Corrective Actions

	Termination	Demotion	Suspension	Reprimand	PIP	Informal
2023	10	2	29	57	2	57
2024	18	0	38	90	5	100

All Employees Receive a Performance Rating; Ratings may not Provide Useful Feedback

- Supervisors rate employee performance annually through a standard program.
  - Employees are rated timely.
  - Stnd. competencies create redundancy.
- Underperformance interventions are not clearly reflected in performance ratings.
- Rating data is generally not used by Depts. or HR.

Performance Rating Standardized Competencies*



*Core values are underlined; the Critical Thinking competency was removed from the actual rating due to system limitations, despite being discussed in written guidance.

Management Response Summary

Rec.	Recommendations*	Response	Implementation Actions*
1	Create guidance to assist supervisors in establishing & clearly communicating performance expectations.	Partially Agree	Ongoing initiatives to develop SOPs and guidance will include establishing and communicating performance expectations.
2	Formalize the process for verifying & documenting individuals awarded merit-based pay increases.	Agree	Will formalize documentation for verifying and recording merit-based pay actions as part of the ongoing Process Library initiative.
3	Consider reimplementing an org.-wide recognition program, including creating promotional opportunities.	Partially Agree	Multiple HR initiatives are planned to develop this program over the next few years; financial resources & staffing will be required.
4	Develop guidance for all corrective actions, including PIPs.	Agree	Initiative recently defined & in progress; developing guidance, training, & corrective action tracking method.
5	Ensure all appeal documentation is retained in the employees' official personnel records.	Agree	Ongoing initiatives include standardizing retention practices.
6	Develop guidance to ensure the few civil service & long-term seasonal employees receive the standard performance evaluation.	Partially Agree	Ongoing initiatives to develop SOPs and guidance will include research and improvement of the performance review process.
7	Develop guidance for tracking evals. including follow-up practices for delayed evaluations.	Partially Agree	Ongoing initiatives to develop SOPs and guidance will include evaluation tracking, follow-ups, and delays.
8	Define, formalize, and share written guidance and performance expectations for craft employees.	Partially Agree	Ongoing initiatives to develop SOPs and guidance will include research and improvement of the performance review process.
9	Provide qualitative eval. results & guidance on how to use these results to department leaders.	Partially Agree	Ongoing initiatives to develop SOPs and guidance will include using data to inform performance discussions and coaching.
10	Implement training on evaluating and monitoring staff performance.	Partially Agree	Ongoing initiatives to develop SOPs and guidance will include defining, documenting, and evaluating performance.
11	Implement a process to review employee rebuttal comments.	Partially Agree	Ongoing initiatives to develop SOPs and guidance will include rebuttal comment review, escalation, and documentation.

*Detailed recommendations and implementation actions can be seen in the full audit report; all three of HR's Organizational Development positions are currently vacant, potentially slowing implementation.

Questions?

Madison Rorschach

City Auditor

City Auditor's Office

City of Denton

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AGENDA INFORMATION SHEET

DEPARTMENT: **Denton Municipal Electric**

DCM: **Cassey Ogden**

DATE: **February 17, 2026**

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding the City's utility billing process for electric service.

BACKGROUND

As part of a task/process transition between Denton Municipal Electric (DME) and Customer Service, staff identified 218 commercial accounts that had not been adjusted per the City's adopted electric rate ordinance as it relates to electric demand charges. This error occurred over a period of 24 months. As such, and in compliance with current governing ordinances, staff issued billing adjustments that resulted in refunds/credits to 32 customers and back billings to 186 customers. In advance of billing adjustments being sent to customers, staff made phone calls and sent written communication. Unfortunately, contact information was not accurate and available for some customers, which hindered communication and in at least one instance, a customer did not receive any communication at all due to human error. The net impact of these billing adjustments resulted in the recovery of $331,607.27 in revenue that should have been received had these commercial accounts been adjusted on a timely basis and in accordance with the adopted electric rate ordinance. When contacted, our Customer Service staff worked closely with customers to explain the billing adjustments and in some cases, payment arrangements were facilitated.

The nature of these billing adjustments relates to commercial customers only and the application of charges for power demand, also known as peak load. Demand charges are a component of base charges and do not include the Energy Cost Adjustment (ECA) or Transmission Cost Recovery Factor (TCRF). For small commercial customers with power demand below 21 kW, there are no demand charges. These customers only pay a fixed facility charge and usage charge as their base charge. For medium and large commercial customers, the base charge is comprised of a fixed facility charge, usage charge and demand charge. The use of demand charges for commercial customers is customary for electric utilities and DME has utilized them for more than 20 years. The key reason for their use is to size equipment to meet the customer's highest demand, ensure that costs are burdened effectively to customers driving the infrastructure costs, incentivize energy efficiency by encouraging customers to "flatten" their load especially during peak times, and application of a "ratchet" or lock period to further incentivize energy efficiency.

In preparation for this work session, DME staff surveyed five city-owned electric utilities (CPS Energy/San Antonio, Austin Energy, Garland Power & Light, Bryan Texas Utilities, Georgetown Electric Utility), reviewed Substantive Rules by the Public Utility Commission of Texas for Retail Electric Providers (REPs), and solicited input from our rates consultant. Findings and recommendations included in staff's presentation are based on information from those sources.

EXHIBITS

1. Agenda Information Sheet
2. Presentation

Respectfully submitted:
Antonio Puente, Jr.
940-349-8487
DME General Manager

Billing Process for Electric Service

Tony Puente
DME General Manager

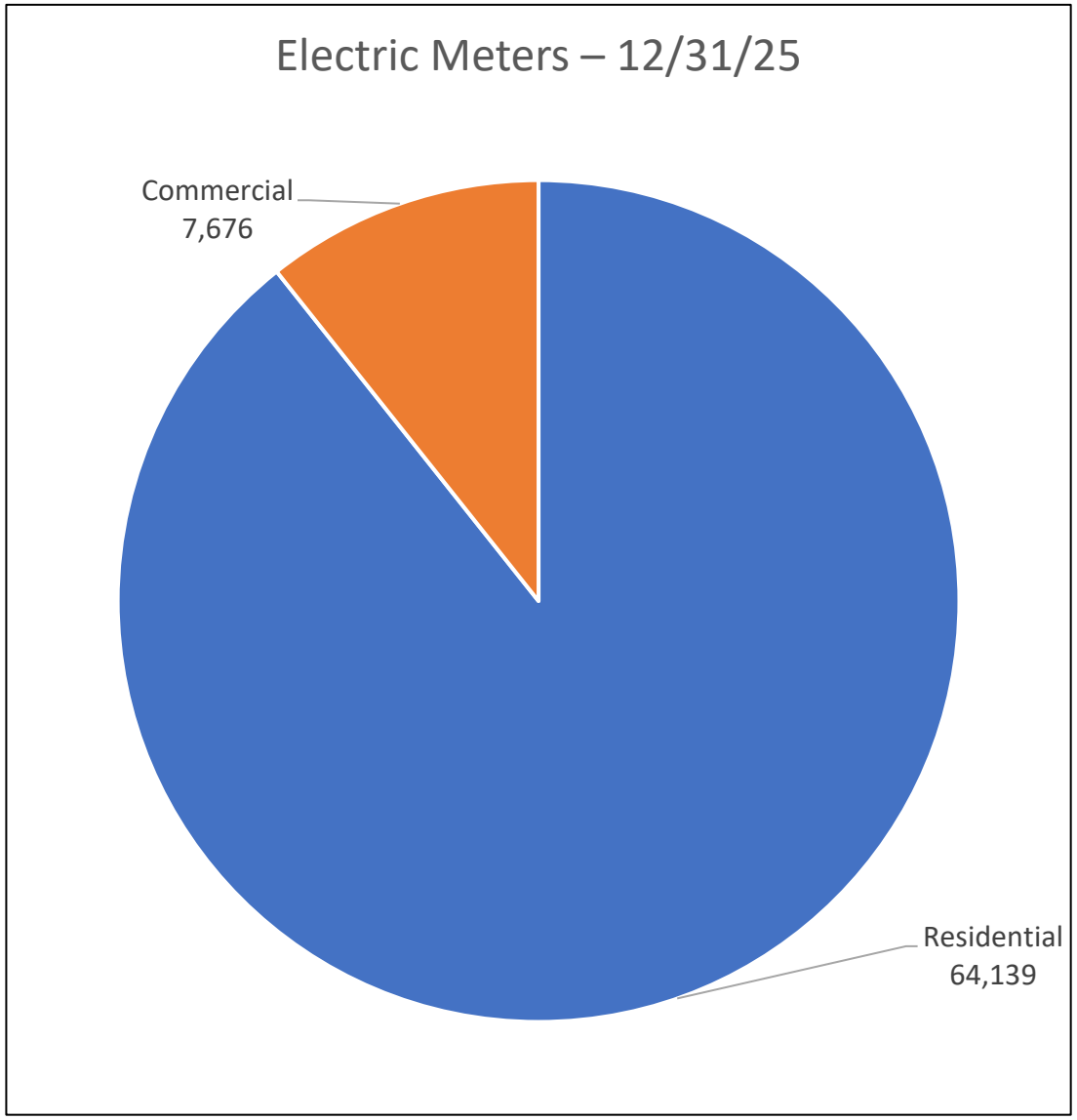
February 17, 2026

ID #25-2296

Objectives

1. Background
2. Overview of Adjustments
3. Governing Ordinances
4. Best Practice & Muni-Owned Electric Utility (MOU) Survey
5. Findings & Staff Recommendations
6. Questions

Background



- Annual Demand Charge Adjustments
  - 80-100, generally associated with new accounts not classified correctly when established.
  - Accounts may be re-classified up or down based on peak demand over 2 consecutive months.

- Overbilling and Underbilling of Electric accounts.
  - Department review found 218 commercial accounts had not been adjusted for Demand Charges.
  - Review period covered 24 months.
  - Staff initiated adjustments with intent to communicate with customers in advance. However, some did not have updated contact information on file, and at least one customer was not contacted.

Overview of Adjustments

- 218 Commercial Accounts, representing a net back billing of $331,607.27.
  - Overbilled accounts = 32
  - Underbilled accounts = 186
- Overbilled accounts were credited a total of $51,160.11.
  - Credits ranged from $21.19 to $10,071.00.
  - Average credit = $1,598.75.
  - Average annual billing = $11,556.00.
- Underbilled accounts were back billed a total of $382,767.38.
  - Back billings ranged from $21.52 to $26,922.65.
  - Average back bill = $2,057.89.
  - Average annual billing = $11,903.52.

Governing Ordinances

- Code of Ordinances, Chapter 26, Sec. 26-23 (4) –
  - "Adjustment period. The City shall also have the right to provide billing adjustments, consisting of back-billing or back credits, on prior billing for a period up to, but no greater than two (2) years."

- Ordinance No. 25-1688 –
  - General Service Small (GSS) – Not subject to Demand Charge.
  - General Service Medium (GSM) & Large (GSL) – Subject to Demand Charge.
  - Application – If power demand (i.e., peak load) exceeds minimum for the rate class in **two (2) consecutive months**, account is moved to the next rate class and locked for twelve (12) billing periods.
  - Calculation – Greater of (1) maximum actual monthly kW in a 15-minute interval, (2) minimum kW for rate class, or (3) 70% of maximum monthly kW during the previous months of May-October.

Best Practice & MOU Survey

- Best Practice: Commercial Demand Charges are the norm, but application and calculation vary.
- Surveyed Utilities: CPS Energy, Austin Energy, Garland Power & Light, Bryan Texas Utilities, & Georgetown.
- Rate Classes – Number and parameters vary. Main finding is transmission level rate classes.
- Demand Application – Small rate class has no demand charge. One month exceeding maximum kW moves account to next rate class; 12-month lock period in new rate class; and annually reviewed for compliance.
- Demand Calculation (for billing purposes) – Varies but generally the greater of (1) maximum 15-minute interval in the month, (2) minimum kW for rate class, or (3) percentage of highest kW for a specific period or installed capacity.
- Overbilling ("Back Credits") & Underbilling ("Back-Billing") Adjustments –
  - Overbillings range from 1 year to Initiation of Service.
  - Underbillings range from 6 months to 1 year.
  - PUCT Substantive Rule – 6 months for underbillings and Entire Period for overbillings.

Findings & Staff Recommendations

1. Overbilling and Underbilling two (2) year period not in line with surveyed MOUs or PUCT Substantive Rule for Retail Electric Providers (REPs).
   - ❑ Staff Recommendation: (1) Change overbilling billing period to Entire Period of Error; and (2) Change underbilling period to 6 months.

2. Demand Application of two (2) consecutive months generally not in line with surveyed MOUs.
   - ❑ Staff Recommendation: No change. Survey results vary but one-month measure is the norm. DME process reflects a higher threshold to account for various factors that may impact demand.

3. Rate Class Lock Period of 12 months partially in line with surveyed MOUs.
   - ❑ Staff Recommendation: No change to lock period, but addition of language clarifying that a review of the lock period will determine if customer remains in current rate class, is moved down to the next lower rate class, or is moved up to the next higher rate class if peak load exceeds the current rate classes kW maximum in 2 consecutive months.

Findings & Staff Recommendations

4. Demand Calculation generally consistent in tiering with surveyed MOUs although specific parameters vary.
   - ❑ Staff Recommendation: No change.

5. Billing adjustments associated with this review.
   - ❑ Staff Recommendation: (1) No change to overbilled/credited accounts, but (2) underbilled accounts should be corrected based on a 6-month period for the 24 period of the review, which means they will be refunded any underbilling amount and put back into their previous rate class. Latter recommendation will have no impact on customers that exceeded the 2 consecutive month threshold in the last 6 months of the review.

Questions



City of Denton

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AGENDA INFORMATION SHEET

DEPARTMENT: **Environmental Services and Sustainability Department**

ACM: **Frank Dixon**

DATE: **February 17, 2026**

SUBJECT

Receive a report, hold a discussion, and give staff direction on the update to the Mosquito Surveillance and Response Plan.

BACKGROUND

The Mosquito Surveillance and Response Plan (the "Plan") guides the City's responses to West Nile Virus (WNV) activities, including mosquito control measures for reducing the spread of WNV among residents. The plan establishes Risk Levels based on activity documented by the trapping and testing of mosquitoes for WNV and WNV human epidemiological data. The Plan specifies Conditions, Triggers, Recommended Responses and Control Measures for each risk level.

EXHIBITS

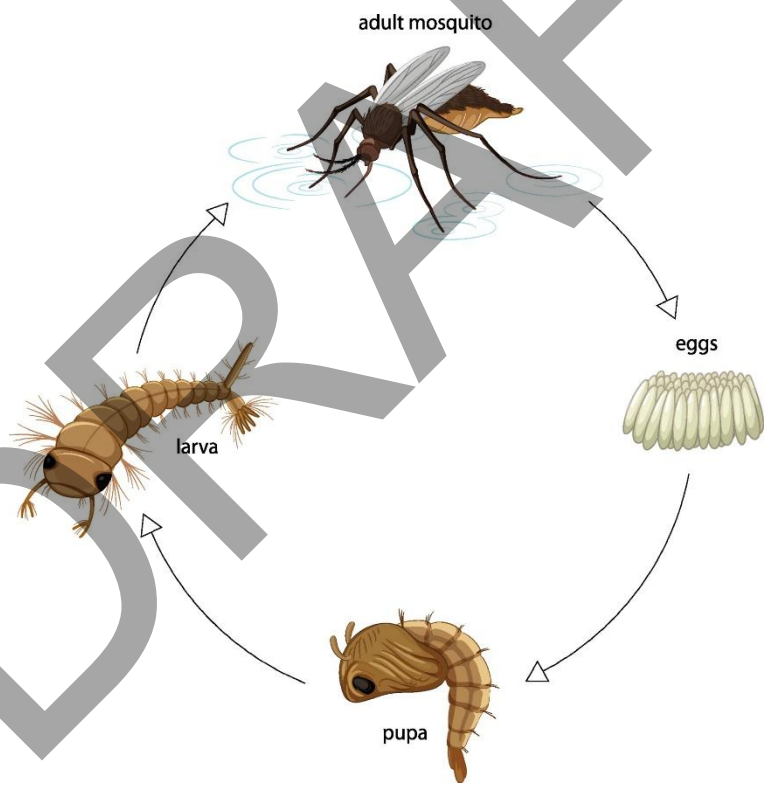
1. Exhibit 1-Agenda Information Sheet
2. Exhibit 2-Draft Mosquito Surveillance and Response Plan
3. Exhibit 3-Current Mosquito Surveillance and Response Plan
4. Exhibit 4-Presentation

Respectfully submitted:
Michael A. Gange
Director of Environmental Services and Sustainability

West Nile Virus

Mosquito Surveillance and Response Plan

DRAFT



January 2026

West Nile Virus

Mosquito Surveillance and Response Plan

1. Introduction

West Nile Virus (WNV) is a mosquito transmitted disease occurring in the United States. WNV was first recorded in North America in 1999 in New York and spread in subsequent years. In 2012, the highest incident rates in the nation were seen in the Texas region, and have been relatively low in the following years.

Most people infected with WNV are asymptomatic. However, roughly 20% of infected people will develop a febrile illness, and about 1% will develop neuroinvasive disease such as encephalitis, meningitis, and acute flaccid myelitis. People who are older and who have immunocompromising conditions are at higher risk for more severe disease and death. Primarily spread by mosquitoes, WNV can also be transmitted by infected blood products.

WNV symptoms usually start 2-6 days after being bitten by an infected mosquito but can start anywhere from 2-14 days. It may take longer for symptoms to start for people with a weakened immune system. Most people (80%) infected with WNV do not develop symptoms. Following diagnosis and testing by a medical provider, the results are reported to the Texas Department of State Health Services (DSHS). DSHS communicates with Denton County Public Health (DCPH)which then investigates the reported case. Once a case is confirmed by DCPH, the City of Denton is alerted if the infected individual lives within the Denton city limits. The process of diagnosing and confirming a positive case may take 4 – 6 weeks.

The City currently works with the University of North Texas to perform mosquito surveillance. The surveillance process includes weekly trapping. Mosquitoes are sent to DSHS for WNV testing. DSHS typically reports results back in 4 – 7 days from receipt.

Mosquitoes generally need stagnant water that is isolated from fish or other small predators to grow from an egg into an adult. Larval habitats can range from marshes, freshwater wetlands, and tree holes to human-made structures like catchments, drains, gutters, and discarded tires. Reducing stagnant water where possible is part of the first line of defense for controlling mosquito populations and is the most effective method for mosquito source reduction.

Not all mosquitoes transmit WNV., Females feed on blood meal, and in north Texas the primary species is the *Culex quinquesfasciatus*. WNV is typically transmitted from an infected bird to a mosquito and then transmitted to other mammals, such as humans, through an infected mosquito bite. Mosquito life spans can vary; typically, female mosquitoes will live 1--6 weeks. Mosquito activity is highest with warm temperatures and decreases with colder temperatures (below 50 degrees and drops more significantly with freezing temperatures). Flight ranges are variable, but most typically fly up to a 1-mile radius.

The WNV Mosquito Surveillance and Response Plan (MSRP) was developed to meet several objectives:

- Provide guidelines on mosquito surveillance and testing approaches.

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- Provide a systematic approach for using mosquito sampling and human disease data to establish risk levels.
- Establish actions to be taken for each risk level.
- Outline roles and responsibilities.

To target WNV, there are two main mosquito control pesticide groups used. The first includes larvicidal pesticides, such as bacillus thuringensis israelensis (BTi), that have targeted toxicity to mosquito larvae. Larvicide prevents larvae from becoming adult mosquitoes. The second pesticide group involves active spraying with pyrethrins and pyrethroids using ultra-low volume spraying to kill active adult mosquitoes.

2. Surveillance

The City will deploy mosquito traps weekly starting in May through the end of October of each year. In the event that weather conditions, such as a freeze, occur earlier than the end of October, the end of the season may align with the weather conditions.

The goals of the proposed mosquito surveillance include:

- Estimate of vector species abundance
- Identify high-risk areas of the City
- Assess the need for and timing of response actions
- Monitor the effectiveness of control measures and/or response actions

Trap locations may be determined using historical trapping data, possible prevalence of mosquitoes, and accessibility for deployment and collection.

3. Identification of Risk Level

The City has established three Risk Levels that focus on the existence and persistence of WNV infected mosquitoes.

Level 1 – Mosquito Awareness (WNV Infected Mosquitoes Possible)
This is the baseline condition when mosquitoes exist; however, WNV has yet to be detected within the City of Denton for the current season.
Actions:

A. Disseminate information on prevention and control methods. Messages should emphasize the importance of mosquito breeding site reduction.
B. Emphasize the use of personal protective measures.
C. Begin surveillance in May/June of the year.
D. Provide free larvicide to residents.
E. Based on trapping data, evaluate the need for larviciding in targeted areas.

Level 2 – Mosquito Alert (WNV Infected Mosquitoes Confirmed)
Elevated condition when mosquito pools are reported WNV positive from trap locations.
Actions:

A. Continue action items from Level 1.
B. Increase personal protective measures messaging.

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C. Evaluate surveillance data and share it publicly.
D. Apply larvicide at City properties on a regular schedule.

Level 3 – Mosquito Warning (Increased WNV Infected Mosquito Activity)
Heightened Response: WNV is confirmed in two consecutive trapping events at more than one location.
Actions:

A. Elevate action items from Level 2 with targeted outreach and larviciding.
B. Consider localized ground application of ultra-low volume mosquito adulticide. Review the following:
    1) Weather conditions (i.e., rainfall, temperature, wind speeds, etc.).
    2) Mosquito counts (i.e., decreasing or increasing trend).
    3) General ecology of hotspot area(s).
    4) Flight range of mosquitoes.
    5) Length of time since the WNV positive mosquito pools were collected.
    6) Season of the year (e.g., possible freezing temperatures).
    7) Human WNV case information, if available.

An Emergency Declaration may be proclaimed by the State, the County, or the City as needed to address WNV impacts. This could be triggered when multiple people are locally diagnosed with WNV or West Nile Neuroinvasive Disease, and conditions that favor the continued transmission of WNV to humans.
Actions:

1. Continue action items from above.
2. After consultation with DCPH, hold a meeting with the City Council to report on the situation, discuss options, and receive direction on possible spraying.
    a. Level 3 – Action B. items will be considered.

4. Awareness and Communication

Public Awareness for the community will include but may not be limited to:

- Posters
- Brochures
- Website
- Denton TV Public Service Announcement (PSAs)
- Social Media

Messaging will be shared consistently across various media types to maximize reach. City facilities will use a combination of printed and electronic messaging to reach visitors. The community receives information in a wide variety of ways, and as such, the City will not limit itself to any one type of outreach.

As the City receives trapping data, the results will be posted on the website. Links to the County information, including their trapping sites, will be included. Some parts of the City of Denton may have a County trap closer to their residence or place of business.

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If the City decides to proceed with a spray event (application of insecticide to attack adult mosquitoes), the following will be performed:

- Map with spray boundaries will be generated and shared
- Website update(s)
- Social Media update(s)
- Local signage (installed at key access points to the identified spray area)
- Beekeeper notification
- Automated robocall to the community
    - Utility account holders with date, time, and location, including spray area boundaries
- Area-specific notifications, such as private street owners

5. Mosquito Management

The City of Denton has adopted Integrated Pest Management (IPM) strategies, which include vector control. IPM utilizes a collaborative treatment approach with prioritization on mechanical and biological treatments.

Source Reduction (reduce breeding habitat)

Mechanical methods that eliminate breeding habitats (e.g., stagnant standing water).

Larvicide (control adult mosquito production)

Apply bacteria to breeding habitats to control the growth from egg to adult. Control the ability of mosquitoes from becoming adults.

Adulticide (attack adult mosquitoes)

Ground-based ultra-low volume spraying to target and hopefully kill adult mosquitoes.

Factors affecting the decision to use mosquito adulticide include weather and logistical conditions to make effective application. Typically, staff will consider the following while deciding when and where to spray:

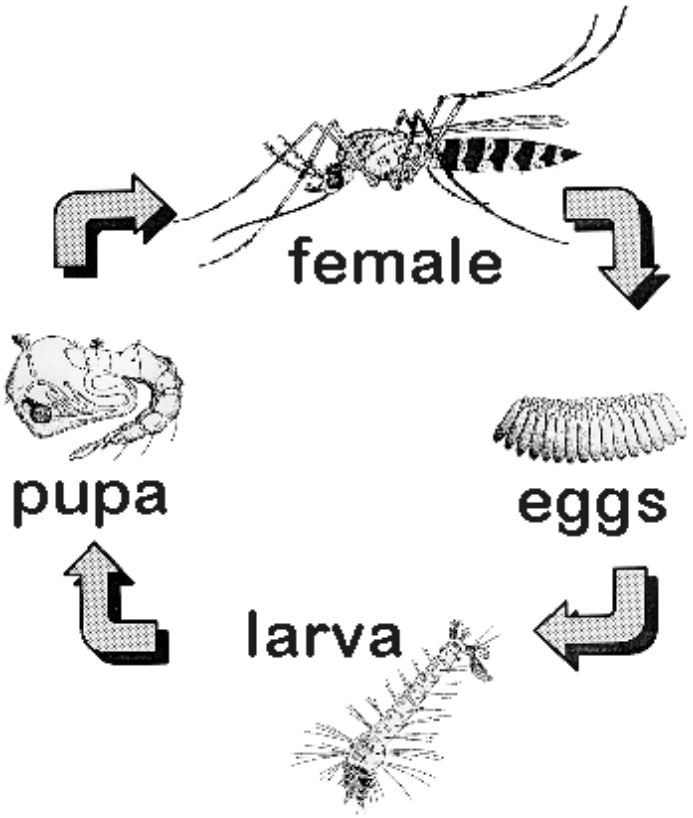
- Current Conditions
    - Weather since trap collection that tested positive for WNV (e.g., heavy rain, freezing temperatures, etc.).
    - Weather forecast (e.g., freezing temperatures, etc.)

  If natural events are likely to reduce the mosquito population, spraying may be unnecessary.

- Spray Conditions
    - Windspeed is forecast to be less than 10-12 mph.
    - Air temperatures are forecast to be above 50 degrees Fahrenheit.
    - Predicted rainfall.
    - Access to the hotspot area (e.g., road access).

DRAFT

Mosquito Surveillance and Response Plan
City of Denton, Texas



Department of Environmental Services
Prepared by Kenneth E. Banks, Ph.D. in 2002. Subsequent revisions made by Department of Environmental Services

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1.0 INTRODUCTION

Mosquitoes are insects that belong to the order Diptera, or True Flies. Female mosquitoes have modified mouthparts that form a long piercing-sucking proboscis, while male mosquitoes have mouthparts that are incapable of piercing skin. There are over 2,500 different species of mosquitoes that have been identified throughout the world, with approximately 150 species occurring in the United States. The Texas Department of Health estimates that there are approximately 82-84 mosquito species in the State of Texas, although only about 12 of these mosquito species have been implicated in the transmission of serious diseases.

Mosquitoes typically need still, stagnant water that is isolated from fish or other small predators to complete their metamorphosis from egg to adult. Larval habitats can range from marshes, freshwater wetlands, and tree holes to human-made structures like catchments, drains, gutters, and discarded tires. Not all species feed on humans and other mammals, and many species feed mostly on birds, amphibians, or reptiles. Only a small percentage of the known mosquito species are considered to be diseases vectors.

Although only a small percentage of mosquito species are capable of transmitting diseases, the effectiveness of mosquitoes as a vector for disease transmission makes control important, when necessary. Within the United States, the occurrences of mosquito-borne illnesses have been relatively rare in recent years. However, epidemics of mosquito-borne diseases were once common in the United States. Outbreaks of Yellow Fever have been recorded as far north as Philadelphia during the Colonial Period, and Dengue fever was prevalent along the Gulf Coast until the mid-1940s. At one time, malaria was well established in the continental United States, especially in the south. Other mosquito-borne illnesses like LaCrosse, St. Louis, and Eastern Equine Encephalitis are still threats in certain areas of the country. Although many of these historical mosquito-borne diseases have been eliminated or at least controlled, the subsequent rapid spread of West Nile Virus within the United States, and sustained local activity is a topic of current concern.

Mosquitoes may be controlled through a variety of different physical, chemical, and biological methods. Physical methods usually involve source reduction, which is simply the physical removal of the specific mosquito breeding habitats of the mosquito species of concern, namely small catchments of water around homes and in storm drain systems. Biological measures mainly center on the use of bacteria that kill mosquito larvae or the use of natural mosquito larvae predators. Chemical control typically involves the application of pesticides to rapidly reduce the adult mosquito population when the human population is at an elevated risk of acquiring a mosquito-borne disease.

Mosquito control pesticides are applied by various means, depending on the type and size of the area being treated. However, pesticides have the potential to impact non-target species, including humans, if not applied according to prescribed methods and quantities. Any consideration for the application of pesticide should be a careful weight of the known risks to the people in the area, potential ecological risks, and potential

environmental risks. Used in a targeted and brief manner, community ultra-low volume (ULV) pesticide application can and does reduce a community's risk from infection by West Nile virus with minimal to no risk to the human population and minimal risk to the environment (Peterson, 2006).

To target the most common mosquito-borne disease, West Nile virus, there are two main mosquito control pesticide groups used. The first group is larvicidal pesticides, such as bacillus thuringensis (BTi) that has targeted toxicity to mosquito larvae. This type of application is used frequently and is encouraged because of the low inherent risk and, when used widely, has a high level of success in mosquito population control.

The second mosquito control pesticide group targets adult mosquitoes. Pyrethrins and pyrethroids could be applied in a targeted manner using ULV spraying. These pesticides are typically applied using either backpacks for a small targeted area truck-mounted for broader applications, or aerial application to target a wide-spread outbreak of the disease. The relatively recent development of ULV with the addition of chemicals that increase targeted mosquito contact, along with operational changes to target the mosquito most likely spreading West Nile virus (Culex quinquesfasciatus), has vastly changed community pesticide application risks when compared to "fogging" of days past. That being said, there are still unknown risks or measures of risk to the environment and to ecological functions that are currently being studied and debated.

2.0 Objectives

The City of Denton Mosquito Surveillance and Response Plan was developed to meet several objectives. Specifically, the Plan:

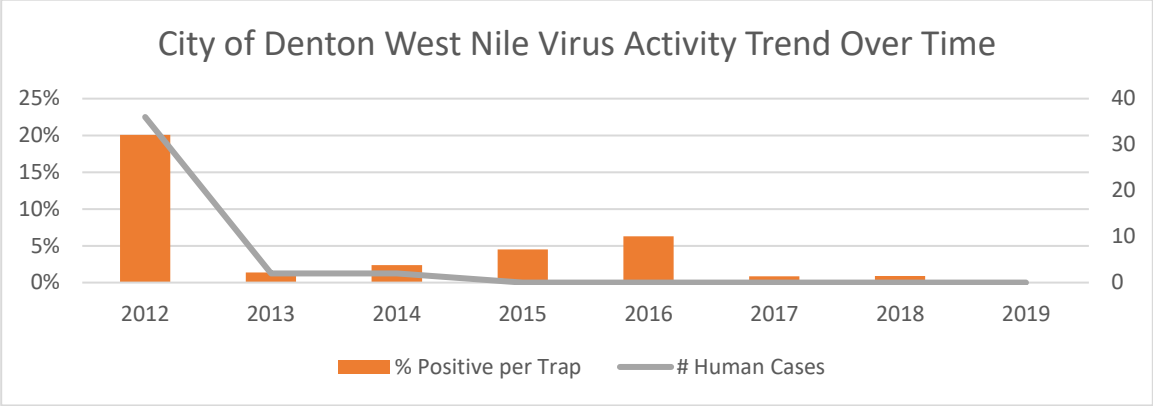
- Provides guidelines and information on mosquito populations, prevalence of diseases, and control strategies;
- Provides a systematic approach for using mosquito sampling and human disease data to establish Risk Levels;
- Establishes actions that will be undertaken for each Risk Level;
- Provides municipal staff and elected officials with a decision-support system;
- Outlines the roles and responsibilities of municipal staff and elected officials.

3.0 West Nile Virus (WNV) Concerns

West Nile Virus is a virus first identified in Africa in the 1960's and then first recorded in North American in August 1999.

In the following years the virus quickly spread across the United States and was first detected in Denton County in 2002 (Denton County West Nile FAQ's). Denton joined the North Texas region in experienced one of the country's most serious and deadly outbreaks of West Nile virus to record (Chung, et.al, 2013). Since 2012, there was

another cycle of activity in 2015 and 2016. Viral activity has been quiet in the last few years (2017 through 2019). The chart below depicts West Nile Virus activity trends over the last 8 years.



While still not fully understood, it is evident weather plays a major role in the risk of disease outbreak. Models using past data have shown stronger predictions for an outbreak when environmental conditions supported an increase in Culex species mosquitoes, a flux in naïve (not previously exposed to WNV) fledgling birds, and a lack of rainfall. The previous year of drought followed by a relatively warm winter and spring experienced in North Texas during 2011 to 2012 may have been a significant factor in the large amount of disease present during the 2012 mosquito season.

The relatively rapid spread of West Nile virus and the increase in disease incidence indicates that WNV is permanently established in the United States. It is likely that the virus survives the winter either within birds that remain in the area or within mosquitoes that survive the winter. When spring returns, the virus can amplify within birds and is readily passed to early season mosquitoes. As mosquito populations increase, mosquitoes begin to feed more frequently on birds, causing an increasing number of birds and mosquitoes that are infected. If environmental conditions are favorable for transmission, the virus will amplify to a theoretical point of spillover. At spillover, the virus can bridge out of the bird-mosquito cycle through mosquitoes that feed on birds, humans, and other animals. At the point of spillover, transmission to humans becomes more likely.

Currently, mosquito bite avoidance and mosquito control are the only practical method of protecting the human population from WNV infection. There are no known specific treatments or cures for the disease, and vaccines are currently not available for public use. The virus also kills a variety of native and non-native birds and may have impacts on other wildlife.

Understanding the types of mosquitoes in the area that transmit the disease is also a crucial consideration for directing control responses and public education activities. Since not all mosquitoes carry the virus, enacting mosquito control efforts that attempt to non-selectively reduce all mosquito populations will not necessarily reduce the risk of

WNV. In fact, based on 15 years of mosquito monitoring and disease analyses in the City of Denton, there appears to be only one mosquito that serves as a vector for this disease. Approximately 94 percent of the WNV infected mosquitoes captured in Denton's monitoring program over the last 15 years have been *Culex quinquefasciatus*, commonly known as the southern house mosquito. Approximately 99% of the mosquitoes that have tested positive for WNV during the last 15 years of monitoring have been some type of *Culex* species. Control efforts enacted by the City are therefore focused on *Culex* species, and are particularly focused on *Culex quinquefasciatus*.

The past experience of numerous mosquito control districts suggests that a mosquito control program should be based on the principals of Integrated Pest Management (IPM). The principals of IPM are:

- knowledge of mosquito biology and the epidemiology of the mosquito-borne diseases;
- surveillance and monitoring efforts for the detection and status assessment of mosquito populations and / or mosquito-borne diseases;
- a multifaceted prevention and control program comprised of a system of control tactics which are compatible with each other and which are proven effective;
- continue program evaluations and updates to ensure that the best methods are being used to meet the prevention and control objectives of the program; and
- continue education of the public to create awareness, understanding, and support.

These general guidelines have been used to develop the threshold-level responses of this surveillance and response plan.

4.0 The Role of Community Members

The role of residents, property owners, and business owners in reducing mosquitoes is crucial to an effective program. The City of Denton is committed to continuing to work with community members to increase the community's knowledge of West Nile Virus, the urban ecological cycle of breeding mosquitoes, and how this increases the risk of WNV outbreaks.

Community members can play an important role in reducing the number of adult mosquitoes by eliminating standing water that may support the development of mosquito larva and pupa. For example, residents can properly dispose of discarded tires, cans, buckets, maintain pools correctly, unclog blocked gutters and drains, dump water from bird baths and pet dishes at least every 2-3 days, ensure that air conditioning condensate is not pooling for several days, control irrigation so that standing water is not produced, irrigate so that runoff is not produced, and perform similar activities around homes and businesses. Water that cannot be eliminated should be treated with a biological

mosquito larvicide such as *Bacillus thuringiensis israelensis* (Bti) in accordance with manufacturer's recommendations.

Culex quinquefasciatus (Southern House Mosquito), the target mosquito for control, tends to prefer to lay its eggs in "artificial" sources of water such as those listed above, as opposed to laying eggs in wetland areas, streams, and ponds. Generally, this mosquito cannot fly long distances, so emerging adult mosquitoes often remain near the habitat they lived in as larva and pupa. Adults will rest during the daytime in vegetation, particularly in areas where humidity is high. Irrigated urban and suburban landscapes can offer excellent habitat, especially if there is standing water present. Underground storm drains that receive small amounts of runoff from irrigation are also good habitat for these mosquitoes. As a result, *Culex quinquefasciatus* tends to become more associated with urban and suburban areas during the summer months. Often these same areas will also have birth baths, bird feeders, trees, and other vegetation that serve to attract birds, especially during the drier times of the year when food and water become scarce. As a result, the opportunities for WNV disease amplification in urban and suburban areas can become more pronounced during summer months.

5.0 Denton's Plan for Mosquito Surveillance

The risk of mosquito-borne diseases depends on the size of mosquito populations and the incidence rate of disease, as well as the likelihood of the mosquito population changing in response to climate factors. Although mosquito abundance can be estimated through collection of either immature or adult mosquitoes, adult mosquito abundance is a key factor contributing to the risk of virus transmission. For this reason, the City of Denton monitoring program primarily focuses on collecting adult mosquito populations for targeting control measures and gauging the potential for disease outbreak. The current mosquito surveillance program is a partnership between the City of Denton and the University of North Texas. This surveillance program collects adult mosquitoes using both CDC light traps and gravid traps. Captured mosquitoes are sent to the Texas Department of State Health Services for testing. Each sample (sometime referred to as a "pool") consists of female mosquitoes that are collected at a specific collection site, in one of the two types of trap. The information obtained from these surveillance efforts is used to map mosquito populations, provide public information, and to determine the incidence of WNV or other arbovirus (CDC, 2013)

The mosquito surveillance program allows analysts to map potential mosquito breeding grounds and areas of persistent disease. Using this information, more targeted efforts towards habitat disruption, source reduction, larviciding operations, and other control mechanisms are possible. An effective, broadly applied surveillance program can allow analysts to detect the presence of WNV of other mosquito-borne viruses during the amplification phase. If targeted mosquito controls are implemented at the amplification stage, the likelihood of bridging can be minimized, thus reducing the risk of human transmission. Depending on weather patterns and monitoring results, trapping can be expanded or contracted and the trapping season may be lengthened or shortened. If

control measures are applied, trapping data may also be of some use for evaluating the effectiveness of control measures.

The overall goal of the mosquito surveillance program is to use data on mosquito populations and mosquito virus infections rates to:

- assess the threat of human disease;
- determine the geographical areas of highest risk;
- determine the need for intervention events, and the timing of these events;
- identify larval habitats that are in need of targeted control;
- monitor the effectiveness of control measures; and
- develop a better understanding of transmission cycles and potential vector species.

Adult surveillance methods should:

- Use both fixed and flexible trap locations if possible
    - Fixed positions allow for the development of a database so year to year comparisons are possible;
    - Flexible sites allow for responses to epidemiological and natural events.
- Use more than one trapping method (CDC light traps, gravid traps, etc...)
    - Testing data collected in the City of Denton's monitoring program suggests that if resource limitations require a choice between CDC light traps or gravid traps, gravid traps are preferred. These traps have been more effective in collecting *Culex quinquefasciatus*, and more effective for establishing the prevalence of WNV.
- Account for different influencing factors, including:
    - Habitat size and diversity;
    - Resource availability;
    - Proximity to human population centers and / or recreational areas; and
    - Flight ranges of target mosquito vector(s).

Advantages of using adult mosquito surveys include:

- The ability to provide early evidence of viral activity in an area;
- Helpful for determining if viral activity is local and / or restricted to a few areas;
- Providing information on potential mosquito vector species
- Providing estimates of vector species abundance and temporal prevalence;
- Providing information on virus infection rates for different mosquito species;
- Providing information on potential risks to humans and animals;
- Providing baseline data that can be used to guide emergency controls.

Disadvantages of using adult mosquito surveys include:

- The amount of labor required, and associated expenses;

- The need for substantial expertise to ensure proper collection and handling of mosquitoes;
- The delays associated with receiving mosquito arbovirus screening results;
- The fact that collectors may be at risk from mosquito bites (although using personal protection methods can minimize risks).

5.1 Adult mosquito collection

The adult mosquito surveys implemented by the City of Denton in conjunction with the University of North Texas are designed to determine the relative abundance of various species present during the sampling period as well as the incidence of arthropod-borne virus/diseases within the captured specimens. Using this information, City of Denton personnel determines the need for various control measures, and can conduct more effective searches for larval breeding places, assess the extent of the problem, and potentially gauge the effectiveness of control measures. Reports concerning the incidence rates of arthropod-borne virus/diseases and the relative risks to citizens are also produced. Currently, collections are made using both CDC light traps and gravid traps deployed simultaneously.

6.0 Mosquito Control Strategies

Human activities can greatly affect the ecology of mosquito populations. Large concentrations of people or animals, for example, can increase exposure rates and the probability of disease outbreak. The use of irrigation, development of drainage networks, elimination of mosquito predators, prevalence of improperly maintained birdbaths and other water holding containers can increase the numbers of certain types of mosquitoes. Expanding international trade and travel has increased the chance of introducing new mosquito species into our areas, as has happened with the Asian tiger mosquito (*Aedes albopictus*). The introduction of new diseases is also a concern, as has been seen recently with both Chikungunya and Zika viruses.

Mosquito control strategies have changed dramatically over the last few decades. Diesel oil, inorganic poisons, and source reduction using ditching operations were the basic tools of early mosquito control programs. Chlorinated hydrocarbons, organophosphates, pyrethroids, monomolecular oils, bacteria, and natural predators are more recent additions to mosquito control efforts. With the growth of ecological consciousness and environmental science, people began to realize the environmental damage that accompanied the use of broad-spectrum chemical control agents, particularly those that did not readily break down in nature. Concerns were also raised because many mosquito populations also appeared to develop resistance to the more commonly used chemical control agents.

Over the past few years, major advances have been made in the areas of biological mosquito control. Biological control strategies may include using natural predators like *Gambusia affinis* (Mosquito fish), fungi, protozoans, round worms, flat worms, and

bacterial agents such as *Bacillus thuringiensis israelensis* (Bti). Each biological control agent has certain benefits and restrictions. In order to use a biological control agent successfully, the applicator must have a basic knowledge of biology associated with the control agent. Some biological control mechanisms, for example, are limited by salinity, temperature, or organic pollution and some mosquito species are much more susceptible to specific types of biological control agents. All of these factors must be considered when choosing and applying biological control agents.

The perfect pesticide is one that is easily applied, reasonably inexpensive, not toxic to non-target organisms, and that eliminates the pest quickly before it becomes a threat. Although no single pesticide can combine all of these factors, certain types of *Bacillus* bacteria have been developed into pesticides that are very close to the perfect pesticide model. *Bacillus thuringiensis israelensis* (Bti), for example, is a naturally occurring soil bacterium that produces a poison capable of killing mosquito larvae. Bti is considered ideal for mosquito management because of its specificity for mosquito larvae and because of the minimal to no toxicity to non-target organisms. These bacteria form reproductive cells, called endospores, which enable them to survive in adverse conditions. The endospores of Bti also contain crystals of an insecticidal protein toxin called delta endotoxin. Once ingested by a mosquito, the alkaline conditions of the stomach dissolve the crystal and release the delta-endotoxin. The toxin has an affinity for the stomach wall lining causing the cells to first swell then rupture. When enough stomach cells burst, the mosquito larvae is unable to effectively digest food. Once affected, larvae stop eating and rapidly die. Currently, Bti is commercially available in powder, liquid, granular, capsule, and “briquette” formulations.

BTi is a registered pesticide. Agencies applying pesticides directly to waters of the United States, or where deposition may enter waters of the United States, are required to obtain a National Pollutant Discharge Elimination System (NPDES) permit from the Texas Commission on Environmental Quality (TCEQ). This permit is titled “General Permit to Authorize Point Source Discharge of Biological Pesticides and Chemical Pesticides That Leave a Residue in Water”. Agencies must comply with all applicable provisions of this permit (see TCEQ General Permit TXG87000). The City of Denton complies with all requirements necessary to maintain the City’s permit under TXG87000.

6.1 Larviciding vs. Adulticiding

In the past, many mosquito control programs have relied heavily upon adult mosquito controls using chemical agents. In certain areas, routine mosquito spraying has been an integral component of control strategies. However, even near-continuous exposures to pesticides may not kill all mosquitoes. Those mosquitoes genetically able to resist higher pesticide concentrations may survive and pass on this resistance to future generations. Eventually, the pesticide becomes less effective as resistance increases in the mosquito populations.

Resistance can be minimized through the "Management by Moderation" approach. Management by moderation is an attempt to prevent the onset of resistance by:

- using doses that are no lower than the lowest recommended application rate to avoid genetic selection of resistance genes;
- using less frequent applications;
- using chemicals of short environmental persistence;
- avoiding the use of slow release formulations;
- avoiding using the same class of pesticides to control both adults and immature stages;
- applying pesticides to only hot spots. Area-wide treatments should only be considered during imminent public health threats;
- leaving certain generations, populations, or population segments untreated; and
- establishing action thresholds that accentuate control mechanisms other than chemical control of adult mosquitoes.

Although management by moderation is a viable means of minimizing resistance, there are other environmental and human health concerns associated with the application of pesticides for adult mosquito control. Routine mosquito spraying, for example, has the potential to expose the public to pesticides. Depending upon the pesticide used, effects on humans are possible and may be more likely for people who already suffer from asthma or other respiratory problems. If proper safety precautions are not followed, applicator personnel may also be in danger of overexposure. Managers must therefore decide whether mosquito populations and the related threat of disease transmission or the chemicals used to control mosquitoes represent the bigger threat to humans.

All mosquitoes begin their lives in water. Prime breeding sites include discarded tires left outdoors, poorly maintained bird baths, clogged rain gutters, unused swimming pools and plastic wading pools, pet dishes, or any other container capable of holding water for more than a few days. Mosquito breeding can therefore be prevented by either eliminating the source of water (source reduction) or by killing larvae (larviciding). Larviciding programs use a combination of source reduction, biological, and possibly chemical measures to control mosquito larvae before they develop into biting adults. If properly implemented, this strategy can be the most effective, economical and safest method for mosquito control because mosquito larvae are minimized, thus reducing the need for adult mosquito control and subsequently reducing the impacts of control measures on non-target organisms. Larviciding programs also offer the opportunity to use biological controls, which minimizes the impacts of the control program on non-target organisms and lessens the risk of chemical exposures to the public. Using biological controls also minimizes the chance of pesticide resistance in the mosquito populations. Experience suggests that the most effective and economical way to reduce mosquito populations is by larval source reduction through a locally funded abatement program. The goal of this program should be to monitor mosquito populations and initiate controls before diseases are transmitted to humans or domestic animals (CDC, 2001).

When larval control is not possible or when more immediate control measures are needed, adult mosquito control may be required to diminish populations of infected mosquitoes and interrupt viral transmission. Adult mosquito control products may be

applied using ground-based equipment, fixed wing aircraft, or helicopters. In all cases, products should be applied in ultralow volume (ULV) formulations and doses, and should be comprised of pyrethrins or pyrethroids.

6.2 Rationale for different treatment methods

Chemical usage should not be viewed as a long-term control strategy, and should be only implemented when there are occasional episodes of heavy uncontrolled breeding concurrent with a high degree of public health risk. This strategy is most appropriate because prolonged use might lead to the development of resistance in mosquito populations, thereby limiting overall management options (Tabashnik, 1990). The most efficient and effective program is one in which mosquito larvae are prevented from becoming biting adults through the use of biological control agents. The bacterium Bti or the related bacterium *Bacillus sphaericus* (Bs.) are considered to be the among the most environmentally acceptable commercially available biological control agents because of their relative specificity for mosquitoes and negligible toxicity for vertebrates (Rishikesh et al., 1983). Larvivorous fish can also be a valuable component of an integrated control program, either alone or together with chemical control agents (Walton et al., 1990; Walton and Mulla, 1991; Reed et al., 1995). For these reasons, the City of Denton relies heavily on source reduction and larviciding for mosquito control.

6.3 Integrated Pest Management

Integrated pest management dictates that control efforts should be dependent on threshold levels. This means simply that a certain defined risk needs to exist before particular control measures are recommended. Levels of risk are based on knowledge of mosquito biology, the epidemiology of the mosquito-borne diseases, and monitoring efforts for the status assessment of mosquitoes and / or mosquito-borne diseases. Risks levels are then used to design multi-tactic prevention and control program that are comprised of a system of tactics which are compatible with each other and which are proven for their effectiveness. Continual program evaluations and updates ensure that the best methods are being used to meet the prevention and control objectives of the program, and continued public education is used to create awareness, understanding, and support. Frequent mosquito population assessments allow analysts to map potential mosquito breeding grounds and determine overall disease transmission risks. Using this information, more targeted efforts towards habitat disruption, source reduction, larviciding operations, and other control mechanisms are possible.

7.0 Denton's Plan for Mosquito Control

The primary objective of mosquito control is to decrease the risk of mosquito-borne human diseases. This objective should be accomplished by:

- Stressing source reduction as a viable means of control, both by residents and on municipal properties, including enforcement actions for stagnant water located on private property;
- Aggressively larviciding where such activities are feasible, practical, and likely to be effective. This includes providing limited supplies of larvicides to citizens for use on private property.
- Promoting the use of personal mosquito protection measures, especially for the elderly and those individuals with compromised immune systems, through public education and outreach.
- Providing public information so that citizens are informed about the current Risk Level, areas of the City where WNV has been located, current municipal control measures, and what can be done by the public to help reduce risks.
- If warranted, implement adult mosquito control measures through targeted ULV pesticide applications (adulticiding).

7.1 Adulticiding

Adulticiding should and will be considered a supplemental control measure. The decision to spray shall be based on the conditions listed (in no particular order) below.

7.1.1 Triggers for adulticides: Adulticiding shall be considered only when there is evidence of WNV activity at a level suggesting a high probability of human infection. In general, finding an isolated WNV-positive mosquito pool does not by itself constitute evidence of an imminent threat to human health and does not warrant adulticiding.

Physicians and laboratories are required by Title 25 of the Texas Administrative Code (Pt. 1, Ch. 97, Subch A, §97.3) to report cases of WNV infection or positive test results in humans to the State and County Health Departments. Positive human WNV cases are investigated by Health Department officials. During an investigation, the Health Department collects demographic and clinical information from the patient and attempts to determine date of onset, whether the infection was acquired locally or from a region outside of the patient's residence, and whether the infection may have been acquired by a non-mosquito route of transmission such as a blood transfusion or organ transplant. To help aid control measures, the Health Department provides some of this information to municipal officials within the municipality where the patient resides. Human case information is used by municipal officials as one of the trigger conditions for the risk levels outlined in this plan

7.1.2 When to use adulticides: The goal of spraying is to reduce the risk of human diseases by decreasing the number of target adult mosquitoes as much as possible. However, today's pesticides tend to only be effective when physically contacting the mosquito, which is most likely to happen when mosquitoes are actively flying. This typically will mean that spraying should be conducted between dusk and dawn. Since the target mosquito, *Culex quinquefasciatus*, is thought to be most active soon after dusk, spraying should be timed to strike the best balance between impacting the target mosquito during its most active time and minimizing impacts on non-target organisms.

It is also important to realize that weather conditions, including air temperature and wind speed, have a large influence on the effectiveness of adulticides. Spray events should be cancelled and rescheduled if conditions are not conducive for effective spraying.

7.1.3 Where to use adulticides: The terrain of the proposed spraying area has a major impact on the pesticide effectiveness. Because pesticide application is typically conducted from a vehicle, if there is substantial vegetation, dense shrubbery, trees, hedges, or tall buildings, the density of the droplets from the ULV machine are substantially reduced over distance and pesticide applicationeffectiveness is reduced. Applications should be made so that the maximum penetration into these types of obstructions is achieved. In some cases, a mild breeze may be able to help distribute the pesticide. Application strategies should consider the meteorological conditions at the time of application, and use these conditions to help improve application effectiveness if possible.

7.1.4 Human population density considerations: The human population density in an area where there is evidence of intense epizootic activity should also be considered. If the area in question is rural and does not contain many people, the cost and potential risk associated with spraying may not justify its use. If the area in question is densely populated, adult mosquito control may be more justified as long as adequate precautionary measures are taken.

7.1.5 Mosquito population considerations: Information from mosquito surveillance can be helpful in determining when to conduct mosquito control and to assess the effectiveness of control measures. It is also important to know the numbers and species of the vector populations in specific localities. The best way to obtain this information is through mosquito trapping efforts. The City of Denton formed a partnership with the University of North Texas to provide the specially trained staff needed for systematic mosquito trapping efforts.

While trapping efforts are crucial for assessing mosquito populations and the prevalence of disease, it is important to realize that surveillance specimens requires some processing time after collection. In the time between the collection date and the date of test results, circumstances may have occurred which would alter a decision to spray. For example, weather conditions may have adversely affected mosquito populations, local mosquito habitats may have been altered, or larviciding efforts may have reduced the number of newly emerged adults. All of these occurrences may result in a reduced need to spray, and should be taken into consideration during control efforts.

Surveillance information should also be evaluated through time to determine the progress of diseases and the relative risk of disease transmission. Surveillance information may also be of some use in gauging the effectiveness of control measures, although establishing control effectiveness is difficult using only surveillance information. In all cases, the available surveillance information should be evaluated as a part of the decision making process for enacting adulticidal activities.

7.1.6 Local perspectives on spraying: Different communities have different perspectives on the benefits and risks associated with adulticiding activities. While these perspectives are valid and should be considered, individuals are likely to have strong opinions on either side of the issue. The City of Denton has incorporated a rationale framework within the mosquito control program that is designed to be protective of both human health and the environment. The decision to spray, however, is a complex issue that will likely be faced without complete information. Thus, there will be citizens that do not believe that the City of Denton has done a good job with regards to reducing public health and environmental risks, regardless of the decision. The mosquito control program should therefore remain flexible and should attempt to address citizen concerns through public education and dialogue.

7.1.7 Denton's plan for mosquito adulticiding operations

Once arbovirus activity is detected and the decision is made to implement mosquito control using adulticides, the size of the area to treat must be determined. Unfortunately, there is no simple formula for determining how large of an area to treat, nor is there adequate information to guide decisions about the degree of vector population suppression that must be attained, or for how long this suppression must be maintained to reduce the risk of disease. The CDC (2001) suggests considering the following factors where deciding the scope of the adulticiding effort:

- the general ecology of the area;
- the flight range of vectors that are known or are believed to be of importance in the area;
- the population density of the vectors;
- the length of time since virus-positive mosquito pools were collected;
- the potential risk to the human population (including the age demographics of the area) as well as the community perception of the relative risk of pesticides versus the risk of arbovirus infection; and
- the season of the year - how much time the transmission risk can be expected to persist until the vectors enter diapause;

It is very likely that some of these factors will be unknown or poorly known, and practical experience in conducting a mosquito control program is needed to refine control recommendations. If adulticiding operations are conducted, the following parameters should be monitored:

- Weather conditions during the application (temperature, wind speed, wind direction, etc.);
- Flow rate of Ultra-Low Volume applications; and
- Overall amount of pesticide applied.

If the application of adulticides is deemed necessary, the public must be informed. The following actions / activities will take place prior to adulticide applications:

- Information, including a map of the proposed spray area, will be released 24 hours in advance through the media and through the city of Denton web site. Under certain conditions in Public Park areas, applications may take place in less than 24 hours notice. For these cases, the facility will be closed to the public during, and a few hours after, application.
- Press releases should be prepared and shared with the appropriate media
- CodeRed, Reverse Utility automated calling systems, and available forms of social media should be used to inform citizens of spray events. CodeRed will make an automated phone call with a message to all individuals that have signed up for the service. The Reverse Utility automated calling system will make an automated phone call with a message to all individuals within an area designed by the spray map. For both systems, it is possible that some residents outside of the spray area will receive one of these calls. However, these systems are the most rapid and accurate means of notifying the public of upcoming spray events.
- If practical, street signs indicating that spraying will occur in the neighborhood should be placed at major roadways entering and exiting the targeted area.

7.2 Plan for Public Education Concerning Mosquitoes

Public education is a key component of a successful mosquito control program. Since the appearance of the West Nile Virus in the United States, the City of Denton has produced and aired many public service announcements, given numerous presentations, and provides information on the City web page concerning this disease. Depending somewhat on Risk level, the following key information will be conveyed to the public:

- The location of WNV positive mosquito trap locations and current risk level;
- Comprehensive prevention strategies and activities used by the City of Denton to address the threat of West Nile Virus;
- The public will be advised to eliminate standing water sites by removing all materials that can hold water for longer than 2-3 days; and
- The public will be informed about the symptoms of West Nile Virus (headache, high fever, muscle pain, weakness, and disorientation).

Techniques used to disseminate information may include any or all of the following:

- Televised public service announcements using Denton's local cable channel;
- Radio announcements;
- Brochures for public use placed in municipal buildings;
- Postings describing the current risk level placed in municipal buildings;
- Brochures and / or fact sheets to be distributed to community-based organizations, community boards, elected officials, schools, nursing homes, libraries, outdoor activity sites, etc.;

- Presentations to elected officials and / or community groups concerning the current risk level, mosquito population and disease status, and mosquito control activities; and
- Press releases describing West Nile virus response activities.

7.3 City of Denton Response Plan

The purpose of this response plan is to:

1. Minimize human illness through public education and targeted vector control.
2. Provide an assessment of virus transmission risk to humans that can be used to plan and adjust control activities.
3. Map the density of mosquitoes and the incidence of the virus within the City of Denton.
4. Identify areas where the incidence of disease is high and provide appropriate warnings to the citizens of Denton.
5. Identify the key vector species that carry diseases within Denton.

The prevention of West Nile virus, as with many diseases, is most efficiently accomplished by ensuring that prompt, accurate information reaches the public. If the appropriate information reaches the public in a timely manner, personal protective measures may be implemented, and control strategies can be enacted efficiently.

The City of Denton will provide continuous information on the city web page concerning West Nile virus, including a frequently asked questions (FAQs) section, disease symptoms, personal preventative measures, and sources of additional information. If a sampled mosquito pool tests positive for arthropod-borne virus/diseases, information describing the location of the sampling event, the date, and other pertinent information will be provided.

This response plan is partially based on Texas Department of Health recommendations. The plan is divided into 5 levels based on the risk of human disease. Each risk level is described below, along with specific recommended responses. In accordance with the principals of Integrated Pest Management Control measures are recommended for each level.

Generally, there are 4 surveillance / observational factors that are evaluated to determine if the trigger condition has been met for a particular risk level. These factors are:

1. Environmental / climatic conditions (mainly temperature, rainfall, and season)
2. Adult *Culex quinquefasciatus* abundance
3. Virus infection rates in *Culex quinquefasciatus* and other mosquito vectors
4 Confirmed infections in humans, including epidemiological information.

7.3.1 Risk level 1 - Normal Response

Condition: Probability of human outbreak is none or remote
Trigger: Normal mosquito activity with no evidence of arthropod-borne virus/disease detected during the past 3 years in vectors, humans, or other hosts.

Recommended Response:

Surveillance:
Surveillance is optional. Under the normal response, mosquitoes are considered to be only a nuisance without significant influences on public health. Complaint calls and informal surveys of larva and adults will be used to direct mosquito control efforts.

Public Information / Education:
Publicize methods for mosquito reduction and personal protection prior to the main season for mosquito activity and outdoor human activities.

Control Measures
Use public information to promote source reduction and personal protection. Conduct standard larviciding approaches using *Bacillus thuringiensis israelensis* (Bti) .

Rationale:
Larviciding and source reduction / elimination are considered to be the most effective long-term solutions for mosquito control. The control measures are designed to accomplish mosquito control by preventing larval mosquitoes from becoming biting adults.

7.3.2 Risk Level 2 - Enhanced Response

Condition: Probability of human outbreak is low
Trigger: Normal mosquito activity with <u>little or no</u> evidence of arthropod-borne virus/disease. Enhanced response level is due to recent historical presence of arthropod-borne virus/disease in vectors, humans, or other hosts within the vicinity of Denton (approximately 100 miles).

Recommended Response:

Surveillance:
Surveillance is optional, but strongly encouraged. If possible, conduct routine surveillance of adult mosquito populations using light traps baited with CO2 and gravid

traps (at minimum). Collected mosquito species should be identified to species level and mosquito pools should be screened for the presence of arboviruses. If positive tests are obtained during arthropod-borne virus/disease screening, additional tests should be performed to determine what type of arbovirus is present.

Public Information / Education:
Implement all steps for public information established by the Public Communication Office for this Risk Level. Generally, this will reflect routine public information concerning methods for mosquito reduction and the importance of personal protection measures. This information should be disseminated at the beginning of the mosquito season.

Control Measures
Use public information to promote source reduction and personal protection. Conduct standard larviciding approaches using *Bacillus thuringiensis israelensis* (Bti).

Rationale:
Larviciding and source reduction / elimination are considered to be the most effective long-term solutions for mosquito control. The control measures are designed to accomplish mosquito control by preventing larval mosquitoes from becoming biting adults.

7.3.3 Risk Level 3 - Public Health Concern

Condition: Probability of human outbreak is low to moderate
Trigger: Arthropod-borne virus/disease isolated from mosquitoes collected during trapping activities at a single monitoring site.

Recommended Response:

Surveillance:
Continue to conduct routine surveillance of mosquito populations. If resources allow, increase surveillance in the area where the positive sample was collected. Use geographic information systems to plot the location of the positive sample and provide this information to the public via the City of Denton web page.

Public Information / Education:

Implement all steps for public information established by the Public Communication Office for this Risk Level, which includes public notification, press releases, and City of Denton web page updates with a map of the positive trap location. Notify medical professionals, veterinarians, and all those registered with the City of Denton's various public notification options of the presence of the disease.

Control Measures

Use public information to promote source reduction and personal protection. Conduct enhanced larviciding using *Bacillus thuringiensis israelensis* (Bti). Increase efforts in areas where positive mosquito pools were detected. Control measures will be implemented based on the following IPM criteria: time of year, the extent of previous mosquito control activities, the current level of mosquito activity, weather conditions, and surveillance results.

Prepare for ground level spraying activities using ULV applications of pyrethriods. Ensure adequate funding and personnel are in place for conducting ULV applications.

Rationale:
Larviciding and source reduction / elimination are considered to be the most effective long-term solution for mosquito control. Increasing these measures in areas where positive mosquito pools are detected offers an additional degree of risk reduction.

7.3.4 Risk Level 4 - Public Health Warning

Condition: Probability of human outbreak is moderate to high
Trigger: Multiple mosquito pools collected at different times and locations test positive for arthropod-borne virus/diseases.
Single human case confirmed with laboratory testing

Recommended Response:

Surveillance:
Continue to conduct routine surveillance of mosquito populations. Increase surveillance in areas where WNV positive samples have been collected if resources are available. Use geographic information systems to plot the location of positive mosquito samples and provide this information to the public via the City of Denton web page.

Public Information / Education:

- Implement all steps for public information established by the Public Communication Office for this Risk Level, which includes public notification, press releases, and City of Denton web page updates with a map of the WNV positive trap location(s).
- Update web page map for all subsequent WNV positive trap locations
- Notify medical professionals, veterinarians, public health officials, and all those registered with the City of Denton's various public notification options of the presence of the disease.

Control Measures
Use public information to promote source reduction and personal protection. Intensify enhanced larviciding efforts using Bti in targeted areas. Consider using Spinosad products in areas where positive mosquito pools were detected, if applicable. Control

measures will be implemented based on the following IPM criteria: time of year, the extent of previous mosquito control activities, the current level of mosquito activity, weather conditions, and surveillance results.

Finalize all actions needed for implementing ground level spraying activities using ULV applications of pyrethroids

Rationale:
Larviciding and source reduction / elimination are considered to be the most effective long-term solutions for mosquito control. Increasing these measures in areas where positive mosquito pools are detected offers an additional degree of risk reduction.

7.3.5 Risk Level 5 - Public Health Alert

Condition: Human outbreak is confirmed
Trigger: Multiple human cases. Cases must be confirmed by laboratory testing.

Recommended Response:
Surveillance:
Continue to conduct routine surveillance of mosquito populations. If resources allow, increase surveillance in areas were arthropod-borne virus/disease positive samples were collected. Use geographic information systems to plot the location of WNV positive mosquito samples, and provide this information to the public.

Public Information/Education:

- Implement all steps for public information established by the Public Communication Office for this Risk Level, which includes public notification, press releases, and City of Denton web page updates with a map of the WNV positive trap location(s).
- Update web page map for all subsequent WNV positive trap locations
- Notify medical professionals, veterinarians, public health officials, and all those registered with the City of Denton's various public notification options of the presence of the disease.
- Increase public education, emphasizing source reduction, personal protection, and disease symptoms.

Control Measures:
Use public information to promote source reduction and personal protection. Intensify larviciding efforts using Bti in targeted areas. Additional larvicides containing IGRs or pesticides such as Spinosad may be applied at this time. Intensely treat standing water in

City Parks. If the threat to human health is considered imminent, consider targeted adulticide applications using ground-based Ultra-Low Volume (ULV) equipment. The decision to spray will be made by a Resolution of the City Council of Denton prior to the first application, for each mosquito season. Based on information available at the time of the Council decision, the Resolution may include specific requirements in addition those outlined in this plan. ULV applications should be implemented in the vicinity (approximately one mile) of areas where positive human cases were detected When ULV applications are initiated, notification will be provided to the public as outlined in Section 7.1. For further protecting non-targeted organisms and pollinators the option of excluding undeveloped properties and protected habitats from spraying would be considered if the efficacy of treatment is not compromised.

During 2020, the City of Denton utilized Merus 3.0®, an organic pyrethrin product not containing petroleum distillates. Natural pyrethrins are a botanical insecticide produced primarily by flowers from the chrysanthemum family. Merus 3.0® is Organic Review Materials Institute (OMRI) listed and meets National Organic Program (NOP) standards for adult mosquito control. The use of Merus 3.0®, or any organic-certified pesticides that may become available, would continue to be used as the preferred option for adulticiding operations in accordance with integrated pest management.

Control measures will be implemented based on the following IPM criteria: time of year, the extent of previous mosquito control activities, the current level of mosquito activity, weather conditions, the species of mosquitoes that test positive for disease, the number of local mosquito pools which test positively for disease, the likely time until a killing frost, the density of roads or other access to mosquito breeding grounds, and the density of human populations. Epidemiological data associated with reported human cases of WNV will also be considered. In general, if an area has been sprayed, that area will not be sprayed again in response to an additional human case unless the date of onset of the new case indicates exposure occurred after the previous spraying event. Areas will also not be sprayed in response to a reported human case if epidemiological information clearly indicates that exposure did not occur in the City of Denton. If public health emergencies are declared at the county or state level, the recommended responses associated with the declaration will take precedence over the control plan of the City of Denton.

Rationale:
Larviciding and source reduction/elimination are considered to be the most effective long-term solutions for mosquito control. Increasing these measures in areas where positive mosquito pools are detected offers an additional degree of risk reduction. However, at this Risk Level, applications of adulticides may be needed to rapidly reduce mosquito populations and halt disease transmission. The objective is to kill a high enough proportion of older adult mosquitoes to break the disease transmission cycle. If adult mosquito controls are implemented, the approaches for adulticiding outlined in this plan are effective and are designed to minimize adverse effects to the environment and non-target organisms.

8.0 Emerging Diseases

In recent years, mosquito-borne viruses from other areas of the world have caused outbreaks in the Western Hemisphere. In addition, mosquito-borne viruses that have been restricted to the tropics for the last several decades are beginning to move northwards, and could cause concerns for outbreaks in the southern portions of the United States.

8.1 Chikungunya, Zika, Dengue and California Seropositive viruses

Chikungunya virus, for example, has become firmly established in the Caribbean; two cases of locally-transmitted Chikungunya virus were observed in Florida in 2014 and one in Texas in 2015. Chikungunya virus disease became a nationally notifiable condition in 2015. Cases are reported to CDC by state and local health departments.
Dengue is a serious arboviral disease of the Americas, Asia and Africa that has become more common in south Texas and the Florida Keys in recent years.

Zika virus has been responsible for outbreaks in tropical areas throughout the world, and was found in 2015 for the first time in the Western Hemisphere. The rapid spread of this disease and the possibility of transmission from human to human without mosquito vectors is particularly troubling. To date, local transmission of Zika virus in Texas has only been documented in Brownsville. However, the City of Denton has experienced human cases of Zika virus, and has developed a response protocol in coordination with the Denton County Public Health Department to ensure that appropriate measures are taken to minimize the likelihood of transmission of the virus from the infected person to local mosquito populations.
The City of Denton also documented two cases of California Seropositive viruses (a group of viruses, some of which can cause human disease) in mosquito samples collected in 2016. These samples were later confirmed to be trivittatus virus. While all mammals including humans are capable of contracting trivittatus virus from the bite of an infected mosquito, this disease is predominately found in wildlife, and human cases are extremely rare. It is important to note that both Zika and trivitattus virus are spread by only a few species of mosquito, and control measures must be specifically targeted to these species. In response to these emerging concerns, City of Denton staff continues to work with local and State public health personnel to assess the risk of disease and coordinate responses.

Currently, emerging disease responses are documented within Standard Operating Procedures (SOPs) that are reviewed with local health officials and mosquito control experts on a regular basis. Modifications to the SOPs are possible more research is conducted on control strategies and risk minimization measures. As more information is collected and evaluated, it is likely that the City of Denton Mosquito Surveillance and Response Plan will be modified in the future to add information specific to these emerging diseases.

8.2 Corona Virus Disease 2019 (COVID-19)

Mosquitoes typically transmit blood borne illnesses. COVID-19 is part of the corona virus family and other members of this family are not transmitted through mosquitoes. COVID-19 is a respiratory virus primarily transmitted through sneezing and coughing, in addition to touching contaminated surfaces and then touching the face. Ongoing research is being conducted to determine if mosquitoes can infect humans with the virus.

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Walton, W.E. and M.S. Mulla, 1991. Integrated control of Culex tarsalis larvae using Bacillus sphaericus and Gambusia affinis: effects on mosquitoes and non-target organisms in field mesocosms. *Bulletin of the Society for Vector Ecology* **16**:203-221.

West Nile Virus

Mosquito Surveillance & Response Plan

Michael A. Gange

Environmental Services & Sustainability Director

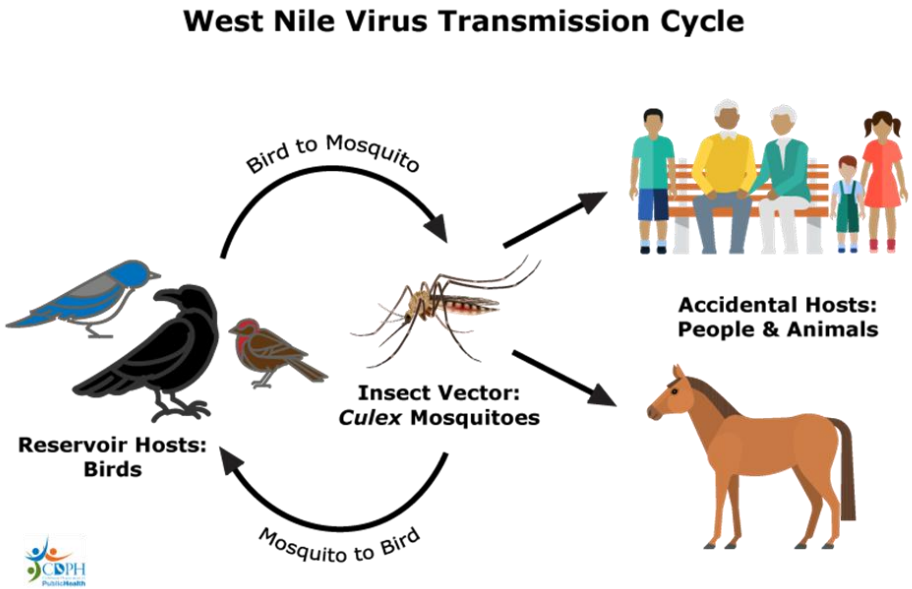
February 17, 2026

ID 25-2291



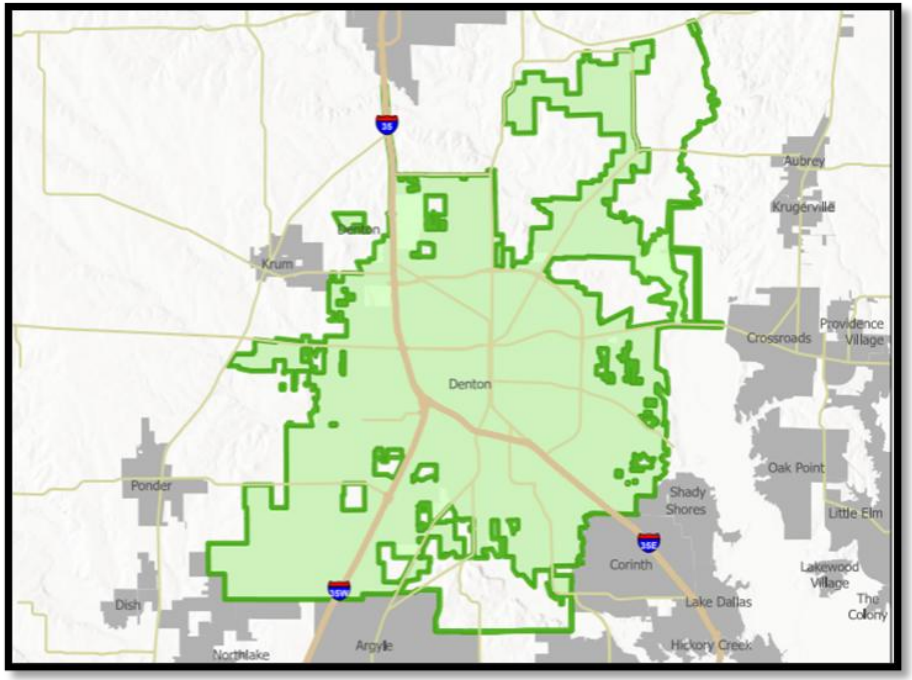
Overview

- Why have a Plan?
- Historical Mosquito Information
- Surveillance / Monitoring
- Risk Levels
- Awareness and Communication
- Response Options
- Direction



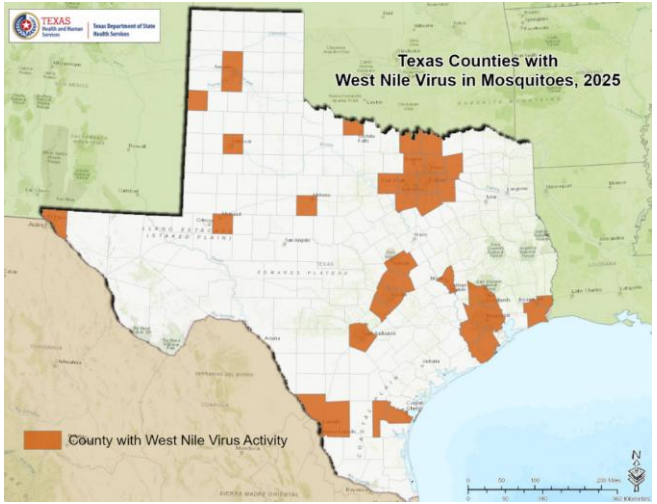
Why have a Plan?

- Define the "Season"
- Surveillance Program
  - Identify mosquito locations
  - Identify WNV infected mosquito locations
- Awareness and Communication
  - Individual actions
  - Outreach options
- Response Options
  - Breeding habitat source reduction
  - Break the life cycle (larvicide)
  - Attack the adult mosquito (spray)



Historical Mosquito Information

Year	WNV Human Cases			City of Denton WNV Traps*		
				Consecutive Weeks		
	City	County	State	One	Two	Three
2025	2	3	125	14	1	1
2024	1	24	169	22	3	0
2023	0	6	90	0	0	0
2022	0	0	36	1	0	0
2021	0	4	77	1	0	0
2020	2	7	69	21	1	0



*WNV Positive traps begin in May with typical peak in July / August

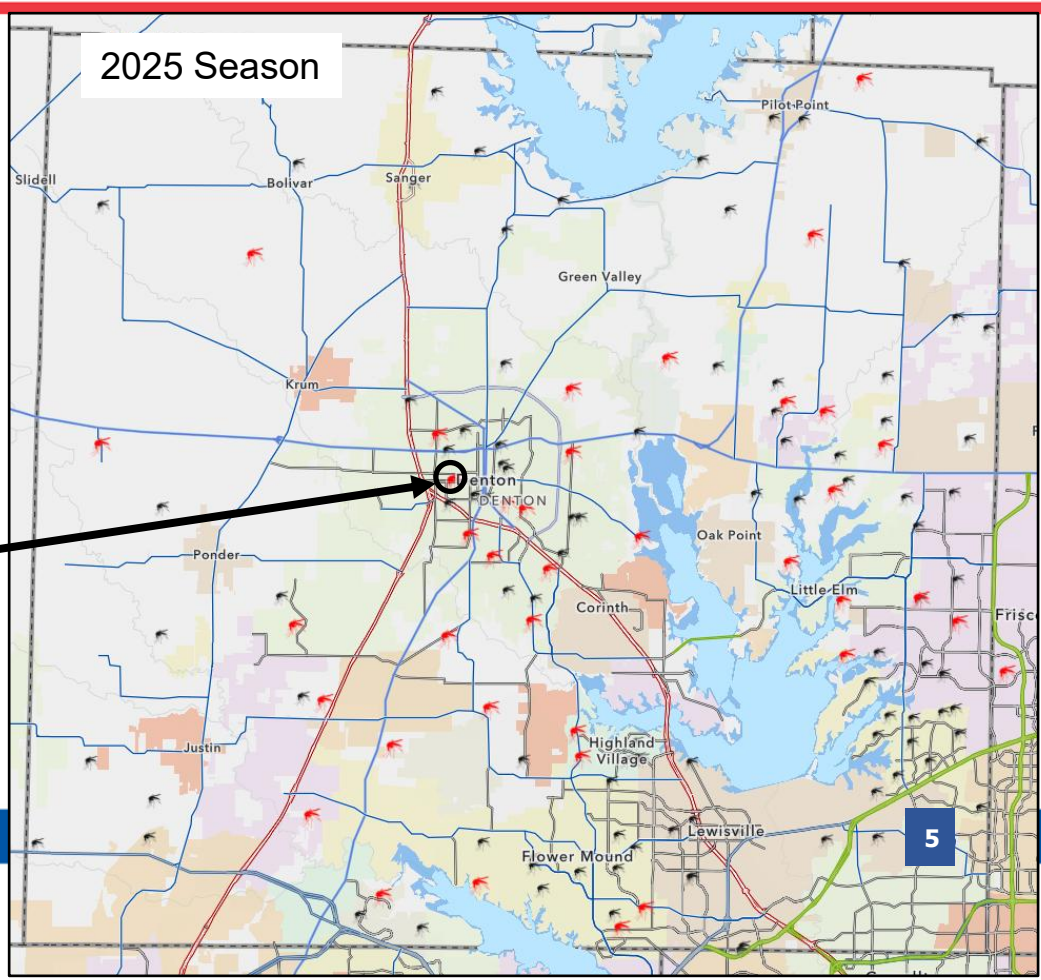
Surveillance / Monitoring

- Season: May through October
- Mosquito Surveillance Program
  - ✓ Weekly Trapping
  - ✓ Analysis by the Texas DSHS
- Human Case Monitoring
  - ✓ DSHS notifies Denton County Public Health
  - ✓ County notifies City could be up to 6 weeks post bite
    Up to 2 weeks for symptoms, up to 2 weeks for medical professional to report, and up to 2 weeks to confirm the results





This trap has tested positive for West Nile Virus.
This trap's jurisdiction is Denton .



CITY OF DENTON

ID 25-2291

Risk Levels

- **Level 1: Mosquito Awareness** 

  WNV Infected Positive Mosquitoes Possible

- **Level 2: Mosquito Alert** 

  WNV Infected Mosquitoes Confirmed

- **Level 3: Mosquito Warning** 

  Mosquito Trap(s) WNV Positive for two consecutive weeks

  Staff authorized to consider spraying without Council Resolution

Awareness and Communication

General Season Outreach

- Printed (posters, brochures, etc.)
- Website
- Social Media
- Denton TV



WNV Positive Results

- Press Release
- Targeted Social Media (e.g., Nextdoor)

Spray Events

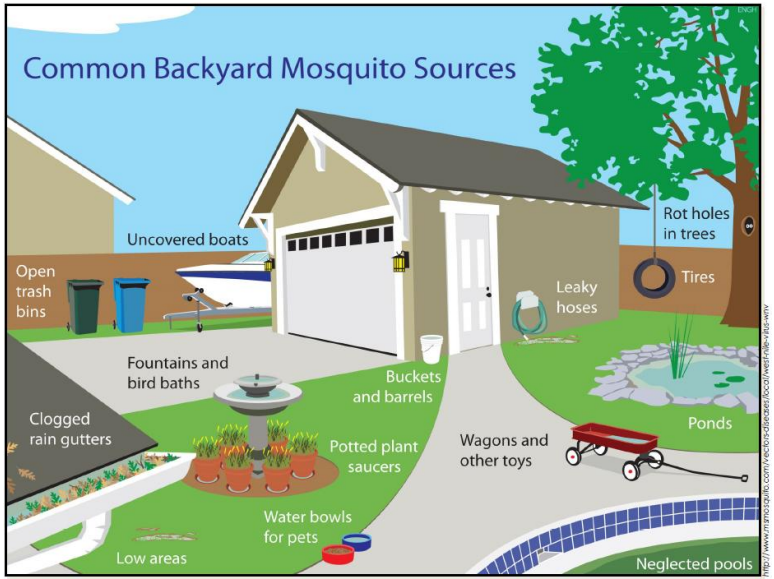
- Automated Robocalls to Spray Area
- Signage in Spray Area



Response Options

- Breeding Habitat Source Reduction
  - ✓ Remove standing water
- Target Mosquito Life Cycle
  - ✓ Treat standing water (apply Larvicide)
  - ✓ BTi Dunks Free to Residents
    - Limit 2 per resident
    - Customer Service
    - Composting (PCWRP)





Response Options (Cont'd)

- Attack Adult Mosquitoes

☑ Disease Transmission Control (spray area of WNV infected trap)

☒ *Nuisance Control (i.e., general spray for mosquitoes)*

Consider spraying as follows:

- ✓ WNV positive trap for two consecutive weeks
- ✓ Spray area determined by local area characteristics

  Street access / Open Space / Geography / Weather Conditions
- ✓ Ultra-Low Volume (ULV) Sprayer

  Along low-speed streets



Direction

1. Update the Plan as discussed
   - Consider ground-level spraying after 2 consecutive weeks (single WNV positive trap)
2. Update the Plan using other factors
3. Make no changes (stay with existing MSRP)

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: City Secretary's Office

CM: Sara Hensley

DATE: February 17, 2026

SUBJECT

Consider approval of the minutes of the February 3, 2026 Regular Meeting.

BACKGROUND

The minutes drafts are provided for review and formal approval by the City Council.

EXHIBITS

Exhibit 1 – Agenda Information Sheet
Exhibit 2 – February 3, 2026 Regular Meeting Minutes

Respectfully submitted:

Ingrid Rex
City Secretary

CITY OF DENTON CITY COUNCIL MINUTES
February 3, 2026

After determining that a quorum was present, the City Council of the City of Denton, Texas convened in a Work Session on Tuesday, February 3 2026, at 2:00 p.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Mayor Gerard Hudspeth, Mayor Pro Tem Suzi Rumohr, Council Members Brian Beck, Vicki Byrd, Joe Holland, Brandon Chase McGee and Jill Jester.

ABSENT: None

Also present were City Manager Sara Hensley, and City Attorney Mack Reinwand.

The posted agenda noted the registration process for public participation at this meeting. However, there were no online registrations or call ins on any items on the agenda

WORK SESSION

1. Citizen Comments on Consent Agenda Items

None

2. Requests for clarification of agenda items listed on this agenda for public hearing and individual consideration.

• Clarification:

o None

• Pulled For Individual Consideration:

o Council Member Beck: Items 3E and 3F

3. Work Session Reports

A. ID 25-2195 Receive a report, hold a discussion, and give staff direction regarding a future fire station in the southwestern portion of the city. [Estimated Presentation/Discussion Time: 30 minutes]

The item was presented, and discussion followed.

Following discussion, City Council consensus was for Option 2, to design/construct a permanent fire station.

B. ID 25-1724 Receive a report, hold a discussion, and give staff direction regarding updates to the Cross-Connection Control and Backflow Prevention Ordinance. [Estimated Presentation/ Discussion Time: 45 minutes]

The item was presented, and discussion followed.

Following discussion, there was no direction provided as the item was for presentation/discussion purposes.

C. ID 25-2042 Receive a report, hold a discussion, and give staff direction regarding the proposed bylaws of the Discover Denton Destination Marketing Organization. [Estimated Presentation/Discussion Time: 30 minutes]

The item was presented, and discussion followed.

Following discussion, City Council consensus was to accept the bylaws of Discover Denton as proposed with Council Member Jester's request that the Chair continue to serve as part of the Board's Nominating Committee.

D. ID 26-0025 Receive a report, hold a discussion, and give staff direction regarding a building lease with the Denton City Federation of Woman's Clubs. [Estimated Presentation/ Discussion Time: 30 minutes]

Council Member Jester had a conflict of interest and left the Work Session Room.

The item was presented, and discussion followed.

Following discussion, there was no direction provided as the item was for presentation/discussion purposes.

The work session ended at 3:40 p.m.

CLOSED MEETING

1. The City Council convened into a Closed Meeting at 3:42 p.m. consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law, as follows:

A. ID 26-0089 Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consulting with Attorneys - Under Texas Government Code Section 551.071. Receive information from staff, discuss, deliberate, and provide staff with direction pertaining to certain real property interests located at 610 Oakland Street in the City of Denton, Denton County, Texas where a public deliberation would have a detrimental effect on the City's position in negotiations with third parties. Consultation with City's attorney regarding issues associated with the above matter where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas or would jeopardize the City's legal position in any administrative or potential litigation.

DELIBERATED

The closed meeting started at 3:42 p.m. and ended at 5:00 p.m. No votes or actions were taken during the closed meeting.

REGULAR MEETING

After determining that a quorum was present, the City Council of the City of Denton, Texas convened in a Regular Meeting on Tuesday, February 3, 2026, at 6:30 p.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Mayor Pro Tem Suzi Rumohr, Council Members Brian Beck, Vicki Byrd, Joe Holland, Brandon Chase McGee and Jill Jester.

ABSENT: Mayor Gerard Hudspeth

Also present were City Manager Sara Hensley, and City Attorney Mack Reinwand.

The posted agenda noted the registration process for public participation at this meeting. However, there were no online registrations or call ins on any items on the agenda

1. PLEDGE OF ALLEGIANCE

A. U.S. Flag
B. Texas Flag

2. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

1) Scheduled Citizen Reports from Members of the Public

A. ID 26-0024 Ms. Mary Wright regarding no mow zone on Cooper Creek.
PRESENTED

B. ID 26-0032 Ms. Grace Hanson regarding ICE in our community.
PRESENTED

C. ID 26-0095 Ms. June Cooke regarding flock camera use and surveillance.
PRESENTED

(2) Additional Citizen Reports (Open Microphone)

Citizen comments received are noted on Exhibit A.

3. CONSENT AGENDA

The Consent Agenda consisted of Items 3.A – O. During the Work Session held earlier in the day, items 3.E and 3.F were pulled for Individual Consideration by Council Member Beck.

Council Member Beck moved to adopt the Consent Agenda, now consisting of Items 3.A - D and 3.G - O. Motion seconded by Council Member McGee.

Motion carried.

AYES (6): Mayor Pro Tem Rumohr and Council Members Beck, Byrd, Holland, Jester, and McGee
NAYS (0): None
ABSENT (1): Mayor Hudspeth

A. ID 26-0022 Consider approval of the minutes of the January 13, 2026 Special Called Meeting.
APPROVED

B. ID 25-2267 Consider approval of a resolution of the City of Denton reaffirming the name of the Juneteenth Softball Tournament; and providing an effective date. The Parks, Recreation and Beautification Board voted to recommend adoption (5-0).
ASSIGNED RESOLUTION NO. 25-2267

C. ID 26-2392 Consider adoption of an ordinance of the City of Denton granting Girls Who Run DFW., a noise exception for the Girls Who Run DFW event on Sunday, February 8, 2026, from 6:00 a.m. to 10:15 a.m. at North Lakes Park; and providing an effective date.
ASSIGNED ORDINANCE NO. 26-2392

D. ID 26-2418 Consider approval of a resolution appointing Kyle Pedigo to serve as the City's representative on the Board of Directors of the Upper Trinity Regional Water District; replacing the City's current representative; and providing an effective date.
ASSIGNED RESOLUTION NO. 26-2418

G. ID 26-0088 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a development agreement with Allegiance Hillview, L.P. for the reimbursement of roadway impact fees and allocation of credits associated with the construction of Heritage Trail in the Rayzor Ranch East subdivision; providing for the expenditure of funds in the amount of $1,174,766.11 and establishing remaining credits in the amount of $240,764.24; and providing an effective date.
ASSIGNED ORDINANCE NO. 26-0088

H. ID 26-2442 Consider nominations and reappointments to the City of Denton Economic Development Partnership Board.
APPROVED

APPOINTMENTS LISTED ON EXHIBIT B

I. ID 25-2362 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Stryker Sales, LLC, through the Sourcewell Cooperative Purchasing Network Contract No. 041823, for the purchase of ProCare maintenance and repair services for Stryker medical equipment

for the Fire Department; authorizing the expenditure of funds therefor; and providing an effective date (File 8967 - awarded to Stryker Sales, LLC, in the five (5) year not-to-exceed amount of $1,006,341.00).

ASSIGNED ORDINANCE NO. 25-2362

J. ID 26-0004 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Clean Harbors Environmental Services, Inc., for household hazardous waste disposal for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8882 - awarded to Clean Harbors Environmental Services, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $400,000.00).

ASSIGNED ORDINANCE NO. 26-0004

K. ID 26-0005 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Carahsoft Technology Corporation, through the Department of Information Resources (DIR) Cooperative Contract No. DIR-CPO-5687, for Procore project management software for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (File 8984 - awarded to Carahsoft Technology Corporation, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $1,849,300.05).

ASSIGNED ORDINANCE NO. 26-0005

L. ID 26-0006 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract extension between the City of Denton and Mustang Apparel, Inc. dba Incentive Brands through July 28, 2026, for workwear for various departments; and declaring an effective date (RFP 7315 - extending a contract with Mustang Apparel, Inc. dba Incentive Brands, to July 28, 2026).

ASSIGNED ORDINANCE NO. 26-0006

M. ID 26-0007 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a contract between the City of Denton and DiVal Safety Equipment, Inc., amending the contract approved by City Council on March 5, 2024, in the not-to-exceed amount of $600,000.00; said first amendment to continue to purchase self-contained breathing apparatus (SCBA) for the Fire Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8432 - providing for an additional first amendment expenditure amount not-to-exceed $150,000.00, with the total contract amount not-to-exceed $750,000.00).

ASSIGNED ORDINANCE NO. 26-0007

N. ID 26-0009 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Rene' Bates Auctioneers, Inc., for the management of auction services to the City of Denton for the Warehouse Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8949 - awarded to Rene' Bates Auctioneers, Inc., for a three (3) year term, with the option for two (2) additional one (1) year extensions).
ASSIGNED ORDINANCE NO. 26-0009

O. ID 26-0010 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to utilize a contract through the City of Midlothian Contract No. 2025-28, as awarded through City of Midlothian Ordinance No. 2025-402, for the purchase of Emergency Medical Services (EMS) for the City of Denton Fire Department; providing for the expenditure of funds therefor; and providing an effective date (File 8999 - awarded to Bound Tree Medical, LLC, as primary vendor, and Life-Assist Incorporated, as the secondary vendor, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $2,130,278.00).
ASSIGNED ORDINANCE NO. 26-0010

ITEMS PULLED FOR INDIVIDUAL CLARIFICATION

E. ID 25-2367 Consider adoption of an ordinance of the City of Denton granting Balfour Beatty a noise exception pursuant to Section 17-20(c)(3)(f) of the City of Denton Code of Ordinances with respect to sound levels and hours of operation for approximately 29 concrete parking lot, foundation, and Insulated Concrete Form (ICF) wall pours, which utilizes concrete pumps, generators, and lights related to the construction of a new elementary school located at 2525 Yellowstone Pl; granting an increase in sound levels and a variance in the hours of operation which may be affected by weather, from 3:00 a.m. to 7:00 a.m., with sound not to exceed 95 decibels; and providing an effective date.
ASSIGNED ORDINANCE NO. 25-2367

Following discussion, Council Member McGee moved to adopt the item as presented. Motion seconded by Council Member Byrd.

Motion carried.

AYES (5): Mayor Pro Tem Rumohr and Council Members Byrd, Holland, Jester, and McGee
NAYS (1): Council Member Beck
ABSENT (1): Mayor Hudspeth

F. ID 26-2441 Consider adoption of an ordinance of the City of Denton granting approval of a wastewater easement for the public and conveyance of a temporary construction easement to Dentex Land, Cattle, and Energy, LP for construction of wastewater improvements being located within City of Denton Parkland known as Sagebrook Park, providing for the

consideration of Seven Thousand, Two Hundred, Six Dollars and 00/100 Dollars ($7,206.00) for such easements; providing for severability and an effective date.
ASSIGNED ORDINANCE NO. 26-2441

Following discussion, Council Member Jester moved to adopt the item as presented. Motion seconded by Council Member McGee.

Motion carried.

AYES (5): Mayor Pro Tem Rumohr and Council Members Byrd, Holland, Jester, and McGee
NAYS (1): Council Member Beck
ABSENT (1): Mayor Hudspeth

4. PUBLIC HEARINGS

A. ID 25-1975 Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas amending the Denton Design Criteria Manual; authorizing the City Manager to execute stormwater facility maintenance agreements; and providing for severability, a savings clause and an effective date.
ASSIGNED ORDINANCE NO. 25-1975

There were no online registrations or call-ins on the item.

The item was presented and discussion followed.

The public hearing was opened and with no callers in the queue, the public hearing was closed.

Following discussion, Council Member Byrd moved to adopt the item as presented. Motion seconded by Council Member Jester.

Motion carried.

AYES (6): Mayor Pro Tem Rumohr and Council Members Beck, Byrd, Holland, Jester, and McGee
NAYS (0): None
ABSENT (1): Mayor Hudspeth

B. ID 25-2371 Hold a Public Hearing and consider approval of a resolution of the City of Denton supporting Palladium Fallmeadow Denton, Ltd.'s 9% housing tax credit application to the Texas Department of Housing and Community Affairs for the proposed new construction of the Palladium Denton West Living apartments to provide affordable rental housing; committing to provide fee reductions in an amount of $500.00; and providing an effective date.
ASSIGNED RESOLUTION NO. 25-2371

There were no online registrations or call-ins on the item.

The item was presented and discussion followed.

The public hearing was opened and with no callers in the queue, the public hearing was closed.

Following discussion, Council Member Beck moved to adopt the item as presented. Motion seconded by Council Member McGee.

Motion carried.

AYES (6): Mayor Pro Tem Rumohr and Council Members Beck, Byrd, Holland, Jester, and McGee
NAYS (0): None
ABSENT (1): Mayor Hudspeth

C. Z25-0014b Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, regarding a change in the zoning district and use classification from Rural Residential (RR) District and Residential 2 (R2) District to Mixed-Use Regional (MR) District on approximately 16.524 acres of land generally located north of West University Drive (US 380), approximately 2,800 feet west of Golden Hoof Drive; adopting an amendment to the City's Official Zoning Map; providing for a penalty in the maximum amount of $2,000.00 for violations thereof; providing a severability clause and an effective date. The Planning and Zoning Commission voted (5-1) to recommend approval of the request. Motion for approval by Commissioner Riggs and second by Commissioner McDuff. (Z25-0014b, Hickory Grove Multifamily, Mia Hines)
ASSIGNED ORDINANCE NO. Z25-0014b

There were no online registrations or call-ins on the item.

The item was presented and discussion followed.

The public hearing was opened and with no callers in the queue, the public hearing was closed.

Following discussion, Council Member Jester moved to adopt the item as presented. Motion seconded by Council Member Byrd.

Motion carried.

AYES (5): Mayor Pro Tem Rumohr and Council Members Byrd, Holland, Jester, and McGee
NAYS (1): Council Members Beck
ABSENT (1): Mayor Hudspeth

5. ITEMS FOR INDIVIDUAL CONSIDERATION

Items A. ID 25-2265 and B. ID 25-2266 were collectively read into the record, presented, and discussed, but voted on individually.

A. ID 25-2265 Consider approval of a resolution of the City of Denton renaming the Civic Center (321 E. McKinney St.) to the Quakertown Civic Center; and providing an effective date. The Parks, Recreation and Beautification Board voted to recommend adoption (5-0).
ASSIGNED RESOLUTION NO. 25-2265

There were no online registrations or call-ins on the item.

The item was presented, and discussion followed.

Citizen comments received are noted on Exhibit A.

Following discussion, Council Member Byrd moved to adopt the item as presented. Motion seconded by Council Member McGee.

Motion carried.

AYES (6): Mayor Pro Tem Rumohr and Council Members Beck, Byrd, Holland, Jester, and McGee
NAYS (0): None
ABSENT (1): Mayor Hudspeth

B. ID 25-2266 Consider approval of a resolution of the City of Denton naming the Day Labor Site (301 Fort Worth Dr.) to the Popo González Day Labor Site; and providing an effective date. The Parks, Recreation and Beautification Board voted to recommend adoption (5-0).
ASSIGNED RESOLUTION NO. 25-2266

There were no online registrations or call-ins on the item.

The item was presented, and discussion followed.

Citizen comments received are noted on Exhibit A.

Following discussion, Council Member Jester moved to adopt the item as presented. Motion seconded by Council Member Beck.

Motion carried.

AYES (6): Mayor Pro Tem Rumohr and Council Members Beck, Byrd, Holland, Jester, and McGee
NAYS (0): None
ABSENT (1): Mayor Hudspeth

C. ID 26-0008 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with RSVP Services, LLC, for comprehensive veterinary services for the Linda McNatt Animal Care and Adoption Center; providing for the expenditure of funds therefor; and providing an effective

date (RFP 8942 - awarded to RSVP Services, LLC, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $9,000,000.00).

ASSIGNED ORDINANCE NO. 26-0008

There were no online registrations or call-ins on the item.

The item was presented, and discussion followed.

Following discussion, Council Member Holland moved to adopt the item as presented. Motion seconded by Council Member Byrd.

Motion carried.

AYES (6): Mayor Pro Tem Rumohr and Council Members Beck, Byrd, Holland, Jester, and McGee
NAYS (0): None
ABSENT (1): Mayor Hudspeth

6. CONCLUDING ITEMS

Council Members expressed items of interest.

With no further business, the meeting was adjourned at 7:57 p.m.

_____	_____
GERARD HUDSPETH	INGRID REX
MAYOR	CITY SECRETARY
CITY OF DENTON, TEXAS	CITY OF DENTON, TEXAS

MINUTES APPROVED ON: _____

EXHIBIT A - February 3, 2026 City Council Regular Meeting

Speaker Commentaries/Registrations
Online, Email, Phone

Name	Address	City	Agenda Item	Position	Method	Comments
Mark Reding	407 Ft. Worth Dr	Denton	Open Mic	n/a	In-Person	Comments regarding utility billing issue
Danna Zoltner	610 Emery	Denton	Open Mic	n/a	In-Person	Comments regarding ADU building guidelines
Frances Punch	2002 Wisterra St	Denton	25-2265	Support	In-Person	Spoke in support
Zelinda Alexander Pegram	1501 Val Verde Ct	Denton	25-2265	Support	In-Person	Spoke in support
Reginald Hill	PO Box 1764	Denton	25-2265	Support	In-Person	Present, did not wish to speak
L Awtrey	210 Stroud St	Denton	25-2266	Oppose	In-Person	Spoke in opposition

BOARDS & COMMISSIONS - NOMINATIONS
February 3, 2026 (EXHIBIT B)

BOARD/COMMITTEE/COMMISSION	COUNCIL PLACE	NOMINATED BY CCM	APPOINTED	TERM INFO	TERM DATES	STATUS; SPECIFIC REQUIREMENT/ QUALIFICATION
Economic Development Partnership Board	N/A	CC nominating committee	Lucy Hedari	NEW	Unexpired term Oct 1, 2025 - Sept 30, 2026	Top 20 Taxpayer
Economic Development Partnership Board	N/A	CC nominating committee	Kimberly Garza Turner	NEW	N/A	UNT President/Designee
Economic Development Partnership Board	N/A	CC nominating committee	Aimee Bissett	Reappointed to a 2nd term	Reappointed to 2nd term Oct 1, 2025 - Sept 30, 2027	Denton Chamber Board - Director
Economic Development Partnership Board	N/A	CC nominating committee	Bryan Danhof	Reappointed to a 2nd term	Oct 1, 2025 - Sept 30, 2027	Top 20 Taxpayer
Economic Development Partnership Board	N/A	CC nominating committee	Clyde Rick Woolfolk	Reappointed to a 2nd term	Oct 1, 2025 - Sept 30, 2027	Aviation
Economic Development Partnership Board	N/A	CC nominating committee	Kerry Goree	Reappointed to a 3rd term	Oct 1, 2025 - Sept 30, 2027	Denton Black Chamber of Commerce

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: **Community Services**

CM/DCM/ACM: **Christine Taylor**

DATE: **February 17, 2026**

SUBJECT

Consider approval of a resolution of the City of Denton, Texas, ratifying an amendment of the bylaws for Denton City Public Facility Corporation; and providing an effective date.

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Foster Economic Opportunity and Affordability.

BACKGROUND

On May 7, 2024, the City Council approved the creation of the Denton City Public Facility Corporation (DCPFC), a public facility corporation, pursuant to Chapter 303 of the Texas Local Government Code; approving the articles of incorporation and the initial bylaws for the corporation (ID 24-992).

On December 16, 2025 the board of DCPFC approved an amendment to the bylaws of DCPFC (DCPFC 25-004).

Pursuant to Chapter 303 of the Texas Local Government Code, the bylaws, as amended, must also be approved by the Governing Body.

OPTIONS

- Approve the Resolution
- Approve the Resolution with conditions
- Postpone to a date certain
- Reject the Resolution

RECOMMENDATION

- Approve the Resolution

EXHIBITS

Exhibit 1 – Agenda Information Sheet
Exhibit 2 – Resolution and Bylaws
Exhibit 3 – Bylaws with Redlines
Exhibit 4 – Draft Minutes

Respectfully submitted:
Jesse Kent
Director of Community Services

Prepared by:
Leia Atkinson
Housing Programs Coordinator

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF DENTON, TEXAS, RATIFYING AN AMENDMENT OF THE BYLAWS FOR DENTON CITY PUBLIC FACILITY CORPORATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 7, 2024, the City Council of the City of Denton ("City Council") approved the creation of the Denton City Public Facility Corporation for the City of Denton (the "City"), approved the Certificate of Incorporation, and approved Bylaws by passing Resolution 24-668; and

WHEREAS, on December 16, 2025, the board of Denton City Public Facility Corporation approved amendments to its bylaws in the form attached hereto as Exhibit "A" (the "Amended Bylaws"); and

WHEREAS, pursuant to Chapter 303 of the Texas Local Government Code, as amended ("Act"), the governing body of the sponsor of a Public Facility Corporation must approve the adoption and each amendment to the bylaws by resolution; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. That the findings and recitations contained in the preamble of this Ordinance are found to be true and incorporated herein by reference.

SECTION 2. That the Amended Bylaws, attached hereto as Exhibit "A", are ratified and approved to be adopted as the Bylaws of the DCPFC.

SECTION 3. This Resolution shall be effective as of its date of approval and passage by City Council.

The motion to approve this Resolution was made by _____ and seconded by _____, the Resolution 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Scott Bray Scott Bray
Deputy City Attorney

EXHIBIT A

BYLAWS OF
DENTON CITY PUBLIC FACILITY CORPORATION

a Texas Public Facility Corporation and Instrumentality of The City of Denton

ARTICLE I
PURPOSE AND POWERS

1.1. **Purpose.** Denton City Public Facility Corporation, a Texas public facility corporation and public nonprofit corporation ("Corporation") is incorporated for the purposes set forth in its Articles of Incorporation, in accordance with the Public Facility Corporation Act, as amended, Chapter 303, Texas Local Government code ("Act"), and other applicable laws.

1.2. **Powers.** In the fulfillment of its corporate purpose, the Corporation shall be governed by the Act, and shall have all the powers set forth and conferred in its Articles of Incorporation, in the Act, and in other applicable law, subject to the limitations prescribed therein and herein and to the provisions thereof and hereof.

1.3. **Nonprofit Corporation.** The Corporation shall be a public, nonprofit corporation and no part of its set earnings remaining after payment of its bonds and expenses shall inure to the benefit of any person other than the City of Denton (the "City").

ARTICLE II
BOARD OF DIRECTORS

2.1. **Powers.** The property and affairs of the Corporation shall be managed by a board of directors (the "Board") which shall consist of members of the City Council of the City of Denton ("Governing Body"). The powers of the Board shall be subject to the limitations imposed by law and described in these Bylaws and the Articles of Incorporation.

2.2. **Initial Board of Directors**. The directors constituting the initial Board shall be those directors named in the Articles of Incorporation.

2.3. **Number of Directors.** The number of directors may be changed by amendment to these Bylaws, but such number must be at least equivalent to the total number of seated City Council Members.

2.4. **Term.** Each director shall hold office for the term which aligns with the board member's term on the Governing Body, and shall be considered removed or resigned from the Board upon their removal from the Governing Body.

2.5. **Vacancies.** Vacancies on the Board may be caused by the death, resignation, or removal of any director, when the size of the Board is increased pursuant to these Bylaws, or upon expiration of the term of the director if no new director has been appointed. Any vacancy on the Board shall be filled by appointment by written resolution of the Governing Body. A director

appointed to fill a vacancy arising other than as a result of the completion of the term of a director shall be appointed for the unexpired term of his or her predecessor in office.

2.6. **Committees of the Board.** The Board may designate two (2) or more directors to constitute an official committee of the Board but any committee shall be limited in size so as not to constitute a quorum of the directors. Any such committee shall act in the manner provided in such resolution to exercise such authority, as approved by resolution of the Board. It is provided, however, that only the Board may exercise all final, official actions of the Corporation. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation and any such meetings must be conducted in accordance with the provisions of the Texas Open Meetings Act, as amended, Chapter 551, Texas Government Code, if applicable.

2.7. **Compensation of Directors.** Directors of the Board shall not receive any salary or compensation for their services as directors. However, they shall be reimbursed for their actual expenses incurred in the performance of their official duties as directors of the Corporation which are authorized by a majority vote of the Board present at a properly-called meeting of the Board at which a quorum is present.

2.8. **Additional Powers.** In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board may exercise all such powers of the Corporation and do all lawful acts and things as are not by statute, other law, or by these Bylaws prohibited. Without prejudice to such general powers and other powers conferred by statute, other law, and by these Bylaws, and except as specifically prohibited by these Bylaws, it is hereby expressly declared that the Board shall have the powers necessary for the Corporation to exercise the powers set forth in Section 303.041 of the Act, as amended.

2.9. **Qualifications**. Directors of the Board shall be of the age of majority in the State of Texas. A person is only eligible to serve as a director of the Board if he or she is a member of the Governing Body.

2.10. **Additional Board and Meeting Requirements.** Except where in conflict with the provisions of these Bylaws or the Corporation's Articles of Incorporation, the Board and individual members of the Board shall be subject to the provisions of the City of Denton Code of Ordinances, Article III - Boards, Commissions, and Committees.

ARTICLE III
OFFICERS, GENERAL MANAGER, AND ADMINISTRATORS

3.1. **Titles of Officers.** The officers of the Corporation shall be a President, a Vice President, and a Secretary, and such other officers as the Board may from time to time elect or appoint. All officers of the Corporation shall be members of the Board.

3.2. **Terms of Office.** Officers shall serve for one-year terms. Upon the expiration of the terms, each officer shall have the right to be re-appointed or re-elected. Notwithstanding the foregoing, the Mayor and the Mayor Pro-Tem of the City of Denton shall be automatically appointed or re-

appointed to the offices of President and Vice President, respectively, upon their assumption of their respective office on the Governing Body or the expiration of their term as Officer hereunder.

3.3. **Removal of an Officer.** All officers shall be subject to removal from office, with or without cause, at any time by a vote of a majority of the Board.

3.4. **Vacancies.** A vacancy in an officer position shall be filled by a vote of a majority of the Board.

3.5. **President.** The president shall be the Mayor of the City of Denton. The president shall be the chief operating executive officer of the Corporation, and subject to the direction of the City and the Board, the president shall be in general charge of the properties and affairs of the Corporation, and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, leases, notes and other instruments in the name of the Corporation; provided, however, that the president may not execute any instrument on behalf of the Corporation without the prior written approval of the Board. The president shall preside over the meetings of the Corporation.

3.6. **Vice President.** The vice president shall be the Mayor Pro-Tem of the City of Denton. The vice president shall have such powers and duties as may be prescribed by the Board and shall exercise the powers of the president during that president's absence or inability to act. Any action taken by the vice president in the performance of the duties of the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken.

3.7. **Secretary.** The secretary shall be a Board Member, elected by the Board. The secretary may appoint an Assistant Secretary, which may, but need not be, a director.

a. The secretary or Assistant Secretary shall keep the minutes of all meetings of the Board in books provided for that purpose; shall have charge of the corporate books, records, documents and instruments, except the books of account and financial records and securities, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to public inspection upon application at the office of the Corporation during business hours; and shall in general perform all duties incident to the office of secretary subject to the control of the Board shall cause the giving and serving of all notices.

b. The secretary, and only the secretary, may sign with the president in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation.

c. The Assistant Secretary may perform any duty required of or granted to the Secretary in these Bylaws and/or in any resolution or order approved by the Board, other than the execution of documents.

3.8. **General Manager.** The general manager shall exercise such powers and perform such duties as are set forth herein and as determined from time to time by the Board. The general manager of the Corporation shall be the City of Denton Director of Community Services or such other person employed by the Corporation or selected by the Corporation through competitive bidding and appointed as General Manager by the Board, which appointment shall be subject to

approval by the Governing Body. The powers and duties of the general manager shall include the following:

a. In cooperation with the Corporation's legal counsel, to ensure that all actions of the Board are in compliance with all applicable laws, ordinances, orders, and resolutions that are in effect;

b. Except as otherwise herein provided, to hire and remove all subordinates, employees, agents, or contractors of the Corporation;

c. To manage the day to day operations of the Corporation, subject to the Act, the Articles of Incorporation, these Bylaws, and any policies and procedures adopted by the Board;

d. To review all contracts of the Corporation to ensure each contract is in accordance with the directives of the Board;

e. To attend and participate in all meetings and deliberations of the Board to the extent allowed by TOMA, but shall not possess the power to vote;

f. To recommend to the Board for adoption such measures as he or she may deem necessary or expedient to further the goals and priorities of the Governing Body;

g. In collaboration with the treasurer, keep the Board at all times fully advised of the financial condition of the Corporation including providing monthly financial statements or reports;

h. To spend Corporation funds up to $25,000.00 without prior approval from the Board when the general manager deems it necessary to pay a refundable option fee or earnest money in connection with any contract for the sale, purchase, or lease of real property or real property interests, provided that the general manager shall first execute an enforceable written agreement which makes all funds paid fully refundable at the Board's discretion. Any such agreement or pledge of funds shall be approved by the Board prior to execution or acceptance of an agreement that would render the funds non-refundable; and

i. To act as budget supervisor with the treasurer and as such prepare and submit to the Board the annual budget.

j. The general manager may appoint an assistant general manager who shall perform such duties of the general manager as may be assigned by the general manager and shall exercise the powers of the general manager during the general manager's absence or inability to act. The assistant general manager shall be removable, with or without cause, at any time by the general manager. The assistant general manager shall not be an officer of the Board.

k. The general manager shall make recommendations to the Board regarding the engagement and retainment of contractors for professional services, as needed by Corporation.

3.9. **Legal Advisor.** The City Attorney's Office (or any outside attorney retained by the City Attorney's Office) may provide general counsel services for the Board, including advice regarding TOMA, parliamentary procedure, and matters relating to governance, as well as any other necessary legal matters.

3.10. **Compensation.** Officers who are members of the board of directors shall not receive any salary or compensation for their services, except that they shall be reimbursed for the actual expenses incurred in the performance of their official duties as officers. Officers who are employees of the City shall receive no compensation from the Corporation for the performance of their duties.

ARTICLE IV
MEETINGS OF DIRECTORS

4.1. **Meetings of Directors.** The Board may hold their meetings at any place authorized by the Act as the Board may from time to time determine; provided that, in the absence of any such determination by the Board, the meetings shall be held at the principal office of the Corporation.

4.2. **Regular Meetings.** Regular Meetings of the Board shall be held at such times and places as shall be designated, from time to time, by the Board.

4.3. **Special Meetings.** Special Meetings of the Board shall be held whenever called: (i) by the President or Secretary of the Board; (ii) by simple majority of the directors; (iii) or upon advice of or request by the Governing Body.

4.4. **Open Meetings Act.** Meetings of the Board are subject to the Texas Open Meetings Act, Texas Government Code, Chapter 551 as amended ("TOMA"), and the Corporation is subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

4.5. **Public Notice of Meetings; Open Meetings.** Written notice of the date, hour, place, and subject of each meeting of the Board shall be posted before each meeting at such times and in such places as prescribed by TOMA. Every meeting of the Board shall be open to the public, except as otherwise permitted by TOMA.

4.6. **Quorum.** The greater of a simple majority of every position on the Board, including any vacant positions, is a quorum, unless law requires the act of a greater number.

4.7. **Conduct of Business.**

a. At the meetings of the Board, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board may determine.

b. At all meetings of the Board, the president shall preside. In the absence of the president, the vice president shall preside. In the absence of both the president and vice president, a member of the Board selected by the members present shall preside.

c. The secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the secretary, the presiding officer may appoint any person to act as secretary of the meeting. The treasurer, secretary and any assistant secretary may, at the option of the Board, be employees of the City, and each member of the Board with the exception of the president, vice president, treasurer, or secretary, may be appointed as an assistant secretary.

ARTICLE V
FUNCTIONAL CORPORATE DUTIES AND REQUIREMENTS

5.1. **Books, Records, and Audits.**

a. The Corporation shall keep and properly maintain in accordance with generally accepted accounting principles, complete books, records, accounts, and financial statements pertaining to its corporate funds, activities, and affairs.

b. Beginning with the fiscal year following the first fiscal year during which the Corporation has taken any action to partner with or finance a public facility, the Corporation, shall cause its books, records, accounts, and financial statements to be studied at least once each fiscal year by an outside, independent auditing and accounting firm selected by the City. Such an audit shall be at the expense of the Corporation and shall be delivered to the City within 150 days of the end of the fiscal year of the Corporation.

c. All books and records of the Corporation may be inspected by any director or his or her agent or attorney for any purpose at any reasonable time and at all times the City shall have access to the books, records, and financial statements of the Corporation.

d. The Corporation is a governmental body pursuant to Section 552.03, therefore the Corporation's documents, books, records, accounts, and financial statements are subject to the Texas Public Information Act, Texas Government Code Chapter 552,

5.2. **Deposit and Investment of Corporation Funds.**

a. All proceeds from loans or from the issuance of bonds, notes, or other debt instruments ("Obligations") issued by the Corporation in accordance with the provisions of the Act shall be deposited and invested as provided in the resolution, order, indenture, or other documents authorizing or relating to their execution or issuance.

b. Subject to the requirements of contracts, loan agreements, indentures or other agreements securing Obligations, all other money of the Corporation, if any, shall be deposited, secured, and/or invested in the manner provided for the deposit, security and/or investment of the public funds of the City. The Board shall designate the accounts and depositories to be created and designated for such purposes, and the methods of withdrawal of funds therefrom for use by and for the purposes of the Corporation upon the signature of its president and such other persons as the Board designates.

c. Funds of the Corporation, the proceeds from the sale of property, revenues generated by and payable to the Corporation pursuant to the Act or any other source of revenues, and the proceeds derived from the sale of Obligations may be expended by the Corporation for any of the purposes authorized by the Act. Expenditures that are permitted to be made from a fund created with the proceeds of Obligations and expenditures of money derived from sources other than the proceeds of Obligations may be used for the purpose of financing or otherwise providing for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing and placement in service of public facilities under the terms of the Act.

5.3. **Issuance of Obligations.** No Obligations, including refunding obligations, shall be authorized or sold and delivered by the Corporation unless the City approves such Obligations by action taken prior to the date of initial delivery of the Obligations to the initial purchasers thereof.

ARTICLE VI
PROVISIONS REGARDING ARTICLES OF INCORPORATION AND BYLAWS

6.1. **Effective Date.** These Bylaws shall become effective upon the occurrence of the following events:

a. the approval of these Bylaws by the City, which approval may be granted prior to the creation of the Corporation; and

b. the adoption of the Bylaws by the Board.

6.2. **Amendments to Bylaws.** These Bylaws may be amended as set forth in the Articles of Incorporation.

6.3. **Interpretation of Bylaws.** These Bylaws and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section, or other part of these Bylaws or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these Bylaws and the application of such word, phrase, clause, sentence, paragraph, section, or other part of these Bylaws to any other person or circumstance shall not be affected thereby.

ARTICLE VII
GENERAL PROVISIONS

7.1. **Principal Office.** The principal office and the registered office of the Corporation shall be 215 E McKinney St, Denton, TX 76201.

7.2. **Fiscal Year.** The fiscal year of the Corporation shall be the same as the fiscal year of the City.

7.3. **Seal.** No seal of the Corporation shall be required.

7.4. **Notice and Waiver of Notice.** Whenever any notice whatsoever is required to be given under the provisions of the Act, the Articles of Incorporation, or these Bylaws, such notice shall be deemed to be sufficient if sent by U.S. Mail, with proper postage, certified mail return receipt requested or by a nationally recognized overnight delivery service addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given three business days following such mailing. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any Regular or Special Meeting of the Board need be specified in the notice of such meeting, unless required by the Board or by the provisions of these Bylaws. A waiver of notice in writing, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Notwithstanding the foregoing, nothing in this section shall be construed to restrict or modify the public notice provisions of TOMA.

7.5. **Resignations.** Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time is specified, at the time of its receipt by the president or secretary. The acceptance of resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

7.6. **Action Without a Meeting of Directors or Committees.** Any action which may be taken at a meeting of the Board or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the Directors, or all of the members of the committee, as the case may be, subject to TOMA. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the Texas Secretary of State, or any other person.

7.7. **Approval or Advice and Consent of the Governing Body.** To the extent these Bylaws or the Articles of Incorporation refer to any approval by the City or refer to advice and consent by the City, such approval or advice and consent shall be evidenced by a certified copy of a resolution or motion duly adopted by the Governing Body.

7.8. **Termination.** Upon the termination of the Corporation after payment of all obligations of the Corporation, all remaining assets of the Corporation shall be transferred to the City.

7.9. **Governmental Unit.** The Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.

ARTICLE VIII
PUBLIC FACILITY CORPORATION POWERS AND LIMITATIONS

8.1. **Purpose and Powers.** The Corporation is organized exclusively for the purpose of assisting the City in financing, refinancing or providing "public facilities," as defined in the Act and as approved by the Governing Body pursuant to the provisions of these Bylaws and the Articles of Incorporation. The Corporation shall have and possess all powers to finance the acquisition of obligations issued or incurred in accordance with existing law, to provide for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing, and placement in service of public facilities as allowed by the Governing Body and pursuant to the Act. The Corporation is authorized to issue bonds, as defined and permitted by the Act; provided, however, no bonds, notes, or other evidence of indebtedness may be issued by the Corporation unless such bonds are first approved by resolution of the Governing Body.

8.2. **Governing Body Oversight.** The Governing Body, in its sole discretion, may alter the Corporation's structure, name, organization, programs, and activities, including dissolution of the Corporation, consistent with the Act and subject to any limitations provided by law relating to the impairment of contracts entered into by the Corporation. Before the consummation of the sale and delivery of any bonds or the application of any available tax exemption to a Public Facility or the user of a Public Facility, as permitted by the Act, the Corporation shall obtain approval by the Governing Body by written resolution. In the exercise of its powers, the Corporation may enter into loan, lease, or other agreements as authorized by the Act that are necessary and appropriate to the fulfillment of the public purpose of the Corporation, all of which agreements, and any specific uses and methods of withdrawals and expenditure of bond proceeds, are subject to the prior approval of the Governing Body by written resolution.

ARTICLE IX
MULTIFAMILY RESIDENTIAL DEVELOPMENT

9.1. **Net Revenue of the Corporation.** Any net revenue generated by any Public Facility related to multifamily residential development by this Corporation shall be used solely in furtherance of the City of Denton housing programs, policies, and initiatives, or provided as fee in lieu of exempted property taxes to taxing entities which would otherwise assess property tax to the owners or users of the Public Facility.

9.2. **Limits on Participation.** The Corporation shall not participate in any Public Facility related to multifamily residential development unless approved by the Governing Body by resolution stating that (i) the development of the Public Facility could not be feasible but for the Corporation's participation and (ii) the development of the Public Facility is in furtherance of the City's housing programs, policies, and initiatives and is carried out pursuant to the provisions of these bylaws and the Act.

9.3. **Solicitation of Development Proposals and Third-Party Services.** The Corporation shall solicit multifamily residential proposals and third-party services through an open application process. Any Public Facility, including multifamily residential developments, developed on City or other publicly-owned land shall be solicited through a request for proposals or similar method in accordance with all laws, ordinances, orders, resolutions, criteria, and policies that are applicable to the City.

9.4. **Fair Housing.** Any Public Facility related to multifamily residential development must adhere to Chapter 14, ARTICLE III of the City of Denton Code of Ordinances, as amended.

ARTICLE X
CODE OF ETHICS

10.1. **Conflicts of Interest.** Directors and Officers are subject to the ethics provisions of ARTICLE XI. - ETHICS of the City of Denton Code of Ordinances, as amended. It is the policy of the Corporation that Directors and Officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that no Officer, employee, or member of the Board should have an interest, financial or otherwise, direct or indirect, or engage in any business, transaction, or professional activity or incur any obligation of any nature which is in conflict with the proper discharge of his or her duties and are not to use their position for personal gain.

ARTICLE XI
INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES

11.1. **Indemnification of Directors.** A Director of the Corporation shall not be personally liable to the Corporation for monetary damages for any act or omission in such Director's capacity as a Director, except that this Article does not authorize the elimination or limitation of the liability of a Director to the extent the Director is found liable for: (i) a breach of a Director's duty to the Corporation; (ii) an act or omission not in good faith that constitutes a breach of duty of the Director to the Corporation or an act or omission that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which a Director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Director's office; or (iv) an act or omission for which the liability of a Director is expressly provided for by an applicable statute. The foregoing elimination of liability shall not be deemed exclusive of any other rights, limitations of liability, or indemnity to which a Director may be entitled under any other provision of the Articles of Incorporation or these Bylaws, any contract or agreement, vote of Directors, principle of law, or otherwise. Any repeal or amendment of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director of the Corporation existing at the time of such repeal or amendment. In addition to the circumstances in which a Director of the Corporation is not personally liable as set forth in the foregoing provisions of this Article, a Director shall not be liable to the full extent permitted by any amendment to the Texas Business Organizations Code or the Act hereafter enacted that further eliminates or authorizes the elimination of the liability of a Director.

11.2. **Indemnification of Officers and Employees.** The Corporation shall indemnify each of its officers and its employees and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorney's fees, incurred by any of such persons by reason of any actions or omissions that may arise out of the sanctions and activities of the Corporation; provided, however, that the Corporation may not provide indemnity in any manner if the officer, employee, or agent is guilty of negligence or misconduct in relation to the matter. The legal counsel for the Corporation is authorized to provide a defense for members of the board of directors, officers, and employees of the Corporation in relation to acts or omissions arising out of the sanctions and activities of the Corporation to the extent that such representation does not conflict with representation of the Corporation and is not adverse to the interests of the Corporation.

11.3. **Directors and Officers Insurance.** The Corporation shall indemnify Directors, Officers, employees, and agents of the Corporation to the fullest extent permitted by law, subject in each case to the restrictions, if any, of this Article. The Corporation shall have the power to purchase and maintain at its cost and expense insurance on behalf of such persons to the fullest extent permitted by law.

ADOPTION OF BYLAWS

We, the undersigned, are all of the Directors of the Corporation, and we consent to, and hereby adopt, the foregoing Bylaws, consisting of eleven (11) pages, as the Bylaws of this Corporation.

Date: _____

By: _____
Gerard Hudspeth, Director

By: _____
Vicki Byrd, Director

By: _____
Brian Beck, Director

By: _____
Suzi Rumohr, Director

By: _____
Joe Holland, Director

By: _____
Brandon Chase McGee, Director

By: _____
Jill Jester, Director

EXHIBIT A

BYLAWS OF
DENTON CITY PUBLIC FACILITY CORPORATION

a Texas Public Facility Corporation and Instrumentality of The City of Denton

ARTICLE I
PURPOSE AND POWERS

1.1. **Purpose.** Denton City Public Facility Corporation, a Texas public facility corporation and public nonprofit corporation ("Corporation") is incorporated for the purposes set forth in its Articles of Incorporation, in accordance with the Public Facility Corporation Act, as amended, Chapter 303, Texas Local Government code ("Act"), and other applicable laws.

1.2. **Powers.** In the fulfillment of its corporate purpose, the Corporation shall be governed by the Act, and shall have all the powers set forth and conferred in its Articles of Incorporation, in the Act, and in other applicable law, subject to the limitations prescribed therein and herein and to the provisions thereof and hereof.

1.3. **Nonprofit Corporation.** The Corporation shall be a public, nonprofit corporation and no part of its set earnings remaining after payment of its bonds and expenses shall inure to the benefit of any person other than the City of Denton (the "City").

ARTICLE II
BOARD OF DIRECTORS

2.1. **Powers.** The property and affairs of the Corporation shall be managed by a board of directors (the "Board") which shall consist of members of the City Council of the City of Denton ("Governing Body"). The powers of the Board shall be subject to the limitations imposed by law and described in these Bylaws and the Articles of Incorporation.

2.2. **Initial Board of Directors**. The directors constituting the initial Board shall be those directors named in the Articles of Incorporation.

2.3. **Number of Directors.** The number of directors may be changed by amendment to these Bylaws, but such number must be at least equivalent to the total number of seated City Council Members.

2.4. **Term.** Each director shall hold office for the term which aligns with the board member's term on the Governing Body, and shall be considered removed or resigned from the Board upon their removal from the Governing Body.

2.5. **Vacancies.** Vacancies on the Board may be caused by the death, resignation, or removal of any director, when the size of the Board is increased pursuant to these Bylaws, or upon expiration of the term of the director if no new director has been appointed. Any vacancy on the Board shall be filled by appointment by written resolution of the Governing Body. A director

appointed to fill a vacancy arising other than as a result of the completion of the term of a director shall be appointed for the unexpired term of his or her predecessor in office.

2.6. **Committees of the Board.** The Board may designate two (2) or more directors to constitute an official committee of the Board but any committee shall be limited in size so as not to constitute a quorum of the directors. Any such committee shall act in the manner provided in such resolution to exercise such authority, as approved by resolution of the Board. It is provided, however, that only the Board may exercise all final, official actions of the Corporation. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation and any such meetings must be conducted in accordance with the provisions of the Texas Open Meetings Act, as amended, Chapter 551, Texas Government Code, if applicable.

2.7. **Compensation of Directors.** Directors of the Board shall not receive any salary or compensation for their services as directors. However, they shall be reimbursed for their actual expenses incurred in the performance of their official duties as directors of the Corporation which are authorized by a majority vote of the Board present at a properly-called meeting of the Board at which a quorum is present.

2.8. **Additional Powers.** In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board may exercise all such powers of the Corporation and do all lawful acts and things as are not by statute, other law, or by these Bylaws prohibited. Without prejudice to such general powers and other powers conferred by statute, other law, and by these Bylaws, and except as specifically prohibited by these Bylaws, it is hereby expressly declared that the Board shall have the powers necessary for the Corporation to exercise the powers set forth in Section 303.041 of the Act, as amended.

2.9. **Qualifications**. Directors of the Board shall be of the age of majority in the State of Texas. A person is only eligible to serve as a director of the Board if he or she is a member of the Governing Body.

2.10. **Additional Board and Meeting Requirements.** Except where in conflict with the provisions of these Bylaws or the Corporation's Articles of Incorporation, the Board and individual members of the Board shall be subject to the provisions of the City of Denton Code of Ordinances, Article III - Boards, Commissions, and Committees.

ARTICLE III
OFFICERS, GENERAL MANAGER, AND ADMINISTRATORS

3.1. **Titles of Officers.** The officers of the Corporation shall be a President, a Vice President, and a Secretary, and such other officers as the Board may from time to time elect or appoint. All officers of the Corporation shall be members of the Board.

3.2. **Terms of Office.** Officers shall serve for one-year terms. Upon the expiration of the terms, each officer shall have the right to be re-appointed or re-elected. Notwithstanding the foregoing, the Mayor and the Mayor Pro-Tem of the City of Denton shall be automatically appointed or re-

appointed to the offices of President and Vice President, respectively, upon their assumption of their respective office on the Governing Body or the expiration of their term as Officer hereunder.

3.3. **Removal of an Officer.** All officers shall be subject to removal from office, with or without cause, at any time by a vote of a majority of the Board.

3.4. **Vacancies.** A vacancy in an officer position shall be filled by a vote of a majority of the Board.

3.5. **President.** The president shall be the Mayor of the City of Denton. The president shall be the chief operating executive officer of the Corporation, and subject to the direction of the City and the Board, the president shall be in general charge of the properties and affairs of the Corporation, and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, leases, notes and other instruments in the name of the Corporation; provided, however, that the president may not execute any instrument on behalf of the Corporation without the prior written approval of the Board. The president shall preside over the meetings of the Corporation.

3.6. **Vice President.** The vice president shall be the Mayor Pro-Tem of the City of Denton. The vice president shall have such powers and duties as may be prescribed by the Board and shall exercise the powers of the president during that president's absence or inability to act. Any action taken by the vice president in the performance of the duties of the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken.

3.7. **Secretary.** The secretary shall be a Board Member, elected by the Board. The secretary may appoint an Assistant Secretary, which may, but need not be, a director.

a. The secretary or Assistant Secretary shall keep the minutes of all meetings of the Board in books provided for that purpose; shall have charge of the corporate books, records, documents and instruments, except the books of account and financial records and securities, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to public inspection upon application at the office of the Corporation during business hours; and shall in general perform all duties incident to the office of secretary subject to the control of the Board shall cause the giving and serving of all notices.

b. The secretary, and only the secretary, may sign with the president in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation.

c. The Assistant Secretary may perform any duty required of or granted to the Secretary in these Bylaws and/or in any resolution or order approved by the Board, other than the execution of documents.

3.8. **General Manager.** The general manager shall exercise such powers and perform such duties as are set forth herein and as determined from time to time by the Board. The general manager of the Corporation shall be the ~~City Manager of the City or their designee~~City of Denton Director of Community Services or such other person employed by the Corporation or selected by the Corporation through competitive bidding and appointed as General Manager by the Board,

which appointment shall be subject to approval by the Governing Body. ~~The City Manager may provide other staff support as deemed necessary by the City Manager.~~ The powers and duties of the general manager shall include the following:

a. In cooperation with the Corporation's legal counsel, to ensure that all actions of the Board are in compliance with all applicable laws, ordinances, orders, and resolutions that are in effect;

b. Except as otherwise herein provided, to hire and remove all subordinates, employees, agents, or contractors of the Corporation;

c. To manage the day to day operations of the Corporation, subject to the Act, the Articles of Incorporation, these Bylaws, and any policies and procedures adopted by the Board;

d. To review all contracts of the Corporation to ensure each contract is in accordance with the directives of the Board ~~and execute such contracts when directed by the Board~~;

e. To attend and participate in all meetings and deliberations of the Board to the extent allowed by TOMA, but shall not possess the power to vote;

f. To recommend to the Board for adoption such measures as he or she may deem necessary or expedient to further the goals and priorities of the Governing Body;

g. In collaboration with the treasurer, keep the Board at all times fully advised of the financial condition of the Corporation including providing monthly financial statements or reports;

h. To spend Corporation funds up to $25,000.00 without prior approval from the Board when the general manager deems it necessary to pay a refundable option fee or earnest money in connection with any contract for the sale, purchase, or lease of real property or real property interests, provided that the general manager shall first execute an enforceable written agreement which makes all funds paid fully refundable at the Board's discretion. Any such agreement or pledge of funds shall be approved by the Board prior to execution or acceptance of an agreement that would render the funds non-refundable; and

i. To act as budget supervisor with the treasurer and as such prepare and submit to the Board the annual budget.

~~j. The general manager shall execute all necessary documents in performance of the duties specified in this section.~~

~~k.~~j. The general manager may appoint an assistant general manager who shall perform such duties of the general manager as may be assigned by the general manager and shall exercise the powers of the general manager during the general manager's absence or inability to act. The assistant general manager shall be removable, with or without cause, at any time by the general manager. The assistant general manager shall not be an officer of the Board.

~~l.~~k. The general manager shall make recommendations to the Board regarding the engagement and retainment of contractors for professional services, as needed by Corporation.

3.9. **Legal Advisor.** The City Attorney's Office (or any outside attorney retained by the City Attorney's Office) may provide general counsel services for the Board, including advice regarding TOMA, parliamentary procedure, and matters relating to governance, as well as any other necessary legal matters.

3.10. **Compensation.** Officers who are members of the board of directors shall not receive any salary or compensation for their services, except that they shall be reimbursed for the actual expenses incurred in the performance of their official duties as officers. Officers who are employees of the City shall receive no compensation from the Corporation for the performance of their duties.

ARTICLE IV
MEETINGS OF DIRECTORS

4.1. **Meetings of Directors.** The Board may hold their meetings at any place authorized by the Act as the Board may from time to time determine; provided that, in the absence of any such determination by the Board, the meetings shall be held at the principal office of the Corporation.

4.2. **Regular Meetings.** Regular Meetings of the Board shall be held at such times and places as shall be designated, from time to time, by the Board.

4.3. **Special Meetings.** Special Meetings of the Board shall be held whenever called: (i) by the President or Secretary of the Board; (ii) by simple majority of the directors; (iii) or upon advice of or request by the Governing Body.

4.4. **Open Meetings Act.** Meetings of the Board are subject to the Texas Open Meetings Act, Texas Government Code, Chapter 551 as amended ("TOMA"), and the Corporation is subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

4.5. **Public Notice of Meetings; Open Meetings.** Written notice of the date, hour, place, and subject of each meeting of the Board shall be posted before each meeting at such times and in such places as prescribed by TOMA. Every meeting of the Board shall be open to the public, except as otherwise permitted by TOMA.

4.6. **Quorum.** The greater of a simple majority of every position on the Board, including any vacant positions, is a quorum, unless law requires the act of a greater number.

4.7. **Conduct of Business.**

a. At the meetings of the Board, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board may determine.

b. At all meetings of the Board, the president shall preside. In the absence of the president, the vice president shall preside. In the absence of both the president and vice president, a member of the Board selected by the members present shall preside.

c. The secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the secretary, the presiding officer may appoint any person to act as secretary of the meeting. The treasurer, secretary and any assistant secretary may, at the option of the Board, be employees of the City, and each member of the Board with the exception of the president, vice president, treasurer, or secretary, may be appointed as an assistant secretary.

ARTICLE V
FUNCTIONAL CORPORATE DUTIES AND REQUIREMENTS

5.1. **Books, Records, and Audits.**

a. The Corporation shall keep and properly maintain in accordance with generally accepted accounting principles, complete books, records, accounts, and financial statements pertaining to its corporate funds, activities, and affairs.

~~b. At the direction of the City, the accountants, staff and personnel of the City may maintain the books, records, accounts, and financial statements of the Corporation for the Corporation.~~

~~c.~~b. Beginning with the fiscal year following the first fiscal year during which the Corporation has taken any action to partner with or finance a public facility, t~~T~~he Corporation, ~~or the City if the option of subsection (b) is selected,~~ shall cause its books, records, accounts, and financial statements to be studied at least once each fiscal year by an outside, independent auditing and accounting firm selected by the City. Such an audit shall be at the expense of the Corporation and shall be delivered to the City within 150 days of the end of the fiscal year of the Corporation.

~~d.~~c. All books and records of the Corporation may be inspected by any director or his or her agent or attorney for any purpose at any reasonable time and at all times the City shall have access to the books, records, and financial statements of the Corporation.

~~e.~~d. The Corporation is a governmental body pursuant to Section 552.03, therefore the Corporation's documents, books, records, accounts, and financial statements are subject to the Texas Public Information Act, Texas Government Code Chapter 552,

5.2. **Deposit and Investment of Corporation Funds.**

a. All proceeds from loans or from the issuance of bonds, notes, or other debt instruments ("Obligations") issued by the Corporation in accordance with the provisions of the Act shall be deposited and invested as provided in the resolution, order, indenture, or other documents authorizing or relating to their execution or issuance.

b. Subject to the requirements of contracts, loan agreements, indentures or other agreements securing Obligations, all other money of the Corporation, if any, shall be deposited, secured, and/or invested in the manner provided for the deposit, security and/or investment of the public funds of the City. The Board shall designate the accounts and depositories to be created and designated for such purposes, and the methods of withdrawal of funds therefrom for use by and for the purposes of the Corporation upon the signature of its ~~treasurer~~ president and such other persons as the Board designates. ~~The CFO of the City or designee of the CFO shall perform the accounts, reconciliation, and investment of such funds and accounts.~~

c. Funds of the Corporation, the proceeds from the sale of property, revenues generated by and payable to the Corporation pursuant to the Act or any other source of revenues, and the proceeds derived from the sale of Obligations may be expended by the Corporation for any of the purposes authorized by the Act. Expenditures that are permitted to be made from a fund created with the proceeds of Obligations and expenditures of money derived from sources other than the proceeds of Obligations may be used for the purpose of financing or otherwise providing for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing and placement in service of public facilities ~~of the City~~ under the terms of the Act.

5.3. **Issuance of Obligations.** No Obligations, including refunding obligations, shall be authorized or sold and delivered by the Corporation unless the City approves such Obligations by action taken prior to the date of initial delivery of the Obligations to the initial purchasers thereof.

ARTICLE VI
PROVISIONS REGARDING ARTICLES OF INCORPORATION AND BYLAWS

6.1. **Effective Date.** These Bylaws shall become effective upon the occurrence of the following events:

a. the approval of these Bylaws by the City, which approval may be granted prior to the creation of the Corporation; and

b. the adoption of the Bylaws by the Board.

6.2. **Amendments to Bylaws.** These Bylaws may be amended as set forth in the Articles of Incorporation.

6.3. **Interpretation of Bylaws.** These Bylaws and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section, or other part of these Bylaws or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these Bylaws and the application of such word, phrase, clause, sentence, paragraph, section, or other part of these Bylaws to any other person or circumstance shall not be affected thereby.

ARTICLE VII
GENERAL PROVISIONS

7.1. **Principal Office.** The principal office and the registered office of the Corporation shall be 215 E McKinney St, Denton, TX 76201.

7.2. **Fiscal Year.** The fiscal year of the Corporation shall be the same as the fiscal year of the City.

7.3. **Seal.** No seal of the Corporation shall be required.

7.4. **Notice and Waiver of Notice.** Whenever any notice whatsoever is required to be given under the provisions of the Act, the Articles of Incorporation, or these Bylaws, such notice shall be deemed to be sufficient if sent by U.S. Mail, with proper postage, certified mail return receipt requested or by a nationally recognized overnight delivery service addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given three business days following such mailing. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any Regular or Special Meeting of the Board need be specified in the notice of such meeting, unless required by the Board or by the provisions of these Bylaws. A waiver of notice in writing, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Notwithstanding the foregoing, nothing in this section shall be construed to restrict or modify the public notice provisions of TOMA.

7.5. **Resignations.** Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time is specified, at the time of its receipt by the president or secretary. The acceptance of resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

~~7.6. **Services of City Staff and Officers.** To the extent possible, the Corporation shall utilize the services and the staff employees of the City. All requests for staff time or inquiries of staff will be requested through the secretary or the general manager. City staff may also hire contractors for professional services and/or outside legal counsel to provide such services. The Corporation shall pay reasonable compensation for such services, and the performance of such services shall not materially interfere with the other duties of such personnel of the City.~~

~~7.7.~~7.6. **Action Without a Meeting of Directors or Committees.** Any action which may be taken at a meeting of the Board or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the Directors, or all of the members of the committee, as the case may be, subject to TOMA. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the Texas Secretary of State, or any other person.

~~7.8.~~7.7. **Approval or Advice and Consent of the Governing Body.** To the extent these Bylaws or the Articles of Incorporation refer to any approval by the City or refer to advice and consent by the City, such approval or advice and consent shall be evidenced by a certified copy of a resolution or motion duly adopted by the Governing Body.

~~7.9.~~7.8. **Termination.** Upon the termination of the Corporation after payment of all obligations of the Corporation, all remaining assets of the Corporation shall be transferred to the City.

~~7.10.~~7.9. **Governmental Unit.** The Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.

ARTICLE VIII
PUBLIC FACILITY CORPORATION POWERS AND LIMITATIONS

8.1. **Purpose and Powers.** The Corporation is organized exclusively for the purpose of assisting the City in financing, refinancing or providing "public facilities," as defined in the Act and as approved by the Governing Body pursuant to the provisions of these Bylaws and the Articles of Incorporation. The Corporation shall have and possess all powers to finance the acquisition of obligations issued or incurred in accordance with existing law, to provide for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing, and placement in service of public facilities as allowed by the Governing Body and pursuant to the Act. The Corporation is authorized to issue bonds, as defined and permitted by the Act; provided, however, no bonds, notes, or other evidence of indebtedness may be issued by the Corporation unless such bonds are first approved by resolution of the Governing Body.

8.2. **Governing Body Oversight.** The Governing Body, in its sole discretion, may alter the Corporation's structure, name, organization, programs, and activities, including dissolution of the Corporation, consistent with the Act and subject to any limitations provided by law relating to the impairment of contracts entered into by the Corporation. Before the consummation of the sale and delivery of any bonds or the application of any available tax exemption to a Public Facility or the user of a Public Facility, as permitted by the Act, the Corporation shall obtain approval by

the Governing Body by written resolution. In the exercise of its powers, the Corporation may enter into loan, lease, or other agreements as authorized by the Act that are necessary and appropriate to the fulfillment of the public purpose of the Corporation, all of which agreements, and any specific uses and methods of withdrawals and expenditure of bond proceeds, are subject to the prior approval of the Governing Body by written resolution.

ARTICLE IX
MULTIFAMILY RESIDENTIAL DEVELOPMENT

9.1. **Net Revenue of the Corporation.** Any net revenue generated by any Public Facility related to multifamily residential development by this Corporation shall be used solely in furtherance of the City of Denton housing programs, policies, and initiatives, or provided as fee in lieu of exempted property taxes to taxing entities which would otherwise assess property tax to the owners or users of the Public Facility.

9.2. **Limits on Participation.** The Corporation shall not participate in any Public Facility related to multifamily residential development unless approved by the Governing Body by resolution stating that (i) the development of the Public Facility could not be feasible but for the Corporation's participation and (ii) the development of the Public Facility is in furtherance of the City's housing programs, policies, and initiatives and is carried out pursuant to the provisions of these bylaws and the Act.

9.3. **Solicitation of Development Proposals and Third-Party Services.** The Corporation shall solicit multifamily residential proposals and third-party services through an open application process. Any Public Facility, including multifamily residential developments, developed on City or other publicly-owned land shall be solicited through a request for proposals or similar method in accordance with all laws, ordinances, orders, resolutions, criteria, and policies that are applicable to the City.

9.4. **Fair Housing.** Any Public Facility related to multifamily residential development must adhere to Chapter 14, ARTICLE III of the City of Denton Code of Ordinances, as amended.

ARTICLE X
CODE OF ETHICS

10.1. **Conflicts of Interest.** Directors and Officers are subject to the ethics provisions of ARTICLE XI. - ETHICS of the City of Denton Code of Ordinances, as amended. It is the policy of the Corporation that Directors and Officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that no Officer, employee, or member of the Board should have an interest, financial or otherwise, direct or indirect, or engage in any business, transaction, or professional activity or incur any obligation of any nature which is in conflict with the proper discharge of his or her duties and are not to use their position for personal gain.

ARTICLE XI
INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES

11.1. **Indemnification of Directors.** A Director of the Corporation shall not be personally liable to the Corporation for monetary damages for any act or omission in such Director's capacity as a Director, except that this Article does not authorize the elimination or limitation of the liability of a Director to the extent the Director is found liable for: (i) a breach of a Director's duty to the Corporation; (ii) an act or omission not in good faith that constitutes a breach of duty of the Director to the Corporation or an act or omission that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which a Director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Director's office; or (iv) an act or omission for which the liability of a Director is expressly provided for by an applicable statute. The foregoing elimination of liability shall not be deemed exclusive of any other rights, limitations of liability, or indemnity to which a Director may be entitled under any other provision of the Articles of Incorporation or these Bylaws, any contract or agreement, vote of Directors, principle of law, or otherwise. Any repeal or amendment of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director of the Corporation existing at the time of such repeal or amendment. In addition to the circumstances in which a Director of the Corporation is not personally liable as set forth in the foregoing provisions of this Article, a Director shall not be liable to the full extent permitted by any amendment to the Texas Business Organizations Code or the Act hereafter enacted that further eliminates or authorizes the elimination of the liability of a Director.

11.2. **Indemnification of Officers and Employees.** The Corporation shall indemnify each of its officers and its employees and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorney's fees, incurred by any of such persons by reason of any actions or omissions that may arise out of the sanctions and activities of the Corporation; provided, however, that the Corporation may not provide indemnity in any manner if the officer, employee, or agent is guilty of negligence or misconduct in relation to the matter. The legal counsel for the Corporation is authorized to provide a defense for members of the board of directors, officers, and employees of the Corporation in relation to acts or omissions arising out of the sanctions and activities of the Corporation to the extent that such representation does not conflict with representation of the Corporation and is not adverse to the interests of the Corporation.

11.3. **Directors and Officers Insurance.** The Corporation shall indemnify Directors, Officers, employees, and agents of the Corporation to the fullest extent permitted by law, subject in each case to the restrictions, if any, of this Article. The Corporation shall have the power to purchase and maintain at its cost and expense insurance on behalf of such persons to the fullest extent permitted by law.

ADOPTION OF BYLAWS

We, the undersigned, are all of the Directors of the Corporation, and we consent to, and hereby adopt, the foregoing Bylaws, consisting of eleven (11) pages, as the Bylaws of this Corporation.

Date: _____

By: _____
Gerard Hudspeth, Director

By: _____
Vicki Byrd, Director

By: _____
Brian Beck, Director

By: _____
Suzi Rumohr, Director

By: _____
Joe Holland, Director

By: _____
Brandon Chase McGee, Director

By: _____
Jill Jester, Director

DENTON CITY PUBLIC FACILITY CORPORATION MINUTES
December 16, 2025

After determining that a quorum was present, the Denton City Public Facility Corporation (DCPFC) convened in a meeting on Tuesday, December 16, 2025, at 5:00 p.m. in the City Council Work Session Room at City Hall, 215 E. McKinney St., Denton, Texas.

PRESENT: Members Gerard Hudspeth, Suzi Rumohr, Vicki Byrd, Brian Beck, Joe Holland, Jill Jester and Brandon Chase McGee

ABSENT: None

Member Hudspeth called the meeting to order at 5:00 p.m. with six members present. Member McGee arrived at 5:15 p.m.

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

There were no online registrations or call-ins on the item and no presentations from members of the public.

2. ITEMS FOR INDIVIDUAL CONSIDERATION

Items are listed in the order they were called.

A. DCPFC25-001 Consider approval of the minutes for the Initial Meeting of the Denton City Public Facility Corporation on Tuesday, January 7, 2025, at 1:00 p.m. in City Council Work Session Room at City Hall, 215 E. McKinney St., Denton, Texas.

No discussion was held.

Member Beck moved to adopt the item as presented by staff. Motion seconded by Member Jester.

Motion carried.

AYES (6): Members Gerard Hudspeth, Suzi Rumohr, Brian Beck, Vicki Byrd, Joe Holland and Jill Jester

NAYS (0): None

ABSENT (1): Member McGee

E. DCPFC25-002 Receive nominations and elect a President, Vice President and Secretary.

Staff explained the DCPFC Bylaws require the positions of President and Vice President be held by the current Mayor and Mayor Pro Tem respectively and therefore no nominations were necessary for these two positions.

Member Hudspeth made a nomination, per the DCPFC Bylaws, to approve himself as President, Member Rumohr as Vice President and nominating Member Jester for the position of Secretary.

No other nominations were made. Member Hudspeth closed the nomination process.

After discussion, Member Holland moved the slate of nominees be approved by acclamation.

Member Hudspeth seconded the motion.

The nominations were approved unanimously by acclamation.

D. DCPFC25-003 Receive a report regarding the history to date of Denton City Public Facility Corporation, the powers of a Public Facility Corporation, and administrative items remaining for Denton City Public Facility Corporation to complete.

The item was presented and discussion followed.

Member McGee joined the meeting at 5:15 p.m.

No direction was provided as the item was for presentation/discussion purposes.

C. DCPFC25-004 Consider approval of a resolution of the Board of Directors of the Denton City Public Facility Corporation, amending the bylaws of the Corporation pursuant to chapter 303 0f the Texas Local Government Code, and providing an effective date.

After discussion, Member Beck made a motion to approve the item as presented. Motion seconded by Member Byrd.

Motion carried.

AYES (7): Members Gerard Hudspeth, Suzi Rumohr, Brian Beck, Vicki Byrd, Joe Holland and Jill Jester

NAYS (0): None

B. DCPFC25-003 Consider approval of the policies and procedures of the Denton City Public Facility Corporation, including application and award procedures.

The item was presented and discussion followed.

After discussion, Member Jester made a motion to approve the item as presented. Motion seconded by Member Beck.

Motion carried.

AYES (7): Members Gerard Hudspeth, Suzi Rumohr, Brian Beck, Vicki Byrd, Joe Holland and Jill Jester

NAYS (0): None

With no further business, the meeting was adjourned at 5:28 p.m.

_____ _____

GERARD HUDSPETH
CORPORATION PRESIDENT

JILL JESTER
CORPORATION SECRETARY

MINUTES APPROVED ON:_____

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton ratifying the submission of an application to the Texas Department of Transportation (TXDOT) for the 2027 General Traffic Safety Grant Program in the amount of $115,000 which would require City's matching funds in an amount not to exceed $28,750 and a total project cost of $143,750 to provide blood draw services at the City of Denton Jail; and providing for an effective date.

BACKGROUND

The Denton Police Department (DPD) is seeking a $143,750 grant through the TXDOT 2027 General Traffic Safety Grant Program to secure a contract for the provision of blood draws at the City of Denton Jail for Driving While Intoxicated (DWI) arrests.

DWI enforcement activities are a 24/7 operation for DPD. DPD has received this grant annually since 2022 and has used the funding for an in-house phlebotomy program that conducts blood draws for DWI arrests at the City jail resulting in time savings and accuracy of results on DWI arrests. By reducing the need to transport arrestees to a hospital for a blood draw and obtaining the specimen in a secure environment, the potential risk of harm to medical staff and civilians is reduced.

If awarded, the DPD will continue contracting with a medical service provider to perform blood draws in the City jail.

Grant applications were due on January 16, 2026. If approved by TXDOT, negotiations are expected to start April 1, 2026, and the final application will be submitted by TXDOT to the National Highway Traffic Safety Administration on July 1, 2026. The grant term will begin October 1, 2026 and end September 30, 2027.

RECOMMENDATION

Staff recommends approval of the ordinance.

FISCAL INFORMATION

The grant requires a 20 percent match in the amount of $28,750 in City funding if awarded. DPD will budget this matching amount in operating account 310101.7838.

EXHIBITS

Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Ordinance

Respectfully submitted:
Matt Hamilton
Chief Financial Officer

Prepared By:
Daniel Jones
Senior Grants Analyst

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON RATIFYING THE SUBMISSION OF AN APPLICATION TO THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) FOR THE 2027 GENERAL TRAFFIC SAFETY GRANT PROGRAM IN THE AMOUNT OF $115,000 WHICH WOULD REQUIRE CITY'S MATCHING FUNDS IN AN AMOUNT NOT TO EXCEED $28,750 AND A TOTAL PROJECT COST OF $143,750 TO PROVIDE BLOOD DRAW SERVICES AT THE CITY OF DENTON JAIL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, TXDOT opened the 2027 Traffic Safety Program Request for Proposals on November 14, 2025 for applications supporting the targets and strategies of its traffic safety program to reduce the number of motor vehicle related crashes, fatalities and serious injuries in Texas.; and

WHEREAS, the organizations eligible for general traffic safety grants include state and local governments, educational institutions, and non-profit organizations; and

WHEREAS, the City of Denton is eligible to apply for the funds under the application criteria; and

WHEREAS, the grant application proposed $115,000 in funding to the City for blood draw services to be performed at the City of Denton Jail; and

WHEREAS, the grant requires a match of 20 percent of the total project cost of $143,750 which equals $28,750 in City funding; and

WHEREAS, the City has developed the necessary application materials to make an application to the TXDOT Traffic Safety Program; and

WHEREAS, grant applications were due on January 16, 2026. NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. The application for the 2027 Traffic Safety Program is hereby ratified.

SECTION 2. The City Manager, or designee, is designated, delegated, and authorized to request grant funding under the TXDOT 2027 Traffic Safety Program, including the submission of the application, and act on behalf of the City of Denton in all matters related to the grant application and any subsequent grant contracts and grant projects that may result.

SECTION 3. Should the project be funded, then the City of Denton shall comply with the requirements of the TXDOT and the State of Texas.

SECTION 4. The City of Denton shall certify that the matching share for this program is readily available upon completion of the grant agreement.

SECTION 5. The project funds and any project-funded equipment and facilities will be used solely for the purposes for which they are intended under the grant.

SECTION 6. This ordinance is effective immediately upon its passage.

The motion to approve this ordinance was made by _____ and seconded by _____, the resolution 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Susan Keller Digitally signed by Susan Keller Date: 2026.01.21 13:40:21 -06'00'

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton approving and authorizing the execution of City Council Contingency Fund donation agreements between the City of Denton and Denton Black Film Festival ($567), Project Hope Denton ($567), Greater Denton Arts Council ($566), and authorizing the transfer of $900 from the Council Contingency Fund to the Parks and Recreation Department to build and install a sign at the Girl Scout Troop 2302 Pollinator Garden in Avondale Park, all of which benefit nonprofit organizations located within the City of Denton and designated for donations by individual council members; providing a severability clause; and providing an effective date. The Community Partnership Committee recommends approval (2-0).

BACKGROUND

Council Contingency Fund support provides each council member with $1,700 to donate to eligible nonprofit organizations within the City of Denton. On November 1, 2022, Council approved Resolution 22-2272, requiring each council member's request to be reviewed by the Community Partnership Committee and provide a recommendation to Council. Organizations must meet the criteria outlined in Exhibit 2 to be eligible to receive the donation.

The following requests were made by council members to donate their Fiscal Year 2025-26 Council Contingency Funds:

Council Member Vicki Byrd – District 1

Denton Black Film Festival	$ 567
Project Hope Denton	567
Greater Denton Arts Council	566
TOTAL	$ 1,700

Council Member Brian Beck – District 2

Girl Scout Troop 2302	$ 900
TOTAL	$ 900

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On Friday, January 23, 2026, the Community Partnership Committee reviewed the requests and recommends approval of the donations.

FISCAL INFORMATION

Council Contingency funds are budgeted annually at a total of $11,900. Funding for the agreements will come from the City's Fiscal Year 2025-2026 Council Contingency funds.

EXHIBITS

Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Council Contingency Support Criteria
Exhibit 3 - Ordinance

Respectfully submitted:
Matt Hamilton
Chief Financial Officer

Prepared by:
Daniel Jones
Senior Grants Analyst

Council Contingency Support

Eligibility Criteria

In accordance with the Sponsorship guidelines, requests for Council Contingency support will only be considered for organizations that meet the eligibility criteria listed below. City staff will seek consultation with appropriate City stakeholders (e.g. City Legal, Finance Department), as needed.

- Must be a non-profit Texas corporation, federally tax-exempt under the Internal Revenue Code (501 (c) (3)) or public agency;
- Must demonstrate corporate good standing with the state of Texas at time of review;
- The applicant must be based in the City of Denton;
- Must have programming, administrative practices and board membership that does not discriminate on the basis of race, color, religion, national origin, sexual orientation, gender identity, citizenship, familial, disability, or veteran status;
- If previously sponsored, applicant must have successfully fulfilled all prior contracts;
- The applicant cannot represent a for-profit enterprise;
- Must further a charitable cause, economic or community growth, or public interest

The City reserves the right to reject a request at any time. Examples of requests that are typically deemed ineligible include, but are not limited to individuals, organizations, and/or businesses who promote hatred against individuals or groups, represent religious or political views, candidates, and campaigns, and whose primary products or services are derived from the sale of tobacco, alcohol, drugs, firearms, gambling, or sexually explicit or inappropriate materials. For-profit organizations are not eligible for support even if some proceeds are donated to non-profit organizations.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON APPROVING AND AUTHORIZING THE EXECUTION OF CITY COUNCIL CONTINGENCY FUND DONATION AGREEMENTS BETWEEN THE CITY OF DENTON AND DENTON BLACK FILM FESTIVAL ($567), PROJECT HOPE DENTON ($567), GREATER DENTON ARTS COUNCIL ($566), AND AUTHORIZING THE TRANSFER OF $900 FROM THE COUNCIL CONTINGENCY FUND TO THE PARKS AND RECREATION DEPARTMENT TO BUILD AND INSTALL A SIGN AT THE GIRL SCOUT TROOP 2302 POLLINATOR GARDEN IN AVONDALE PARK, ALL OF WHICH BENEFIT NONPROFIT ORGANIZATIONS LOCATED WITHIN THE CITY OF DENTON AND DESIGNATED FOR DONATIONS BY INDIVIDUAL COUNCIL MEMBERS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton's Council Contingency Program provides support to nonprofit organizations that are based in the City of Denton and provide programming to benefit the community; and

WHEREAS, all the organizations listed meet the requirements to be eligible to receive Council Contingency Program funding; and

WHEREAS, Vicki Byrd, District 1, and Brian Beck, District 2, have requested support from available contingency funds to support the eligible organizations; and

WHEREAS, on January 23, 2026, the Community Partnership Committee reviewed and recommended approval of the requests for Council Contingency fund support for the organizations; and

WHEREAS, the City Council of the City of Denton hereby finds the agreements between the City and the nonprofit organizations, attached hereto and made a part hereof by reference (the "Agreements"), furthers a charitable cause, economic or community growth, or public interest; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth in the preamble of this Ordinance are incorporated by reference into the body of this Ordinance and hereby ratified.

SECTION 2. The Agreements in the Exhibits listed in this section and the corresponding amounts to be donated are hereby approved, and the City Manager, or designee, is hereby authorized to execute the Agreements and to carry out the duties and responsibilities of the City under the Agreements, including the expenditure of funds in accordance with the terms of the Agreements.

Exhibit A – Denton Black Film Festival Institute, Inc., - $567 – Vicki Byrd, District 1
Exhibit B – Project Hope Denton - $567 - Vicki Byrd, District 1
Exhibit C – Greater Denton Arts Council - $566 - Vicki Byrd, District 1

SECTION 3. The transfer of funds in the amount of $900 from the Council Contingency Funds (Brian Beck, District 2) to the Parks and Recreation Department for the purpose of building and installing a sign at the Girl Scout Troop 2302 Pollinator Garden in Avondale Park is hereby authorized.

SECTION 4. This Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by [_____] and seconded by [_____].

The 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Susan Keller Digitally signed by Susan Keller Date: 2026.01.30 10:49:54 -06'00'

EXHIBIT A

COUNCIL CONTINGENCY FUND AGREEMENT BETWEEN THE CITY OF DENTON AND DENTON BLACK FILM FESTIVAL INSTITUTE, INC.

This Agreement is hereby entered into by and between the City of Denton, a Texas home rule municipal corporation, hereinafter referred to as "City", and Denton Black Film Festival Institute, Inc., a Texas non-profit corporation.

WHEREAS, the City has determined the services provided by Denton Black Film Festival Institute to the citizens of the City merit assistance through the Council Contingency Fund and the City has provided funds in its budget for such Council Contingency Fund; and

WHEREAS, Vicki Byrd, District 1, requested support from available contingency funds to support Denton Black Film Festival Institute; and

WHEREAS, this Agreement serves a valid municipal and public purpose and is in the public interest;

NOW, THEREFORE, the parties hereto mutually agree as follows:

I: OBLIGATIONS OF DENTON BLACK FILM FESTIVAL INSTITUTE

In consideration of the receipt of funds from the City, Denton Black Film Festival Institute agrees to the following terms and conditions:

A. Five Hundred Sixty-Seven and no/100 ($567.00) shall be paid to Denton Black Film Festival Institute by the City to be utilized for the support of the organization.

B Denton Black Film Festival Institute will maintain adequate records to establish that the City funds are used only for the purposes authorized by this Agreement.

C Upon request, Denton Black Film Festival Institute will permit authorized officials of the City to review its books, financial statements, and records and provide copies of its By-Laws, rules and regulations, and meeting minutes at any time. Such information shall be made available within ten (10) business days of such request. All records pertaining to the funds granted hereby shall be maintained for at least five (5) years after the expiration or termination of this Agreement.

D Denton Black Film Festival Institute will not enter into any contracts that would encumber City funds or the use thereof for a period that would extend beyond the term of this Agreement.

E Denton Black Film Festival Institute will appoint a representative who will be available to meet with City officials when requested.

F Denton Black Film Festival Institute will comply with all applicable federal, State, and local laws and policies including all applicable equal employment opportunity and affirmative action laws or regulations. In the event Denton Black Film Festival Institute fails to comply, this

Agreement may be canceled, terminated, or suspended in whole or in part, and Denton Black Film Festival Institute may be barred from further contracts with the City.

G Denton Black Film Festival Institute will comply with all applicable federal, state, and local laws and policies regarding conflicts of interest and will not participate in any transactions or decisions where such a conflict might exist.

II: TIME OF PERFORMANCE

The term of this Agreement shall commence on the date of the last signature affixed to this Agreement (the "Effective Date") and terminate one year from the Effective Date unless the contract is sooner terminated under Section V "Termination".

III. PAYMENTS

A PAYMENTS TO DENTON BLACK FILM FESTIVAL INSTITUTE. City shall pay to Denton Black Film Festival Institute the sum specified in Article I after the Effective Date of this Agreement.

B EXCESS PAYMENT. Denton Black Film Festival Institute shall refund to City within ten (10) working days of City's request, any sum of money which has been paid by City and which City at any time thereafter determines: has resulted in overpayment to Denton Black Film Festival Institute; or has not been spent strictly in accordance with the terms of this Agreement; or is not supported by adequate documentation to fully justify the expenditure.

IV. EVALUATION

Denton Black Film Festival Institute agrees to participate in an implementation and maintenance system whereby the services can be continuously monitored. Denton Black Film Festival Institute maintains records that provide complete and accurate statements as to the status and use of City funds. In addition, upon request, Denton Black Film Festival Institute agrees to provide the City with the following data and reports, or copies thereof related to this Agreement, including all external and internal audits. Denton Black Film Festival Institute shall submit a copy of the annual independent audit to the City within ten (10) days of receipt; all external or internal evaluation reports; and an explanation of any major changes in program services.

V. TERMINATION

The City may terminate this Agreement for cause if Denton Black Film Festival Institute violates any provision of this Agreement, Denton Black Film Festival Institute's insolvency or filing of bankruptcy, dissolution, or receivership, or Denton Black Film Festival Institute's violation of any law or regulation to which it is bound under the terms of this Agreement. The City may terminate this Agreement for other reasons not specifically enumerated in this paragraph, including for convenience. The Agreement shall immediately terminate upon reasonable notice to Denton Black Film Festival Institute.

VI. WARRANTIES

Denton Black Film Festival Institute represents and warrants that:

A. All financial reports, information, reports, records, and data heretofore or hereafter requested by City and furnished to City pursuant to this Agreement, are complete and accurate and fairly reflect the financial conditions of Denton Black Film Festival Institute of the date shown on the financial report, information, data, record, or report, and, since that date, have not undergone any significant change, adverse or otherwise, without written notice to City.

B. No litigation or legal proceedings are presently pending or threatened against Denton Black Film Festival Institute.

C. None of the provisions herein contravenes or is in conflict with the authority under which Denton Black Film Festival Institute is doing business or with the provisions of any existing indenture or agreement of Denton Black Film Festival Institute.

D. Denton Black Film Festival Institute has the power to enter into this Agreement and accept payments hereunder and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.

E. Denton Black Film Festival Institute does not have any conflicts of interest with respect to this transaction.

Each of the representations and warranties made by Denton Black Film Festival Institute herein shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

VII. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties.

B. It is understood and agreed by the parties hereto that changes in the State, Federal, or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto and shall become a part of the Agreement on the effective date specified by the law or regulation.

C. Denton Black Film Festival Institute shall notify the City of any changes in executive, managerial, or similar level of personnel or in governing board composition.

VIII. INDEMNIFICATION

TO THE EXTENT AUTHORIZED BY LAW, DENTON BLACK FILM FESTIVAL INSTITUTE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL

CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR RELATED TO THE PERFORMANCE BY DENTON BLACK FILM FESTIVAL INSTITUTE OR THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF DENTON BLACK FILM FESTIVAL INSTITUTE, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES, AND INVITEES.

IX. NOTICE

Any notice or other written instrument required or permitted to be delivered under the terms of this Agreement shall be deemed to have been delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, or via hand-delivery, e-mail, addressed to Denton Black Film Festival Institute or City, as the case may be, at the following addresses:

CITY	Denton Black Film Festival Institute, Inc.,
City of Denton, Texas	Harry Eaddy
Attn: City Manager	
215 E. McKinney	PO Box 1217
Denton, TX 76201	Denton, TX 76202
sara.hensley@cityofdenton.com	harrdbff@gmail.com

Either party may change its mailing address by sending written notice of change of address to the other at the above address by certified mail, return receipt requested.

X. MISCELLANEOUS

A. Denton Black Film Festival Institute shall not transfer, pledge or otherwise assign this Agreement or any interest therein, or any claim arising thereunder to any party without the prior written approval of the City.

B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.

C. In no event shall any payment to Denton Black Film Festival Institute hereunder, or any other act or failure of City to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by City of any breach or default under this Agreement. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to the City to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of the City may waive the effect of this provision.

D. The following sections shall survive the termination of this Agreement: Section I, Subsections B, C, and E; Section III Subsection B; Section VI Subsection A; Section VIII.

INDEMNIFICATION, and Section IX.

E. The recitals set forth above are hereby incorporated herein as if fully set forth in this Agreement.

F. This Agreement constitutes the entire agreement between the parties hereto, and no prior agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement or subsequent thereto related to the subject matter described herein, has any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.

G. This Agreement shall be governed by the laws of the State of Texas and venue shall be and remain in Denton County, Texas.

IN WITNESS WHEREOF, the parties do hereby each affix their signatures by and through their respective duly authorized representatives and enter into this Agreement as of the _____ day of _____, 2026.

CITY OF DENTON
SARA HENSLEY, CITY MANAGER

_____

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

DENTON BLACK FILM FESTIVAL INSTITUTE

_____

APPROVED AS TO LEGAL FORM
MACK REINWAND, CITY ATTORNEY

BY: Susan Keller Digitally signed by Susan Keller Date: 2026.01.30 11:38:38 -06'00'

THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED
As to financial and operational obligations
And business terms.

_____
SIGNATURE PRINT NAME

_____
TITLE

Finance
DEPARTMENT

EXHIBIT B

COUNCIL CONTINGENCY FUND AGREEMENT BETWEEN THE CITY OF DENTON AND PROJECT HOPE

This Agreement is hereby entered into by and between the City of Denton, a Texas home rule municipal corporation, hereinafter referred to as "City", and Project Hope, a Texas non-profit corporation.

WHEREAS, the City has determined the services provided by Project Hope to the citizens of the City merit assistance through the Council Contingency Fund and the City has provided funds in its budget for such Council Contingency Fund; and

WHEREAS, Gerard Hudspeth, Mayor, requested support from available contingency funds to support Project Hope; and

WHEREAS, this Agreement serves a valid municipal and public purpose and is in the public interest;

NOW, THEREFORE, the parties hereto mutually agree as follows:

I: OBLIGATIONS OF PROJECT HOPE

In consideration of the receipt of funds from the City, Project Hope agrees to the following terms and conditions:

A. Five Hundred Sixty-Seven and no/100 ($567.00) shall be paid to Project Hope by the City to be utilized for the support of the organization.

B Project Hope will maintain adequate records to establish that the City funds are used only for the purposes authorized by this Agreement.

C Upon request, Project Hope will permit authorized officials of the City to review its books, financial statements, and records and provide copies of its By-Laws, rules and regulations, and meeting minutes at any time. Such information shall be made available within ten (10) business days of such request. All records pertaining to the funds granted hereby shall be maintained for at least five (5) years after the expiration or termination of this Agreement.

D Project Hope will not enter into any contracts that would encumber City funds or the use thereof for a period that would extend beyond the term of this Agreement.

E Project Hope will appoint a representative who will be available to meet with City officials when requested.

F Project Hope will comply with all applicable federal, State, and local laws and policies including all applicable equal employment opportunity and affirmative action laws or regulations. In the event Project Hope fails to comply, this Agreement may be canceled, terminated, or suspended in whole or in part, and Project Hope may be barred from further contracts with the City.

G Project Hope will comply with all applicable federal, state, and local laws and policies regarding conflicts of interest and will not participate in any transactions or decisions where such a conflict might exist.

II: TIME OF PERFORMANCE

The term of this Agreement shall commence on the date of the last signature affixed to this Agreement (the "Effective Date") and terminate one year from the Effective Date unless the contract is sooner terminated under Section V "Termination".

III. PAYMENTS

A PAYMENTS TO PROJECT HOPE. City shall pay to Project Hope the sum specified in Article I after the Effective Date of this Agreement.

B EXCESS PAYMENT. Project Hope shall refund to City within ten (10) working days of City's request, any sum of money which has been paid by City and which City at any time thereafter determines: has resulted in overpayment to Project Hope; or has not been spent strictly in accordance with the terms of this Agreement; or is not supported by adequate documentation to fully justify the expenditure.

IV. EVALUATION

Project Hope agrees to participate in an implementation and maintenance system whereby the services can be continuously monitored. Project Hope maintains records that provide complete and accurate statements as to the status and use of City funds. In addition, upon request, Project Hope agrees to provide the City with the following data and reports, or copies thereof related to this Agreement, including all external and internal audits. Project Hope shall submit a copy of the annual independent audit to the City within ten (10) days of receipt; all external or internal evaluation reports; and an explanation of any major changes in program services.

V. TERMINATION

The City may terminate this Agreement for cause if Project Hope violates any provision of this Agreement, Project Hope's insolvency or filing of bankruptcy, dissolution, or receivership, or Project Hope's violation of any law or regulation to which it is bound under the terms of this Agreement. The City may terminate this Agreement for other reasons not specifically enumerated in this paragraph, including for convenience. The Agreement shall immediately terminate upon reasonable notice to Project Hope.

VI. WARRANTIES

Project Hope represents and warrants that:

A. All financial reports, information, reports, records, and data heretofore or hereafter requested by City and furnished to City pursuant to this Agreement, are complete and accurate and

fairly reflect the financial conditions of Project Hope of the date shown on the financial report, information, data, record, or report, and, since that date, have not undergone any significant change, adverse or otherwise, without written notice to City.

B. No litigation or legal proceedings are presently pending or threatened against Project Hope.

C. None of the provisions herein contravenes or is in conflict with the authority under which Project Hope is doing business or with the provisions of any existing indenture or agreement of Project Hope.

D. Project Hope has the power to enter into this Agreement and accept payments hereunder and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.

E. Project Hope does not have any conflicts of interest with respect to this transaction.

Each of the representations and warranties made by Project Hope herein shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

VII. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties.

B. It is understood and agreed by the parties hereto that changes in the State, Federal, or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto and shall become a part of the Agreement on the effective date specified by the law or regulation.

C. Project Hope shall notify the City of any changes in executive, managerial, or similar level of personnel or in governing board composition.

VIII. INDEMNIFICATION

TO THE EXTENT AUTHORIZED BY LAW, PROJECT HOPE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR RELATED TO THE PERFORMANCE BY PROJECT HOPE OR THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF PROJECT HOPE, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES, AND INVITEES.

IX. NOTICE

Any notice or other written instrument required or permitted to be delivered under the terms of this Agreement shall be deemed to have been delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, or via hand-delivery, e-mail, addressed to Project Hope or City, as the case may be, at the following addresses:

CITY	Project Hope
City of Denton, Texas	Cedric Chambers
Attn: City Manager	
215 E. McKinney St.	1111 Wilson St.
Denton, TX 76201	Denton, TX 76201
sara.hensley@cityofdenton.com	

Either party may change its mailing address by sending written notice of change of address to the other at the above address by certified mail, return receipt requested.

X. MISCELLANEOUS

A. Project Hope shall not transfer, pledge or otherwise assign this Agreement or any interest therein, or any claim arising thereunder to any party without the prior written approval of the City.

B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.

C. In no event shall any payment to Project Hope hereunder, or any other act or failure of City to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by City of any breach or default under this Agreement. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to the City to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of the City may waive the effect of this provision.

D. The following sections shall survive the termination of this Agreement: Section I, Subsections B, C, and E; Section III Subsection B; Section VI Subsection A; Section VIII. INDEMNIFICATION, and Section IX.

E. This Agreement constitutes the entire agreement between the parties hereto, and no prior agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement or subsequent thereto related to the subject matter described herein, has any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.

F. This Agreement shall be governed by the laws of the State of Texas and venue shall

be and remain in Denton County, Texas.

IN WITNESS WHEREOF, the parties do hereby each affix their signatures by and through their respective duly authorized representatives and enter into this Agreement as of the _____ day of _____, 2026.

CITY OF DENTON
SARA HENSLEY, CITY MANAGER

_____

ATTEST:
INGRID REX, CITY SECRETARY

BY:_____

PROJECT HOPE DENTON

_____

APPROVED AS TO LEGAL FORM
MACK REINWAND, CITY ATTORNEY

BY: Susan Keller

THIS AGREEMENT HAS BEEN BOTH
REVIEWED AND APPROVED
As to financial and operational obligations
And business terms.

_____ _____
SIGNATURE PRINT NAME

_____
TITLE
Finance
DEPARTMENT

EXHIBIT C

COUNCIL CONTINGENCY FUND AGREEMENT
BETWEEN THE CITY OF DENTON AND
GREATER DENTON ARTS COUNCIL

This Agreement is hereby entered into by and between the City of Denton, a Texas home rule municipal corporation, hereinafter referred to as "City", and Greater Denton Arts Council, a Texas non-profit corporation.

WHEREAS, the City has determined the services provided by Greater Denton Arts Council to the citizens of the City merit assistance through the Council Contingency Fund and the City has provided funds in its budget for such Council Contingency Fund; and

WHEREAS, Vicki Byrd, District 1, requested support from available contingency funds to support the Greater Denton Arts Council; and

WHEREAS, this Agreement serves a valid municipal and public purpose and is in the public interest;

NOW, THEREFORE, the parties hereto mutually agree as follows:

I. OBLIGATIONS OF GREATER DENTON ARTS COUNCIL

In consideration of the receipt of funds from the City, Greater Denton Arts Council agrees to the following terms and conditions:

A. Five Hundred Sixty-Six and no/100 ($566.00) shall be paid to Greater Denton Arts Council by the City to be utilized for the support of the organization.

B. Greater Denton Arts Council will maintain adequate records to establish that the City funds are used only for the purposes authorized by this Agreement.

C. Upon request, Greater Denton Arts Council will permit authorized officials of the City to review its books, financial statements, and records and provide copies of its By-Laws, rules and regulations, and meeting minutes at any time. Such information shall be made available within ten (10) business days of such request. All records pertaining to the funds granted hereby shall be maintained for at least five (5) years after the expiration or termination of this Agreement.

D. Greater Denton Arts Council will not enter into any contracts that would encumber City funds or the use thereof for a period that would extend beyond the term of this Agreement.

E. Greater Denton Arts Council will appoint a representative who will be available to meet with City officials when requested.

F. Greater Denton Arts Council will comply with all applicable federal, State, and local laws and policies including all applicable equal employment opportunity and affirmative action laws or regulations. In the event Greater Denton Arts Council fails to comply, this Agreement may be canceled, terminated, or suspended in whole or in part, and Greater Denton Arts Council may be barred from further contracts with the City.

G. Greater Denton Arts Council will comply with all applicable federal, state, and local laws and policies regarding conflicts of interest and will not participate in any transactions or decisions where such a conflict might exist.

II. TIME OF PERFORMANCE

The term of this Agreement shall commence on the date of the last signature affixed to this Agreement (the "Effective Date") and terminate one year from the Effective Date unless the contract is sooner terminated under Section V "Termination".

III. PAYMENTS

A. PAYMENTS TO GREATER DENTON ARTS COUNCIL. City shall pay to Greater Denton Arts Council the sum specified in Article I after the Effective Date of this Agreement.

B. EXCESS PAYMENT. Greater Denton Arts Council shall refund to City within ten (10) working days of City's request, any sum of money which has been paid by City and which City at any time thereafter determines: has resulted in overpayment to Greater Denton Arts Council; or has not been spent strictly in accordance with the terms of this Agreement; or is not supported by adequate documentation to fully justify the expenditure.

IV. EVALUATION

Greater Denton Arts Council agrees to participate in an implementation and maintenance system whereby the services can be continuously monitored. Greater Denton Arts Council maintains records that provide complete and accurate statements as to the status and use of City funds. In addition, upon request, Greater Denton Arts Council agrees to provide the City with the following data and reports, or copies thereof related to this Agreement, including all external and internal audits. Greater Denton Arts Council shall submit a copy of the annual independent audit to the City within ten (10) days of receipt; all external or internal evaluation reports; and an explanation of any major changes in program services.

V. TERMINATION

The City may terminate this Agreement for cause if Greater Denton Arts Council violates any provision of this Agreement, Greater Denton Arts Council's insolvency or filing of bankruptcy, dissolution, or receivership, or Greater Denton Arts Council's violation of any law or regulation to which it is bound under the terms of this Agreement. The City may terminate this Agreement for other reasons not specifically enumerated in this paragraph, including for convenience. The Agreement shall immediately terminate upon reasonable notice to Greater Denton Arts Council.

VI. WARRANTIES

Greater Denton Arts Council represents and warrants that:

A. All financial reports, information, reports, records, and data heretofore or hereafter requested by City and furnished to City pursuant to this Agreement, are complete and accurate and fairly reflect the financial conditions of Greater Denton Arts Council as of the date shown on the financial report,

information, data, record, or report, and, since that date, have not undergone any significant change, adverse or otherwise, without written notice to City.

B. No litigation or legal proceedings are presently pending or threatened against Greater Denton Arts Council.

C. None of the provisions herein contravenes or is in conflict with the authority under which Greater Denton Arts Council is doing business or with the provisions of any existing indenture or agreement of Greater Denton Arts Council.

D. Greater Denton Arts Council has the power to enter into this Agreement and accept payments hereunder and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.

E. Greater Denton Arts Council does not have any conflicts of interest with respect to this transaction.

Each of the representations and warranties made by Greater Denton Arts Council herein shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

VII. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties.

B. It is understood and agreed by the parties hereto that changes in the State, Federal, or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto and shall become a part of the Agreement on the effective date specified by the law or regulation.

C. Greater Denton Arts Council shall notify the City of any changes in executive, managerial, or similar level of personnel or in governing board composition.

VIII. INDEMNIFICATION

TO THE EXTENT AUTHORIZED BY LAW, GREATER DENTON ARTS COUNCIL AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSS, OR LIABILITY OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR RELATED TO THE PERFORMANCE BY GREATER DENTON ARTS COUNCIL OR THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF GREATER DENTON ARTS COUNCIL, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES, AND INVITEES.

IX. NOTICE

Any notice or other written instrument required or permitted to be delivered under the terms of this Agreement shall be deemed to have been delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, or via hand-delivery, e-mail, addressed to Greater Denton Arts Council or City, as the case may be, at the following addresses:

CITY
City of Denton, Texas
Attn: City Manager
215 E. McKinney
Denton, TX 76201
sara.hensley@cityofdenton.com

Greater Denton Arts Council
Krisi Oden
Executive Director
400 E, Hickory St.
Denton, TX 76201

Either party may change its mailing address by sending written notice of change of address to the other at the above address by certified mail, return receipt requested.

X. MISCELLANEOUS

A. Greater Denton Arts Council shall not transfer, pledge or otherwise assign this Agreement or any interest therein, or any claim arising thereunder to any party without the prior written approval of the City.

B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.

C. In no event shall any payment to Greater Denton Arts Council hereunder, or any other act or failure of City to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by City of any breach or default under this Agreement. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to the City to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of the City may waive the effect of this provision.

D. The following sections shall survive the termination of this Agreement: Section I, Subsections B, C, and E; Section III Subsection B; Section VI Subsection A; Section VIII. INDEMNIFICATION, and Section IX.

E. The recitals set forth above are hereby incorporated herein as if fully set forth in this Agreement.

F. This Agreement constitutes the entire agreement between the parties hereto, and no prior agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement or subsequent thereto related to the subject matter described herein, has any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.

G. This Agreement shall be governed by the laws of the State of Texas and venue shall be and remain in Denton County, Texas.

IN WITNESS WHEREOF, the parties do hereby each affix their signatures by and through their respective duly authorized representatives and enter into this Agreement as of the _____ day of _____, 2026.

CITY OF DENTON
SARA HENSLEY, CITY MANAGER

_____

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

GREATER DENTON ARTS COUNCIL

_____

APPROVED AS TO LEGAL FORM
MACK REINWAND, CITY ATTORNEY

BY: Susan Keller

THIS AGREEMENT HAS BEEN BOTH
REVIEWED AND APPROVED
As to financial and operational obligations
And business terms.

_____
SIGNATURE PRINT NAME

_____
TITLE

Finance
DEPARTMENT

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract extension between the City of Denton and WSP USA Inc., for program management services for the Denton Municipal Electric Capital Improvement Plan projects; and declaring an effective date (RFQ 6862 – extending a contract with WSP USA Inc., until project completion). The Public Utilities Board recommends approval (6 - 0).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

Denton Municipal Electric (DME) is actively advancing its Capital Improvement Program (CIP), which includes a range of substation and transmission line projects critical to the city's electric infrastructure. To support the successful execution of these projects, DME has relied on the services of WSP USA Inc. under contract 6862 for the past five (5) years. WSP USA Inc. has provided essential program management, construction inspection, and supplemental engineering services throughout this period.

The scale and complexity of DME's CIP projects necessitate comprehensive program management. This includes detailed scheduling, coordination, tracking, and reporting to ensure efficient execution. Effective sequencing is essential to minimize outage durations and maintain the highest safety standards.

Currently, WSP USA Inc. is managing 14 active projects and has a full-time inspector dedicated to overseeing DME construction activities. Given the ongoing nature of these projects and the continued need for inspection and management services, DME is requesting an extension of WSP USA Inc.'s services until the completion of the active project. This will allow the projects started during the contract period to be completed by WSP USA Inc. City of Denton staff are in the process of developing a new agreement to cover program management, inspection, and engineering services for future projects, which is anticipated to be in place within the next four (4) to six (6) months.

To date, WSP USA Inc. has billed $2,649,518.35 under contract 6862, leaving a remaining balance of $2,420,785.65. No additional funding is required to continue services under the existing contract.

The following is a list of projects currently under program management oversight.

Project	Estimated Completion Date
Hickory Substation	Feb 2026
Industrial Substation TM Bypass	Feb 2026
Brinker SS - Phase II	Feb 2026
Denton West - RDW TM Line	Feb 2026
Masch Branch Transformer Addition	October 2026
North Lakes SSVT Addition	August 2027
Kings Row SSVT Addition	August 2027
Underwood Substation	August 2027
DC Data center	August 2027
Jim Christal Transformer Addition	August 2027
Locust SSVT Addition	August 2027
Denton West - Brazos Tie-In	August 2028
Fort Worth Transformer Replacement	August 2028

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On May 12, 2020, City Council approved a contract with Power Engineers, Inc., in the not-to-exceed amount of $5,070,304 (Ordinance 20-905).

On December 16, 2022, Purchasing approved a no-cost change to the Schedule of Charges.

On December 19, 2024, Purchasing approved a six (6) month contract extension to November 12, 2025.

On December 11, 2025, Purchasing approved an Assignment of Contract from Power Engineers, Inc. to WSP USA Inc.

On February 9, 2026, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award a contract extension with WSP USA Inc., for program management services for the Denton Municipal Electric Capital Improvement Plan projects.

PRINCIPAL PLACE OF BUSINESS

WSP USA Inc.
New York, NY

FISCAL INFORMATION

The costs for materials and services purchased under the proposed agreement will be funded out of amounts budgeted for specific CIP projects. The majority of the work proposed will be in the transmission category. Therefore, these costs for transmission projects will ultimately be recovered through the Public Utility Commission of Texas, Transmission Cost of Service Program (TCOS). The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Original Ordinance, Contract, Amendment 1, Extension, and Assignment of Contract
Exhibit 3: Ordinance and Amendment 2

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Mark Zimmerer, 940-349-7169.

Legal point of contact: Leah Bush at 940-349-8333.

ORDINANCE NO. 20-905

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH POWER ENGINEERS, INC., FOR PROGRAM MANAGEMENT, CONSTRUCTION INSPECTION SERVICES, AND PROFESSIONAL ENGINEERING SERVICES FOR THE CAPITAL IMPROVEMENT PROGRAM FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 6862 – AWARDED TO POWER ENGINEERS, INC., FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN A TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF $5,070,304.)

WHEREAS, Power Engineers, Inc., the services provider (the "Provider") set forth in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, the fees under the proposed contract are fair, and reasonable, and are consistent with and not higher than the recommended practices and fees published by the professional associations applicable to the Provider's profession and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager is authorized to enter into a professional service contract with Power Engineers, Inc., for program management, construction inspection services, and professional engineering services for the Capital Improvement Program for Denton Municipal Electric, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton, 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 for program management, construction inspection services, and professional engineering services for the Capital Improvement Program for Denton Municipal Electric, to the City Manager of the City of Denton, or his designee.

SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by JOHN RYAN and seconded by JESSE DAVIS, the ordinance was passed and approved by the following vote [6 - 1]:

	Aye	Nay	Abstain	Absent
Mayor Chris Watts:	✓			
Gerard Hudspeth, District 1:	✓			
Keely G. Briggs, District 2:	✓			
Jesse Davis, District 3:	✓			
John Ryan, District 4:	✓			
Deb Armintor, At Large Place 5:		✓		
Paul Meltzer, At Large Place 6:	✓			

PASSED AND APPROVED this the 12th day of May, 2020.

CHRIS WATTS, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

BY:

CITY OF DENTON
DENTON, TEXAS

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: Mack Reinwand

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Docusign City Council Transmittal Coversheet

PSA	6862
File Name	Capital Program Management - Power Engineers
Purchasing Contact	Jane Rogers
City Council Target Date	5/12/20
Piggy Back Option	Not Applicable
Contract Expiration	5/12/25
Ordinance	20-905

DS
LH

DocuSign Envelope ID: A49D2E0E-CC48-4637-95AA-0B9C426C8F83

CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND POWER ENGINEERS, INC.
(CONTRACT 6862)

THIS CONTRACT is made and entered into this date 05/12/2020, by and between Power Engineers, Inc., an Idaho corporation, whose address is 4100 International Plaza, Suite 320, Fort Worth, Texas 76109, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

SCOPE OF SERVICES

Supplier shall provide products and/or services in accordance with the City's document RFQ 6862 – Capital Program Management Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFQ 6862 **(Exhibit "B" on File at the Office of the Purchasing Agent);**
(c) City of Denton Standard Terms and Conditions **(Exhibit "C");**
(d) Insurance Requirements **(Exhibit "D");**
(e) Certificate of Interested Parties Electronic Filing **(Exhibit "E");**
(f) Contractor's Proposal **(Exhibit "F")**;
(g) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "G");**

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

Prohibition on Contracts with Companies Boycotting Israel
Supplier acknowledges that in accordance with Chapter 2270 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, Supplier certifies that Supplier's signature provides written verification to the City that Supplier: (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.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

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Section 2252 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, Supplier certifies that Supplier's signature provides written verification to the City that Supplier, pursuant to Chapter 2252, 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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

SUPPLIER

BY: DocuSigned by: Holger Peller 5B3E24EEA4334C7...

AUTHORIZED SIGNATURE

Printed Name: Holger Peller

Title: EVP Power Delivery

208-788-0582

PHONE NUMBER

holger.peller@powereng.com

EMAIL ADDRESS

2020-610741

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: DocuSigned by: Todd Hileman B7CCA1FA0D454...

TODD HILEMAN
CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: DocuSigned by: Rosa Rios 1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: DocuSigned by: Mack Reinwand 7F9D328BF0204E5...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

DocuSigned by: Antonio Puente, Jr. A3761948C2BF4B5...

SIGNATURE

Antonio Puente, Jr.

PRINTED NAME

Chief Financial Officer

TITLE

Electric

DEPARTMENT

Contract # 6862

DocuSign Envelope ID: A49D2E0E-CC48-4637-95AA-0B9C426C8F83

Exhibit A
Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed $5,070,304. Pricing shall be per Exhibit F attached.

The total contract for program management, construction inspection services and professional engineering services of RFQ 6862, which these services only are awarded by this Contract for the supply of these services, shall not exceed $5,070,304. Pricing shall be per Exhibit F attached.

2. Contract Terms

The contract term will be three (3) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. Price Escalation and De-escalation

The City will implement an escalation/de-escalation price adjustment annually. The escalation/de-escalation will be based upon manufacturer published pricing sheets to the vendor. The price will be increased or decreased based upon the annually percentage change in the manufacturer's price list. The price adjustment will be determined annually from the award date. Should the change exceed or decrease a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the published price change. It is the supplier or the Cities responsibility to request a price adjustment annually in writing. If no request is made, then it will be assumed that the bid price will be in effect. **The supplier must submit or make available the manufacturers pricing sheet used to calculate the bid proposal, to participate in the escalation/de-escalation clause.**

The Supplier's request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. The Supplier should provide documentation as a percentage of each cost associated with the unit prices quoted for consideration. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton, at its sole option, reserves the right to either: (1) accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award; or, (2) reject the increase within thirty (30) calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Supplier may request cancellation of such items from the contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has

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been issued. The prices in effect prior to the increase request must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

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Exhibit C
Standard Purchase Terms and Conditions

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

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

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

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

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

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

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

6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be

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

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

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

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

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

10. **WORKFORCE**

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

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

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

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

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed

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any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

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

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

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

12. **INVOICES**:

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:

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

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in Accounts Payable, whichever is later.

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

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

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

i. delivery of defective or non-conforming deliverables by the Contractor;

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

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

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

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

14. **TRAVEL EXPENSES**: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

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

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

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

17. **RIGHT TO AUDIT**:
A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.
B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

18. **SUBCONTRACTORS**:
A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract

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Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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

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

19. **WARRANTY-PRICE**:

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

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

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

20. **WARRANTY – TITLE**: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES**: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and

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conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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

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

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

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

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

30. **DELAYS**:
A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY**:
A. Definitions:

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

B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR’S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF**

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THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

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

A. General Requirements:

i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

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

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

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

ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any

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reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

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

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

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

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

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

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

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

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

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

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

37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

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the City, to the City upon request by the City.

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

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

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

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

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

42. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with

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a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

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

45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

46. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is

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supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

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

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

49. **DISPUTE RESOLUTION**:

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

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. **JURISDICTION AND VENUE**: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted

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in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

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

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

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

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

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

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

55. **EQUAL OPPORTUNITY**
A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any

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discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.
B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**
The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –
i. "Component" means an article, material, or supply incorporated directly into an end product.
ii. "Cost of components" means -
(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
iii. "Domestic end product" means-
(1) An unmanufactured end product mined or produced in the United States; or
(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
v. "Foreign end product" means an end product other than a domestic end product.
vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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

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

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

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

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

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

63. **RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

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

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

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

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

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

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Exhibit D
INSURANCE REQUIREMENTS AND WORKERS' COMPENSATION REQUIREMENTS

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

STANDARD PROVISIONS:

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

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

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.

- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:

    - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.

    - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

    - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

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- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

[X] A. **General Liability Insurance:**

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

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

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.

- Coverage B shall include personal injury.

- Coverage C, medical payments, is not required.

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

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.

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

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[X] **Automobile Liability Insurance:**

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

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

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

[ ] **Workers' Compensation Insurance**

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

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

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

[ ] **Fire Damage Legal Liability Insurance**

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

[ ] **Professional Liability Insurance**

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

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[ ] **Builders' Risk Insurance**

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

[ ] **Environmental Liability Insurance**

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

[ ] **Riggers Insurance**

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

[ ] **Commercial Crime**

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

[ ] **Additional Insurance**

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

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Exhibit E
Certificate of Interested Parties Electronic Filing

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

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

The contractor shall:

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

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

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EXHIBIT F

POWER ENGINEERS, INC.
4100 INTERNATIONAL PLAZA
SUITE 320
FORT WORTH, TX 76109 USA

PHONE 817-882-1900
FAX 817-882-1999

December 6, 2019

Jane Rogers, MPA, CPBFM
Senior Buyer, City of Denton
901-B Texas Street
Denton, TX 76209
Via email to: Monisa.Rogers@cityofdenton.com

Subject: RFQ #6862 – Draft Revised Cost Proposal Request for Professional Engineering Services for Electric Transmission and Substation Capital Program Management Services

Dear Ms. Rogers:

Thank you for meeting with us on November 22nd, 2019. This gave us an opportunity to explain our current proposal and at the same time understand DME's requirements.

We have revised the attached budget based on our discussions and have extended it to five (5) years, which we understand to be three (3) years plus two (2) optional one-year extensions. Please understand that this proposal is contingent on the performance of the start-up phase proposed for the first three months of this engagement and that POWER will adjust our scope, schedule, and budget proposals accordingly.

The work plan that we submitted November 22 is based on our perception of Program Management and will be adapted to what DME needs during real time execution

We thank you again for the chance to propose our Program Management Services to the City of Denton. Please contact me with questions you may have. We look forward to hearing from you.

Sincerely,

Navin Amalraj, PMP
832.562.1487 mobile
navin.amalraj@powereng.com

DocuSign Envelope ID: A49D2E0E-CC48-4637-95AA-0B9C426C8F83

City of Denton - Program Management
Proposed 2020 Budget
Assumed Start Date of 2/3/2020

POWER ENGINEERS

	Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01 Start Up	**1,172**	**$185,768**	**$17,040**	**$202,808**
01.01 Tim Jon (Start-up)	140	$27,860	$4,042	$31,902
01.02 Navin (Start-up)	288	$55,296	$4,667	$59,963
01.04 Lauren (Start-up)	144	$19,872	$3,215	$23,087
01.05 Scheduler (Start-up)	480	$66,240	$5,116	$71,356
01.07 Process / Proceedure review	120	$16,500	$0	$16,500
TASK 02 Execution	**3012**	**$475,068**	**$38,988**	**$514,056**
02.01 Tim Jon (2020 Duration)	312	$62,088	$5,446	$67,534
02.02 Navin (2020 Duration)	680	$130,560	$12,153	$142,713
02.03 Lauren (2020 Duration)	1360	$187,680	$14,495	$202,175
02.05 Scheduler (2020 Duration)	600	$82,800	$6,883	$89,683
02.07 Engineering Review	60	$11,940	$12	$11,952
TASK 04 Construction Oversight	**2371**	**$275,086**	**$59,587**	**$334,673**
04.01 Inspector	2371	$275,086	$59,587	$334,673
TOTAL HOURS				**6555**
TOTAL POWER LABOR COST				**$935,922**
TOTAL EXPENSES				**$115,615**
TOTAL POWER BUDGET				**$1,051,537**

DocuSign Envelope ID: A49D2E0E-CC48-4637-95AA-0B9C426C8F83

City of Denton - Program Management
Proposed 2021 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**4636**	**$724,964**	**$47,194**	**$772,158**
02.01	Tim Jon (2020 Duration)	416	$82,784	$6,294	$89,078
02.02	Navin (2020 Duration)	1040	$199,680	$13,387	$213,067
02.03	Lauren (2020 Duration)	2080	$287,040	$22,169	$309,209
02.05	Scheduler (2020 Duration)	1040	$143,520	$5,344	$148,864
02.07	Engineering Review	60	$11,940	$1	$11,941
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**7236**
	TOTAL POWER LABOR COST				**$1,026,564**
	TOTAL EXPENSES				**$112,524**
	TOTAL POWER BUDGET				**$1,139,088**

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City of Denton - Program Management
Proposed 2022 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**4636**	**$724,964**	**$47,205**	**$772,169**
02.01	Tim Jon (2020 Duration)	416	$82,784	$6,294	$89,078
02.02	Navin (2020 Duration)	1040	$199,680	$13,387	$213,067
02.03	Lauren (2020 Duration)	2080	$287,040	$22,169	$309,209
02.05	Scheduler (2020 Duration)	1040	$143,520	$5,344	$148,864
02.07	Engineering Review	60	$11,940	$12	$11,952
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**7236**
	TOTAL POWER LABOR COST				**$1,026,564**
	TOTAL EXPENSES				**$112,535**
	TOTAL POWER BUDGET				**$1,139,099**

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City of Denton - Program Management
Proposed 2023 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**2972**	**$471,412**	**$31,138**	**$502,550**
02.01	Tim Jon (2020 Duration)	208	$41,392	$4,537	$45,929
02.02	Navin (2020 Duration)	832	$159,744	$11,230	$170,974
02.03	Lauren (2020 Duration)	1040	$143,520	$10,564	$154,084
02.05	Scheduler (2020 Duration)	832	$114,816	$4,795	$119,611
02.07	Engineering Review	60	$11,940	$12	$11,952
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**5572**
	TOTAL POWER LABOR COST				**$773,012**
	TOTAL EXPENSES				**$96,468**
	TOTAL POWER BUDGET				**$869,480**

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City of Denton - Program Management
Proposed 2024 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**2972**	**$471,412**	**$32,758**	**$504,170**
02.01	Tim Jon (2020 Duration)	208	$41,392	$4,597	$45,989
02.02	Navin (2020 Duration)	832	$159,744	$11,750	$171,494
02.03	Lauren (2020 Duration)	1040	$143,520	$11,084	$154,604
02.05	Scheduler (2020 Duration)	832	$114,816	$5,315	$120,131
02.07	Engineering Review	60	$11,940	$12	$11,952
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**5572**
	TOTAL POWER LABOR COST				**$773,012**
	TOTAL EXPENSES				**$98,088**
	TOTAL POWER BUDGET				**$871,100**

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Exhibit G

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 **Name of vendor who has a business relationship with local governmental entity.** Power Engineers, Inc.

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.**

Chuck Sears

Name of Officer

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

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☒ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐ Yes ☒ No

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

no employment, business or family relationship exists

4 ☒ **I have no Conflict of Interest to disclose.**

5 DocuSigned by: Holger Peller 38D5245EA49247...

Signature of vendor doing business with the governmental entity

4/22/2020

Date

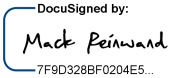
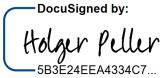
Certificate Of Completion

Envelope Id: A49D2E0ECC48463795AA0B9C426C8F83
Status: Completed
Subject: Please DocuSign: City Council Contract 6862 Capital Program- Power Engineers Management - PEI
Source Envelope:
Document Pages: 36
Signatures: 6
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Monisa Rogers
901B Texas Street
Denton, TX 76209
Monisa.Rogers@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
4/14/2020 1:33:09 PM
Holder: Monisa Rogers
Monisa.Rogers@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Monisa Rogers monisa.rogers@cityofdenton.com Senior Buyer City Of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	**Completed** Using IP Address: 198.49.140.104	Sent: 4/14/2020 1:40:41 PM Viewed: 4/14/2020 1:40:49 PM Signed: 4/14/2020 1:42:03 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DS  Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 4/14/2020 1:42:05 PM Viewed: 4/15/2020 12:25:24 PM Signed: 4/15/2020 12:35:59 PM
Mack Reinwand mack.reinwand@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DocuSigned by:  7F9D328BF0204E5... Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 4/15/2020 12:36:02 PM Viewed: 4/20/2020 5:02:18 PM Signed: 4/21/2020 3:35:20 PM
Holger Peller holger.peller@powereng.com EVP Power Delivery POWER Engineers Incorporated Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/22/2020 2:41:42 PM ID: 05706695-df18-49ee-b250-99c7bc796967	DocuSigned by:  5B3E24EEA4334C7... Signature Adoption: Pre-selected Style Using IP Address: 209.141.115.2	Sent: 4/21/2020 3:35:22 PM Resent: 4/21/2020 4:48:28 PM Resent: 4/21/2020 4:50:10 PM Viewed: 4/22/2020 2:41:42 PM Signed: 4/22/2020 3:22:21 PM

Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com Chief Financial Officer Security Level: Email, Account Authentication (None)	DocuSigned by: Antonio Puente, Jr. E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 4/22/2020 3:22:24 PM Viewed: 4/22/2020 9:43:43 PM Signed: 4/22/2020 9:44:05 PM
Electronic Record and Signature Disclosure: Accepted: 4/22/2020 9:43:43 PM ID: df40da9e-9864-4684-bd42-843afda387fd		
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)	**Completed** Using IP Address: 198.49.140.104	Sent: 4/22/2020 9:44:08 PM Viewed: 5/13/2020 8:21:35 AM Signed: 5/13/2020 8:22:03 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Todd Hileman Todd.Hileman@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by: Todd Hileman B776C711BA0D454... Signature Adoption: Pre-selected Style Using IP Address: 47.186.192.80	Sent: 5/13/2020 8:22:06 AM Viewed: 5/13/2020 9:02:23 AM Signed: 5/13/2020 9:02:29 AM
Electronic Record and Signature Disclosure: Accepted: 7/25/2017 11:02:14 AM ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21		
Rosa Rios rosa.rios@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)	DocuSigned by: Rosa Rios 1C5CA8C5E175493... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 5/13/2020 9:02:31 AM Viewed: 5/13/2020 9:16:28 AM Signed: 5/13/2020 9:17:01 AM
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In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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 Contract Administrator City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 4/14/2020 1:42:05 PM
Electronic Record and Signature Disclosure:		

Carbon Copy Events	Status	Timestamp
Not Offered via DocuSign		
Sherri Thurman sherri.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 4/22/2020 9:44:08 PM
Jane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 5/13/2020 8:22:06 AM
Zolaina Parker Zolaina.Parker@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 5/13/2020 8:22:06 AM
Chuck Sears chuck.sears@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 5/13/2020 9:17:03 AM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/13/2020 9:17:03 AM
Certified Delivered	Security Checked	5/13/2020 9:17:03 AM
Signing Complete	Security Checked	5/13/2020 9:17:03 AM
Completed	Security Checked	5/13/2020 9:17:03 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

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Docusign City Council Transmittal Coversheet

PSA	6862
File Name	Capital Program Management - Power Engineers
Purchasing Contact	Jane Rogers
City Council Target Date	5/12/20
Piggy Back Option	Not Applicable
Contract Expiration	5/12/25
Ordinance	20-905

DS
LH

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CONTRACT BY AND BETWEEN CITY OF DENTON, TEXAS AND POWER ENGINEERS, INC. (CONTRACT 6862)

THIS CONTRACT is made and entered into this date 05/12/2020, by and between Power Engineers, Inc., an Idaho corporation, whose address is 4100 International Plaza, Suite 320, Fort Worth, Texas 76109, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

SCOPE OF SERVICES

Supplier shall provide products and/or services in accordance with the City's document RFQ 6862 – Capital Program Management Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFQ 6862 **(Exhibit "B" on File at the Office of the Purchasing Agent);**
(c) City of Denton Standard Terms and Conditions **(Exhibit "C");**
(d) Insurance Requirements **(Exhibit "D");**
(e) Certificate of Interested Parties Electronic Filing **(Exhibit "E");**
(f) Contractor's Proposal **(Exhibit "F")**;
(g) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "G");**

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

Prohibition on Contracts with Companies Boycotting Israel
Supplier acknowledges that in accordance with Chapter 2270 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, Supplier certifies that Supplier's signature provides written verification to the City that Supplier: (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.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization
Contract # 6862

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Section 2252 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, Supplier certifies that Supplier's signature provides written verification to the City that Supplier, pursuant to Chapter 2252, 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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

SUPPLIER

BY: DocuSigned by: Holger Peller 5B3E24EEA4334C7...

AUTHORIZED SIGNATURE

Printed Name: Holger Peller

Title: EVP Power Delivery

208-788-0582

PHONE NUMBER

holger.peller@powereng.com

EMAIL ADDRESS

2020-610741

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: DocuSigned by: Todd Hileman B776C711BA0D454...

TODD HILEMAN
CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: DocuSigned by: Rosa Rios 1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: DocuSigned by: Mack Reinwand 7F9D328BF0204E5...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

SIGNATURE DocuSigned by: Antonio Puente, Jr. E3760944C2BF4B5...

Antonio Puente, Jr.

PRINTED NAME

Chief Financial Officer

TITLE

Electric

DEPARTMENT

Contract # 6862

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Exhibit A
Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed $5,070,304. Pricing shall be per Exhibit F attached.

The total contract for program management, construction inspection services and professional engineering services of RFQ 6862, which these services only are awarded by this Contract for the supply of these services, shall not exceed $5,070,304. Pricing shall be per Exhibit F attached.

2. Contract Terms

The contract term will be three (3) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. Price Escalation and De-escalation

The City will implement an escalation/de-escalation price adjustment annually. The escalation/de-escalation will be based upon manufacturer published pricing sheets to the vendor. The price will be increased or decreased based upon the annually percentage change in the manufacturer's price list. The price adjustment will be determined annually from the award date. Should the change exceed or decrease a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the published price change. It is the supplier or the Cities responsibility to request a price adjustment annually in writing. If no request is made, then it will be assumed that the bid price will be in effect. **The supplier must submit or make available the manufacturers pricing sheet used to calculate the bid proposal, to participate in the escalation/de-escalation clause.**

The Supplier's request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. The Supplier should provide documentation as a percentage of each cost associated with the unit prices quoted for consideration. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton, at its sole option, reserves the right to either: (1) accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award; or, (2) reject the increase within thirty (30) calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Supplier may request cancellation of such items from the contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has

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been issued. The prices in effect prior to the increase request must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

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Exhibit C
Standard Purchase Terms and Conditions

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

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

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

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

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

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

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

6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be

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

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

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

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

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

10. **WORKFORCE**

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

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

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

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

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed

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any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

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

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

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

12. **INVOICES**:

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:

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

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in Accounts Payable, whichever is later.

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

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

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

i. delivery of defective or non-conforming deliverables by the Contractor;

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

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

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

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

14. **TRAVEL EXPENSES**: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

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15. **FINAL PAYMENT AND CLOSE-OUT**:
A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.
B. The making and acceptance of final payment will constitute:
i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. **RIGHT TO AUDIT**:
A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.
B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

18. **SUBCONTRACTORS**:
A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract

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Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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

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

19. **WARRANTY-PRICE**:

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

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

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

20. **WARRANTY – TITLE**: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES**: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and

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conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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

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

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

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

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

30. **DELAYS**:
A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY**:
A. Definitions:

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

B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF**

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THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

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

A. General Requirements:

i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

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

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

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

ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any

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reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

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

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

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

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

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

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

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

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

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

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

37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

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the City, to the City upon request by the City.

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

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

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

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

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

42. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with

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a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

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

45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

46. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is

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supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

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

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

49. **DISPUTE RESOLUTION**:
A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. **JURISDICTION AND VENUE**: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted

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in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

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

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

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

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

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

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

55. **EQUAL OPPORTUNITY**
A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any

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discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.
B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**
The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –
i. "Component" means an article, material, or supply incorporated directly into an end product.
ii. "Cost of components" means -
(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
iii. "Domestic end product" means-
(1) An unmanufactured end product mined or produced in the United States; or
(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
v. "Foreign end product" means an end product other than a domestic end product.
vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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

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

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

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

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

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

63. **RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

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

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

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

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

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

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Exhibit D
INSURANCE REQUIREMENTS AND WORKERS' COMPENSATION REQUIREMENTS

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

STANDARD PROVISIONS:

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

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

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.

- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:

    - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.

    - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

    - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

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- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

[X] A. **General Liability Insurance:**

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

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

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.

- Coverage B shall include personal injury.

- Coverage C, medical payments, is not required.

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

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.

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

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[X] **Automobile Liability Insurance:**

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

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

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

[ ] **Workers' Compensation Insurance**

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

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

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

[ ] **Fire Damage Legal Liability Insurance**

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

[ ] **Professional Liability Insurance**

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

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[ ] **Builders' Risk Insurance**

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

[ ] **Environmental Liability Insurance**

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

[ ] **Riggers Insurance**

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

[ ] **Commercial Crime**

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

[ ] **Additional Insurance**

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

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Exhibit E
Certificate of Interested Parties Electronic Filing

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

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

The contractor shall:

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

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

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EXHIBIT F

POWER ENGINEERS, INC.
4100 INTERNATIONAL PLAZA
SUITE 320
FORT WORTH, TX 76109 USA

PHONE 817-882-1900
FAX 817-882-1999

December 6, 2019

Jane Rogers, MPA, CPBFM
Senior Buyer, City of Denton
901-B Texas Street
Denton, TX 76209
Via email to: Monisa.Rogers@cityofdenton.com

Subject: RFQ #6862 – Draft Revised Cost Proposal Request for Professional Engineering Services for Electric Transmission and Substation Capital Program Management Services

Dear Ms. Rogers:

Thank you for meeting with us on November 22nd, 2019. This gave us an opportunity to explain our current proposal and at the same time understand DME's requirements.

We have revised the attached budget based on our discussions and have extended it to five (5) years, which we understand to be three (3) years plus two (2) optional one-year extensions. Please understand that this proposal is contingent on the performance of the start-up phase proposed for the first three months of this engagement and that POWER will adjust our scope, schedule, and budget proposals accordingly.

The work plan that we submitted November 22 is based on our perception of Program Management and will be adapted to what DME needs during real time execution

We thank you again for the chance to propose our Program Management Services to the City of Denton. Please contact me with questions you may have. We look forward to hearing from you.

Sincerely,

Navin Amalraj, PMP
832.562.1487 mobile
navin.amalraj@powereng.com

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City of Denton - Program Management
Proposed 2020 Budget
Assumed Start Date of 2/3/2020

POWER ENGINEERS

	Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01 Start Up	**1,172**	**$185,768**	**$17,040**	**$202,808**
01.01 Tim Jon (Start-up)	140	$27,860	$4,042	$31,902
01.02 Navin (Start-up)	288	$55,296	$4,667	$59,963
01.04 Lauren (Start-up)	144	$19,872	$3,215	$23,087
01.05 Scheduler (Start-up)	480	$66,240	$5,116	$71,356
01.07 Process / Proceedure review	120	$16,500	$0	$16,500
TASK 02 Execution	**3012**	**$475,068**	**$38,988**	**$514,056**
02.01 Tim Jon (2020 Duration)	312	$62,088	$5,446	$67,534
02.02 Navin (2020 Duration)	680	$130,560	$12,153	$142,713
02.03 Lauren (2020 Duration)	1360	$187,680	$14,495	$202,175
02.05 Scheduler (2020 Duration)	600	$82,800	$6,883	$89,683
02.07 Engineering Review	60	$11,940	$12	$11,952
TASK 04 Construction Oversight	**2371**	**$275,086**	**$59,587**	**$334,673**
04.01 Inspector	2371	$275,086	$59,587	$334,673
TOTAL HOURS				**6555**
TOTAL POWER LABOR COST				**$935,922**
TOTAL EXPENSES				**$115,615**
TOTAL POWER BUDGET				**$1,051,537**

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City of Denton - Program Management
Proposed 2021 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**4636**	**$724,964**	**$47,194**	**$772,158**
02.01	Tim Jon (2020 Duration)	416	$82,784	$6,294	$89,078
02.02	Navin (2020 Duration)	1040	$199,680	$13,387	$213,067
02.03	Lauren (2020 Duration)	2080	$287,040	$22,169	$309,209
02.05	Scheduler (2020 Duration)	1040	$143,520	$5,344	$148,864
02.07	Engineering Review	60	$11,940	$1	$11,941
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**7236**
	TOTAL POWER LABOR COST				**$1,026,564**
	TOTAL EXPENSES				**$112,524**
	TOTAL POWER BUDGET				**$1,139,088**

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City of Denton - Program Management
Proposed 2022 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**4636**	**$724,964**	**$47,205**	**$772,169**
02.01	Tim Jon (2020 Duration)	416	$82,784	$6,294	$89,078
02.02	Navin (2020 Duration)	1040	$199,680	$13,387	$213,067
02.03	Lauren (2020 Duration)	2080	$287,040	$22,169	$309,209
02.05	Scheduler (2020 Duration)	1040	$143,520	$5,344	$148,864
02.07	Engineering Review	60	$11,940	$12	$11,952
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**7236**
	TOTAL POWER LABOR COST				**$1,026,564**
	TOTAL EXPENSES				**$112,535**
	TOTAL POWER BUDGET				**$1,139,099**

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City of Denton - Program Management
Proposed 2023 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**2972**	**$471,412**	**$31,138**	**$502,550**
02.01	Tim Jon (2020 Duration)	208	$41,392	$4,537	$45,929
02.02	Navin (2020 Duration)	832	$159,744	$11,230	$170,974
02.03	Lauren (2020 Duration)	1040	$143,520	$10,564	$154,084
02.05	Scheduler (2020 Duration)	832	$114,816	$4,795	$119,611
02.07	Engineering Review	60	$11,940	$12	$11,952
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**5572**
	TOTAL POWER LABOR COST				**$773,012**
	TOTAL EXPENSES				**$96,468**
	TOTAL POWER BUDGET				**$869,480**

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City of Denton - Program Management
Proposed 2024 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**2972**	**$471,412**	**$32,758**	**$504,170**
02.01	Tim Jon (2020 Duration)	208	$41,392	$4,597	$45,989
02.02	Navin (2020 Duration)	832	$159,744	$11,750	$171,494
02.03	Lauren (2020 Duration)	1040	$143,520	$11,084	$154,604
02.05	Scheduler (2020 Duration)	832	$114,816	$5,315	$120,131
02.07	Engineering Review	60	$11,940	$12	$11,952
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**5572**
	TOTAL POWER LABOR COST				**$773,012**
	TOTAL EXPENSES				**$98,088**
	TOTAL POWER BUDGET				**$871,100**

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Exhibit G

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 **Name of vendor who has a business relationship with local governmental entity.** Power Engineers, Inc.

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.**

Chuck Sears

Name of Officer

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

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☒ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐ Yes ☒ No

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

no employment, business or family relationship exists

4 ☒ **I have no Conflict of Interest to disclose.**

5 DocuSigned by: Holger Peller 5B3E24EEA4334C7...

ıg business with the governmental entity

4/22/2020

Date

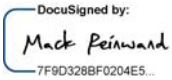
Certificate Of Completion

Envelope Id: A49D2E0ECC48463795AA0B9C426C8F83
Status: Completed
Subject: Please DocuSign: City Council Contract 6862 Capital Program- Power Engineers Management - PEI
Source Envelope:
Document Pages: 36
Signatures: 6
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Monisa Rogers
901B Texas Street
Denton, TX 76209
Monisa.Rogers@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
4/14/2020 1:33:09 PM
Holder: Monisa Rogers
Monisa.Rogers@cityofdenton.com
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Signer Events	Signature	Timestamp
Monisa Rogers monisa.rogers@cityofdenton.com Senior Buyer City Of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	**Completed** Using IP Address: 198.49.140.104	Sent: 4/14/2020 1:40:41 PM Viewed: 4/14/2020 1:40:49 PM Signed: 4/14/2020 1:42:03 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 4/14/2020 1:42:05 PM Viewed: 4/15/2020 12:25:24 PM Signed: 4/15/2020 12:35:59 PM
Mack Reinwand mack.reinwand@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 4/15/2020 12:36:02 PM Viewed: 4/20/2020 5:02:18 PM Signed: 4/21/2020 3:35:20 PM
Holger Peller holger.peller@powereng.com EVP Power Delivery POWER Engineers Incorporated Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/22/2020 2:41:42 PM ID: 05706695-df18-49ee-b250-99c7bc796967	 Signature Adoption: Pre-selected Style Using IP Address: 209.141.115.2	Sent: 4/21/2020 3:35:22 PM Resent: 4/21/2020 4:48:28 PM Resent: 4/21/2020 4:50:10 PM Viewed: 4/22/2020 2:41:42 PM Signed: 4/22/2020 3:22:21 PM

Signer Events	Signature	Timestamp
Antonio Puente, □r. Antonio.Puente@cityofdenton.com Chief Financial Officer Security Level: Email, Account Authentication (None)	DocuSigned by: Antonio Puente, Jr. E3760944C2BF4B5...	Sent: 4/22/2020 3:22:24 PM Viewed: 4/22/2020 9:43:43 PM Signed: 4/22/2020 9:44:05 PM
Electronic Record and Signature Disclosure: Accepted: 4/22/2020 9:43:43 PM ID: df40da9e-9864-4684-bd42-843afda387fd	Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)	**Completed** Using IP Address: 198.49.140.104	Sent: 4/22/2020 9:44:08 PM Viewed: 5/13/2020 8:21:35 AM Signed: 5/13/2020 8:22:03 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Todd Hileman Todd.Hileman@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by: Todd Hileman B776C711BA0D454...	Sent: 5/13/2020 8:22:06 AM Viewed: 5/13/2020 9:02:23 AM Signed: 5/13/2020 9:02:29 AM
Electronic Record and Signature Disclosure: Accepted: 7/25/2017 11:02:14 AM ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21	Signature Adoption: Pre-selected Style Using IP Address: 47.186.192.80	
Rosa Rios rosa.rios@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)	DocuSigned by: Rosa Rios 1C5CA8C5E175493...	Sent: 5/13/2020 9:02:31 AM Viewed: 5/13/2020 9:16:28 AM Signed: 5/13/2020 9:17:01 AM
Electronic Record and Signature Disclosure: Accepted: 5/13/2020 9:16:28 AM ID: d7939c7b-4183-40e2-ae89-9b5bbb0840ae	Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	

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Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 4/14/2020 1:42:05 PM
Electronic Record and Signature Disclosure:		

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Sherri Thurman sherri.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 4/22/2020 9:44:08 PM
□ane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 5/13/2020 8:22:06 AM
Zolaina Parker Zolaina.Parker@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 5/13/2020 8:22:06 AM
Chuck Sears chuck.sears@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 5/13/2020 9:17:03 AM

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Envelope Summar□ Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/13/2020 9:17:03 AM
Certified Delivered	Security Checked	5/13/2020 9:17:03 AM
Signing Complete	Security Checked	5/13/2020 9:17:03 AM
Completed	Security Checked	5/13/2020 9:17:03 AM

□a□ment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

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Docusign Transmittal Coversheet

File Name	6862
Purchasing Contact	Christa Christian
Contract Expiration	MAY 11, 2025

DocuSign Envelope ID: 83D8B446-C49A-4D59-B6B2-6A7C17239450

Procurement & Compliance
901 B Texas St., Denton, TX 76209 • (940) 349-7100

December 16, 2022

Mr. Hugo Bonjour
Power Engineers, Inc.
16825 Northchase Drive, Suite 1200
Houston, Texas 77060
Hugo.Bonjour@powereng.com

Re: Letter Agreement to Amend (this "Amendment") File 6862 – DME CIP Management Services between the City of Denton ("COD") and Power Engineers, Inc., dated May 11, 2020 (the "Contract") – Amendment #1

Dear Mr. Bonjour,

Thank you for being such a valued partner. By signing this Amendment below, COD and Power Engineers, Inc agree that the Contract is hereby deemed amended to the updated Schedule of Charges, as shown in Attachment A.

Except as amended by this Amendment, the Contract is not otherwise amended and all other terms and conditions of the Contract remain in full force and effect, as amended hereby. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signatures transmitted electronically shall have the same effect as the delivery of original signatures.

The City of Denton reserves the right to re-evaluate pricing as the market conditions change and can ask your firm to provide updated proposed pricing, including, but not limited to, a decrease in pricing, as a result of any such change.

We look forward to future business with your firm.

Regards,

DocuSigned by:
Christa Christian
6A8263DE08F4429...

Christa Christian, CPPB
Procurement and Compliance
City of Denton

DocuSigned by:
Hugo Bonjour
42637D600EE24C5...

Hugo Bonjour, Senior Project Manager, P.E.
Power Engineers, Inc

DocuSign Envelope ID: 83D8B446-C49A-4D59-B6B2-6A7C17239450

ATTACHMENT A

3 AND ENERGIZATION, INC.
SCHEDULE OF CHARGES – 2023
DENTON MUNICIPAL ELECTRIC

This standard Schedule of Charges is for professional field testing and energization services. Unless agreed otherwise, charges for work on continuing projects will be based on the then current Schedule of Charges. A new Schedule of Charges will be issued to be effective January 1 of each new year and as necessary on an intermediate basis to accommodate new items or revised charges. Invoices will be submitted monthly and/or upon completion of the work and will be due and payable when issued. All accounts not paid within thirty (30) days after Owner's receipt of the invoice will bear a **SERVICE CHARGE OF 1.0% PER MONTH** for each month the invoice is unpaid.

GRADE	PERSONNEL CLASSIFICATION	
13, 14, 15	President Executive Vice President PTE Senior Project Manager IV	$242.00/hr.
12	PTE Senior Project Manager III	$242.00/hr.
11	PTE Senior Project Manager II	$225.00/hr.
10	PTE Field Service Manager PTE P&C Technician VI PTE Project Manager IV PTE Sales Manager V PTE Senior Project Manager I PTE Testing Supervisor V	$225.00/hr.
9	PTE Engineer VI PTE P&C Technician V PTE Project Manager III PTE Sales Manage IV PTE Senior Project Engineer II PTE Testing Supervisor IV	$217.00/hr.
8	PTE Engineer V PTE P&C Technician IV PTE Project Manager II PTE Sales Manager III PTE Test Technician VII PTE Testing Supervisor III PTE Training Manager	$193.00/hr.
7	PTE Engineer IV PTE P&C Technician III PTE Project Manager I PTE Sales Manager II PTE Test Technician VI PTE Testing Supervisor II	$167.00/hr.
6	PTE Engineer III PTE P&C Technician II PTE Sales Manager I PTE Test Technician V PTE Testing Supervisor I	$156.00/hr.
5	Project Administrator I PTE Asset Administrator III PTE Engineer II PTE P&C Technician I PTE Test Technician IV	$143.00/hr.
4	Project Manager Assistant III PTE Asset Administrator II PTE Engineer I PTE Staff Assistant III PTE Test Technician III	$131.00/hr.
3	Project Manager Assistant II PTE Asset Administrator I PTE Staff Assistant II PTE Test Technician II	$113.00/hr.
2	Project Manager Assistant I PTE Staff Assistant I PTE Test Technician I	$95.00/hr.
1	General Office Assistant I	$76.00/hr.

All rates shown are Straight time (S.T.) rates – S.T. for the first 40 hours per week. Overtime (O.T.) is for all time over 40 hours per week and will be invoiced at 1.50 times the S.T. rates. Premium time (P.T.) is for Sundays and Holidays and will be invoiced at 1.50 times the S.T. rates. All field service rates are based on portal-to-portal travel. Any forensic, legal, or other “expert witness” support shall be billed at the Project Manager, premium time rate. Personnel with specialized experience are employed by or on retainer to Contractor. Fees for these specialists are negotiated on an individual basis depending on the assignment.

Personnel with specialized experience are employed by or on retainer to POWER. Charges for these specialists are negotiated on an individual basis depending on the assignment. Professional time for depositions and testimony is charged at 1.5 times the rate for services; full-day minimums apply.

; AND ENERGIZATION, INC.
SCHEDULE OF CHARGES – 2023
DENTON MUNICIPAL ELECTRIC

This standard Schedule of Charges is for professional field testing and energization services. Unless agreed otherwise, charges for work on continuing projects will be based on the then current Schedule of Charges. A new Schedule of Charges will be issued to be effective January 1 of each new year and as necessary on an intermediate basis to accommodate new items or revised charges. Invoices will be submitted monthly and/or upon completion of the work and will be due and payable when issued. All accounts not paid within thirty (30) days after Owner's receipt of the invoice will bear a **SERVICE CHARGE OF 1.0% PER MONTH** for each month the invoice is unpaid.

POWER OWNED TEST EQUIPMENT

Test Equipment will be billed at 20% of the labor billing charges, or at the daily rates set forth below:

Current Transformer Tester	$116.00 /day	$578.00 /week
1000 amp Current Source	$116.00 /day	$578.00 /week
20 kA Current Source	$346.00 /day	$1,733.00 /week
80 kA Current Source	$578.00 /day	$2,888.00 /week
10 Amp Ductor (DLRO)	$64.00 /day	$318.00 /week
100 Amp Ductor (DLRO)	$98.00 /day	$491.00 /week
Ground Resistance Tester	$127.00 /day	$635.00 /week
DC Hi-Pot	$127.00 /day	$635.00 /week
5kV Meggar	$64.00 /day	$318.00 /week
Watt-hour Standard	$127.00 /day	$635.00 /week
Field Oil Test Set	$87.00 /day	$433.00 /week
Phase Angle Meter	$64.00 /day	$318.00 /week
Power Factor Test Set	$346.00 /day	$1,733.00 /week
3 Phase Relay Test Set	$462.00 /day	$2,310.00 /week
1 Phase TTR Set	$75.00 /day	$375.00 /week
3 Phase TTR Set	$202.00 /day	$1,011.00 /week
Power Monitor	$87.00 /day	$433.00 /week
Recloser Test Set	$87.00 /day	$347.00 /week
Infrared Camera	$231.00 /day	$1,155.00 /week
Vehicle	$87.00 /day+fuel	$433.00 /week+fuel
or		
Mileage	$1.73 /Mile	

Other expenses such as rental equipment, photography, transportation, rental vehicles, shipping, outside computer services, lodging, meals, other reproduction, express mail, courier/delivery service, special supplies, or other out of pocket expenses are charged at cost plus an administrative charge of 5%.

Meals and lodging for test technicians and test supervisors will be invoiced at $180 per day or based on Federal rates published by the US General Services Administration current year rates for the continental US (GSA CONUS).

Lodging and meals will be reimbursed as per diem for field personnel and actual expenses occurred for Project Managers and other non-field personnel.

Pass through expenses for subcontractors are at cost plus an administrative charge of 10%. Training classes are provided on a fixed price basis.

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POWER Engineers Inc.
Proposed Schedule of Charges -2023
Denton Municipal Electric

Grade	Current DME Rates (2018)	2023 DME Rates
13,14,15	$214.00	$242.00
12	$214.00	$242.00
11	$199.00	$225.00
10	$199.00	$225.00
9	$192.00	$217.00
8	$171.00	$193.00
7	$148.00	$167.00
6	$138.00	$156.00
5	$127.00	$143.00
4	$116.00	$131.00
3	$100.00	$113.00
2	$84.00	$95.00
1	$67.00	$76.00
Total % Increase		13.0%
Per Year % Increase		3.1%

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[illegible] ENGINEERS, INC.
SCHEDULE OF CHARGES – 2023
DENTON MUNICIPAL ELECTRIC

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GRADE	PERSONNEL CLASSIFICATION	
13, 14, 15	President Executive Vice President Senior Project Manager IV	$242.00/hr.
12	Project Manager Director Senior Project Manager III	$242.00/hr.
11	Senior Project Manager II Senior Program Manager II Principal Engineer II	$225.00/hr.
10	Senior Project Manager I Senior Program Manager I Senior Project Engineer III Senior Project Lead III Strategic Consultant III Principal Engineer I	$225.00/hr.
9	Project Manager III Senior Project Lead II Construction Manager III Senior Project Engineer II Strategic Consultant II Senior Consultant III Senior Engineer II	$217.00/hr.
8	Project Manager II Senior Project Lead I Strategic Consultant I Senior Consultant II Senior Project Engineer I Construction Manager II Senior Engineer I	$193.00/hr.
7	Project Manager I Project Lead II Construction Manager I Environmental Specialist IV Project Engineer II Engineer IV Designer V Project Administrator III Senior Consultant I	$167.00/hr.
6	Project Lead I Project Engineer I Engineer III Designer IV Environmental Specialist III Procurement Specialist III Scheduling Specialist III Project Administrator II Consultant III	$156.00/hr.
5	Engineer II Designer III Technician IV Environmental Specialist II Procurement Specialist II Scheduling Specialist II Project Administrator I Consultant II	$143.00/hr.
4	Engineer I Designer II Drafter IV Technician III Environmental Specialist I Procurement Specialist I Field Representative IV Scheduling Specialist I Project Managers Assistant III Consultant I	$131.00/hr.
3	Designer I Drafter III Technician II Field Representative III Staff Assistant II Project Managers Assistant II	$113.00/hr.
2	Drafter II Staff Assistant Field Representative II Project Managers Assistant I	$95.00/hr.
1	Drafter I General Office Assistant Field Representative I	$76.00/hr.

Personnel with specialized experience are employed by or on retainer to POWER. Charges for these specialists are negotiated on an individual basis depending on the assignment. Professional time for depositions and testimony is charged at 1.5 times the rate for services; full-day minimums apply.

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POWER ENGINEERS, INC.
SCHEDULE OF CHARGES – 2023
DENTON MUNICIPAL ELECTRIC

This standard Schedule of Charges is for professional services. Unless agreed otherwise, charges for work on continuing projects will be based on the then current Schedule of Charges. A new Schedule of Charges will be issued to be effective January 1 of each new year and as necessary on an intermediate basis to accommodate new items or revised charges. Invoices will be submitted monthly and/or upon completion of the work and will be due and payable when issued. All accounts not paid within thirty (30) days after Owner's receipt of the invoice will bear a **SERVICE CHARGE OF 1.0% PER MONTH** for each month the invoice is unpaid.

REPRODUCTION

Drawings – Black & White

Large Scale Drawings (C Size)	$1.90/ea.
Large Scale Drawings (D Size)	$3.30/ea.
Large Scale Drawings (E Size)	$5.50/ea.

Drawings – Color

Large Scale Drawings (C Size)	$6.00/ea.
Large Scale Drawings (D Size)	$10.90/ea.
Large Scale Drawings (E Size)	$17.50/ea.

Documents – Black & White

Single-sided Copies	8 x 11 $0.11/ea.	11 x 17 $0.17/ea.
Double-sided Copies	8 x 11 $0.22/ea.	11 x 17 $0.34/ea.

Documents – Color

Single-sided Copies	8 x 11 $0.50/ea.	11 x 17 $1.00/ea.
Double-sided Copies	8 x 11 $1.00/ea.	
Spiral Comb		$2.65/ea.
3 Ring Binder		Dependent on size
Special Copy Center Projects (Labor)		$45.00/hr.

SURVEY EQUIPMENT

Survey Equip. to support field crew		$70.00/day
GPS Equipment 2 Units	$60.00/hour	$350.00/day
GPS Equipment 3 Units	$80.00/hour	$450.00/day

Other expenses including but not limited to subcontractors, airfare, lodging, meals, postage and shipping, purchases, rentals, are charged at cost plus a carrying and handling charge of 10%.

Communication Charge - including but not limited to VOIP charges, file sharing cloud services, and web collaboration sites, charged at 1% of labor billing charges.

CAD and Software Usage Charge – charged at 3% of labor billing charges. This charge covers CAD application and design software including: AutoCAD, MicroStation, Autodesk Revit, PLS-Cad, Smart Plant P&ID, electrical studies software, and other design software as required.

DocuSign

Certificate Of Completion

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Status: Completed
Subject: ***Purchasing Approval*** 6862 - AMENDMENT 1 - 2023 SCHEDULE OF CHARGES
Source Envelope:
Document Pages: 7
Signatures: 2
Certificate Pages: 5
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Christa Christian
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Denton, TX 76209
Christa.Christian@cityofdenton.com
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Location: DocuSign

Signer Events	Signature	Timestamp
Christa Christian christa.christian@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by: Christa Christian 6A8263DE08F4429... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 12/16/2022 11:21:35 AM Viewed: 12/16/2022 11:21:46 AM Signed: 12/16/2022 11:22:05 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Hugo Bonjour hugo.bonjour@powereng.com Security Level: Email, Account Authentication (None)	DocuSigned by: Hugo Bonjour 42637D600EE24C5... Signature Adoption: Pre-selected Style Using IP Address: 72.191.13.148	Sent: 12/16/2022 11:22:07 AM Viewed: 12/16/2022 11:30:25 AM Signed: 12/19/2022 9:55:19 AM
Electronic Record and Signature Disclosure: Accepted: 12/19/2022 9:43:11 AM ID: ce379b16-599e-4444-a959-0b6fdc326064		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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)	COPIED	Sent: 12/19/2022 9:55:21 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Carbon Copy Events	Status	Timestamp
Mark Zimmerer mark.zimmerer@cityofdenton.com Electric Engineering Supervisor Security Level: Email, Account Authentication (None)	COPIED	Sent: 12/19/2022 9:55:21 AM

Electronic Record and Signature Disclosure:
Accepted: 11/22/2022 6:25:38 PM
ID: 5080502d-7963-4595-b569-f8160389366d

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/16/2022 11:21:35 AM
Certified Delivered	Security Checked	12/16/2022 11:30:25 AM
Envelope Updated	Security Checked	12/16/2022 11:55:02 AM
Envelope Updated	Security Checked	12/19/2022 8:34:28 AM
Signing Complete	Security Checked	12/19/2022 9:55:19 AM
Completed	Security Checked	12/19/2022 9:55:21 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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 request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

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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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

Docusign Envelope ID: F6FDEE35-9C41-4A18-90CA-18F0E30FF362

DocuSign Transmittal Coversheet

File Name	6862 - 6 Month Contract Extension
Purchasing Contact	Christa Christian, CPPB

Docusign Envelope ID: F6FDEE35-9C41-4A18-90CA-18F0E30FF362

Procurment

901-B Texas Street, Denton, TX 76209 • (940) 349-7100

December 19, 2024

Hugo Bonjour
Power Engineers, Inc
4100 International Plaza, Suite 320
Fort Worth, Texas 76109
hugo.bonjour@powereng.com

Ref: Extension of Contract # 6862 Capital Program Management Services

Dear Hugo:

The City of Denton would like to extend the above referenced contract through November 12, 2025 with all pricing, terms and conditions, and contract's not-to-exceed amount remaining the same. If you are in agreement, please sign this letter.

We look forward to continuing to work with your company.

If you have any questions, please contact the Purchasing Office at (940) 349-7100 or purchasing@cityofdenton.com.

Sincerely,

DocuSigned by:
Christa Christian
6A8263DE08F4429...
Christa Christian, CPPB
Purchasing Supervisor

Signed by:
Hugo Bonjour
42637D600EE24C5...
Authorized Rep.

12/19/2024
Date

Certificate Of Completion

Envelope Id: F6FDEE35-9C41-4A18-90CA-18F0E30FF362
Status: Completed
Subject: ***Purchasing Approval***6862 - 6 month Contract Extension
Source Envelope:
Document Pages: 2
Signatures: 2
Certificate Pages: 5
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Christa Christian
901B Texas Street
Denton, TX 76209
Christa.Christian@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
12/19/2024 2:13:42 PM
Holder: Christa Christian
Christa.Christian@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Christa Christian christa.christian@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by: Christa Christian 6A8263DE08F4429... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 12/19/2024 2:18:08 PM Viewed: 12/19/2024 2:18:16 PM Signed: 12/19/2024 2:18:31 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Hugo Bonjour hugo.bonjour@powereng.com Security Level: Email, Account Authentication (None)	Signed by: Hugo Bonjour 42637D600EE24C5... Signature Adoption: Pre-selected Style Using IP Address: 73.232.245.57	Sent: 12/19/2024 2:18:33 PM Viewed: 12/19/2024 2:27:19 PM Signed: 12/19/2024 4:16:37 PM
Electronic Record and Signature Disclosure: Accepted: 12/19/2024 2:27:19 PM ID: 01a6f2c1-1e22-4690-9992-951923942eb4		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Mark Zimmerer mark.zimmerer@cityofdenton.com Electric Engineering Supervisor Security Level: Email, Account Authentication (None)	COPIED	Sent: 12/19/2024 4:16:38 PM
Electronic Record and Signature Disclosure: Accepted: 11/12/2024 7:37:52 PM ID: 83ac2bb2-3a14-4218-b7aa-213d23b414c3		

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: 12/19/2024 4:16:39 PM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/19/2024 2:18:08 PM
Certified Delivered	Security Checked	12/19/2024 2:27:19 PM
Signing Complete	Security Checked	12/19/2024 4:16:37 PM
Completed	Security Checked	12/19/2024 4:16:39 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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Withdrawing your consent

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All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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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, IS 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

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- 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

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Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

Procurement
215 E. McKinney St., Denton, TX 76201 • (940) 349-7100

Assignment of Contract #6862

FOR VALUE RECEIVED, POWER Engineers, Inc. ("Assignor") hereby assigns and otherwise transfers to WSP USA Inc. ("Assignee") all rights, title, and interest held by Assignor in and to the "Contract" described as follows (this "Assignment"):

Contract approved May 12, 2020, by and between the City of Denton, POWER Engineers, Inc., for program management, construction inspection services, and professional engineering services, for the Capital Improvement Program for Denton Municipal Electric; said Contract being in the original not to exceed amount of $5,070,304.00. Amendment 1 approved December 19, 2022, to update the Schedule of Charges, and a Contract Extension approved December 19, 2024, extending the contract to November 12, 2025. Currently, extending the contract for a period which may reasonably be required for the completion of the projects listed in Exhibit A.

Assignor warrants and represents that said Contract is in full force and effect and is fully assignable. Assignor further warrants that it has the full right and authority to transfer said Contract and that Contract rights herein transferred are free of liens, encumbrances, and adverse claims. Said Contract has not been modified and remains on the terms and conditions originally contained therein. If said Contract has been modified, then all modifications to said Contract are attached hereto and made a part hereof.

Assignor grants, bargains, sells, conveys, transfers, assigns, and delivers all of its rights, interests, obligations, and duties under the Contract to Assignee. Assignee fully assumes and agrees to perform all remaining covenants, duties, and obligations of Assignor under the Contract in strict accordance with the terms and conditions of the Contract and agrees to indemnify and hold Assignor harmless from any claim or demand resulting from non-performance by Assignee. Assignor agrees that Assignee shall be entitled to all monies remaining to be paid under the Contract, which rights are also assigned hereunder. The City of Denton's obligations to make payment to Assignee shall only be effective following the date this Assignment becomes effective. In the event that a dispute arises between Assignor and Assignee as to the allocation or division of any payments payable or paid to Assignor of Assignee, such dispute shall be resolved strictly between Assignor and Assignee.

This Assignment shall become effective as of the date the Consent to Assignment is executed by the City of Denton after this Assignment is executed by the Assignor and Assignee and shall be binding upon and inure to the benefit of the Assignor and Assignee, their heirs, administrators, successors and assigns.

IN WITNESS WHEREOF the Assignor and Assignee execute and affix their respective approval and signature on this Assignment on the dates herein set forth.

Dated: 12/11/2025

Signed by:
Dale Murphy
CCBCB04BA0804E2...
Assignor

Dated: 12/11/2025

Signed by:
Hillary Jassey
E3B53893074F498...
Assignee

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

Procurement
215 E. McKinney St., Denton, TX 76201 • (940) 349-7100

Consent to Assignment of Contract

In accordance with the provisions of the Contract, the City of Denton hereby consents to the Assignment of Contract affirming that no modification of the Contract is made or intended, except as noted hereinabove, and that Assignee is now and hereafter substituted for Assignor.

Attached: Contract #6862, Contract Extension, Amendment 1, and Exhibit A

Dated: 12/11/2025

Approved by:

DocuSigned by:
Lori Hewell
13E1D934887C40E...

Lori Hewell
Purchasing Manager
City of Denton
901B Texas Street
Denton, Texas
940-349-7100
lori.hewell@cityofdenton.com

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

Docusign City Council Transmittal Coversheet

PSA	6862
File Name	Capital Program Management - Power Engineers
Purchasing Contact	Jane Rogers
City Council Target Date	5/12/20
Piggy Back Option	Not Applicable
Contract Expiration	5/12/25
Ordinance	20-905

DS
LH

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

CONTRACT BY AND BETWEEN CITY OF DENTON, TEXAS AND POWER ENGINEERS, INC. (CONTRACT 6862)

THIS CONTRACT is made and entered into this date 05/12/2020, by and between Power Engineers, Inc., an Idaho corporation, whose address is 4100 International Plaza, Suite 320, Fort Worth, Texas 76109, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

SCOPE OF SERVICES

Supplier shall provide products and/or services in accordance with the City's document RFQ 6862 – Capital Program Management Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFQ 6862 **(Exhibit "B" on File at the Office of the Purchasing Agent);**
(c) City of Denton Standard Terms and Conditions **(Exhibit "C");**
(d) Insurance Requirements **(Exhibit "D");**
(e) Certificate of Interested Parties Electronic Filing **(Exhibit "E");**
(f) Contractor's Proposal **(Exhibit "F")**;
(g) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "G");**

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

Prohibition on Contracts with Companies Boycotting Israel
Supplier acknowledges that in accordance with Chapter 2270 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, Supplier certifies that Supplier's signature provides written verification to the City that Supplier: (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.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization
Contract # 6862

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

Section 2252 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, Supplier certifies that Supplier's signature provides written verification to the City that Supplier, pursuant to Chapter 2252, 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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

SUPPLIER

BY: DocuSigned by: Holger Peller 5B3E24EEA4334C7...

AUTHORIZED SIGNATURE

Printed Name: Holger Peller

Title: EVP Power Delivery

208-788-0582

PHONE NUMBER

holger.peller@powereng.com

EMAIL ADDRESS

2020-610741

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: DocuSigned by: Todd Hileman B776C711BA0D454...

TODD HILEMAN
CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: DocuSigned by: Rosa Rios 1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: DocuSigned by: Mack Reinwand 7F9D328BF0204E5...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

SIGNATURE DocuSigned by: Antonio Puente, Jr. E3760944C2BF4B5...

Antonio Puente, Jr.

PRINTED NAME

Chief Financial Officer

TITLE

Electric

DEPARTMENT

Contract # 6862

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

Exhibit A
Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed $5,070,304. Pricing shall be per Exhibit F attached.

The total contract for program management, construction inspection services and professional engineering services of RFQ 6862, which these services only are awarded by this Contract for the supply of these services, shall not exceed $5,070,304. Pricing shall be per Exhibit F attached.

2. Contract Terms

The contract term will be three (3) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. Price Escalation and De-escalation

The City will implement an escalation/de-escalation price adjustment annually. The escalation/de-escalation will be based upon manufacturer published pricing sheets to the vendor. The price will be increased or decreased based upon the annually percentage change in the manufacturer's price list. The price adjustment will be determined annually from the award date. Should the change exceed or decrease a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the published price change. It is the supplier or the Cities responsibility to request a price adjustment annually in writing. If no request is made, then it will be assumed that the bid price will be in effect. **The supplier must submit or make available the manufacturers pricing sheet used to calculate the bid proposal, to participate in the escalation/de-escalation clause.**

The Supplier's request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. The Supplier should provide documentation as a percentage of each cost associated with the unit prices quoted for consideration. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton, at its sole option, reserves the right to either: (1) accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award; or, (2) reject the increase within thirty (30) calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Supplier may request cancellation of such items from the contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has

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been issued. The prices in effect prior to the increase request must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

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Exhibit C
Standard Purchase Terms and Conditions

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

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

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

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

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

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

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

6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be

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

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

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

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

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

10. **WORKFORCE**

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

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

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

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

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed

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any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
Immigration: The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

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

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

12. **INVOICES**:
A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department**. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.
The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:
A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received

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in Accounts Payable, whichever is later.

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

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

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

i. delivery of defective or non-conforming deliverables by the Contractor;

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

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

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

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

14. **TRAVEL EXPENSES**: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

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15. **FINAL PAYMENT AND CLOSE-OUT**:
A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.
B. The making and acceptance of final payment will constitute:
i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. **RIGHT TO AUDIT**:
A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.
B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

18. **SUBCONTRACTORS**:
A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract

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Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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

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

19. **WARRANTY-PRICE**:

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

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

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

20. **WARRANTY – TITLE**: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES**: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and

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conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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

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

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

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

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

30. **DELAYS**:
A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY**:
A. Definitions:

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

B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF**

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THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

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

A. General Requirements:

i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

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

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

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

ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any

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reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

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

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

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

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

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

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

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

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

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

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

37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

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the City, to the City upon request by the City.

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

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

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

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

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

42. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with

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a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

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

45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

46. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is

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supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

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

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

49. **DISPUTE RESOLUTION**:
A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. **JURISDICTION AND VENUE**: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted

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in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

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

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

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

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

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

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

55. **EQUAL OPPORTUNITY**
A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any

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discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.
B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**
The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –
i. "Component" means an article, material, or supply incorporated directly into an end product.
ii. "Cost of components" means -
(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
iii. "Domestic end product" means-
(1) An unmanufactured end product mined or produced in the United States; or
(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
v. "Foreign end product" means an end product other than a domestic end product.
vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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

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

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

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

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

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

63. **RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

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

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

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

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

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

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Exhibit D
INSURANCE REQUIREMENTS AND WORKERS' COMPENSATION REQUIREMENTS

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

STANDARD PROVISIONS:

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

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

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.

- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:

    - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.

    - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

    - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

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- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

[X] A. **General Liability Insurance:**

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

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

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.

- Coverage B shall include personal injury.

- Coverage C, medical payments, is not required.

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

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.

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

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

[X] **Automobile Liability Insurance:**

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

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

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

[ ] **Workers' Compensation Insurance**

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

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

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

[ ] **Fire Damage Legal Liability Insurance**

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

[ ] **Professional Liability Insurance**

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

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

[ ] **Builders' Risk Insurance**

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

[ ] **Environmental Liability Insurance**

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

[ ] **Riggers Insurance**

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

[ ] **Commercial Crime**

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

[ ] **Additional Insurance**

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

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

Exhibit E
Certificate of Interested Parties Electronic Filing

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

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

The contractor shall:

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

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

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

EXHIBIT F

POWER ENGINEERS, INC.
4100 INTERNATIONAL PLAZA
SUITE 320
FORT WORTH, TX 76109 USA

PHONE 817-882-1900
FAX 817-882-1999

December 6, 2019

Jane Rogers, MPA, CPBFM
Senior Buyer, City of Denton
901-B Texas Street
Denton, TX 76209
Via email to: Monisa.Rogers@cityofdenton.com

Subject: RFQ #6862 – Draft Revised Cost Proposal Request for Professional Engineering Services for Electric Transmission and Substation Capital Program Management Services

Dear Ms. Rogers:

Thank you for meeting with us on November 22nd, 2019. This gave us an opportunity to explain our current proposal and at the same time understand DME's requirements.

We have revised the attached budget based on our discussions and have extended it to five (5) years, which we understand to be three (3) years plus two (2) optional one-year extensions. Please understand that this proposal is contingent on the performance of the start-up phase proposed for the first three months of this engagement and that POWER will adjust our scope, schedule, and budget proposals accordingly.

The work plan that we submitted November 22 is based on our perception of Program Management and will be adapted to what DME needs during real time execution

We thank you again for the chance to propose our Program Management Services to the City of Denton. Please contact me with questions you may have. We look forward to hearing from you.

Sincerely,

Navin Amalraj, PMP
832.562.1487 mobile
navin.amalraj@powereng.com

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

City of Denton - Program Management
Proposed 2020 Budget
Assumed Start Date of 2/3/2020

	Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01 Start Up	**1,172**	**$185,768**	**$17,040**	**$202,808**
01.01 Tim Jon (Start-up)	140	$27,860	$4,042	$31,902
01.02 Navin (Start-up)	288	$55,296	$4,667	$59,963
01.04 Lauren (Start-up)	144	$19,872	$3,215	$23,087
01.05 Scheduler (Start-up)	480	$66,240	$5,116	$71,356
01.07 Process / Proceedure review	120	$16,500	$0	$16,500
TASK 02 Execution	**3012**	**$475,068**	**$38,988**	**$514,056**
02.01 Tim Jon (2020 Duration)	312	$62,088	$5,446	$67,534
02.02 Navin (2020 Duration)	680	$130,560	$12,153	$142,713
02.03 Lauren (2020 Duration)	1360	$187,680	$14,495	$202,175
02.05 Scheduler (2020 Duration)	600	$82,800	$6,883	$89,683
02.07 Engineering Review	60	$11,940	$12	$11,952
TASK 04 Construction Oversight	**2371**	**$275,086**	**$59,587**	**$334,673**
04.01 Inspector	2371	$275,086	$59,587	$334,673
TOTAL HOURS				**6555**
TOTAL POWER LABOR COST				**$935,922**
TOTAL EXPENSES				**$115,615**
TOTAL POWER BUDGET				**$1,051,537**

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

City of Denton - Program Management
Proposed 2021 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**4636**	**$724,964**	**$47,194**	**$772,158**
02.01	Tim Jon (2020 Duration)	416	$82,784	$6,294	$89,078
02.02	Navin (2020 Duration)	1040	$199,680	$13,387	$213,067
02.03	Lauren (2020 Duration)	2080	$287,040	$22,169	$309,209
02.05	Scheduler (2020 Duration)	1040	$143,520	$5,344	$148,864
02.07	Engineering Review	60	$11,940	$1	$11,941
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**7236**
	TOTAL POWER LABOR COST				**$1,026,564**
	TOTAL EXPENSES				**$112,524**
	TOTAL POWER BUDGET				**$1,139,088**

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

City of Denton - Program Management
Proposed 2022 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**4636**	**$724,964**	**$47,205**	**$772,169**
02.01	Tim Jon (2020 Duration)	416	$82,784	$6,294	$89,078
02.02	Navin (2020 Duration)	1040	$199,680	$13,387	$213,067
02.03	Lauren (2020 Duration)	2080	$287,040	$22,169	$309,209
02.05	Scheduler (2020 Duration)	1040	$143,520	$5,344	$148,864
02.07	Engineering Review	60	$11,940	$12	$11,952
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**7236**
	TOTAL POWER LABOR COST				**$1,026,564**
	TOTAL EXPENSES				**$112,535**
	TOTAL POWER BUDGET				**$1,139,099**

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

City of Denton - Program Management
Proposed 2023 Budget

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**2972**	**$471,412**	**$31,138**	**$502,550**
02.01	Tim Jon (2020 Duration)	208	$41,392	$4,537	$45,929
02.02	Navin (2020 Duration)	832	$159,744	$11,230	$170,974
02.03	Lauren (2020 Duration)	1040	$143,520	$10,564	$154,084
02.05	Scheduler (2020 Duration)	832	$114,816	$4,795	$119,611
02.07	Engineering Review	60	$11,940	$12	$11,952
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**5572**
	TOTAL POWER LABOR COST				**$773,012**
	TOTAL EXPENSES				**$96,468**
	TOTAL POWER BUDGET				**$869,480**

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City of Denton - Program Management
Proposed 2024 Budget

POWER ENGINEERS

		Total Hours	POWER Labor	POWER Expenses	Total Cost
TASK 01	**Start Up**	**0**	**$0**	**$0**	**$0**
01.01	Tim Jon (Start-up)	0	$0	$0	$0
01.02	Navin (Start-up)	0	$0	$0	$0
01.03	Staff Assitant	0	$0	$0	$0
01.04	Lauren (Start-up)	0	$0	$0	$0
01.05	Scheduler (Start-up)	0	$0	$0	$0
01.06	Procurement	0	$0	$0	$0
01.07	Process / Proceedure review	0	$0	$0	$0
TASK 02	**Execution**	**2972**	**$471,412**	**$32,758**	**$504,170**
02.01	Tim Jon (2020 Duration)	208	$41,392	$4,597	$45,989
02.02	Navin (2020 Duration)	832	$159,744	$11,750	$171,494
02.03	Lauren (2020 Duration)	1040	$143,520	$11,084	$154,604
02.05	Scheduler (2020 Duration)	832	$114,816	$5,315	$120,131
02.07	Engineering Review	60	$11,940	$12	$11,952
TASK 04	**Construction Oversight**	**2600**	**$301,600**	**$65,330**	**$366,930**
04.01	Inspector	2600	$301,600	$65,330	$366,930
	TOTAL HOURS				**5572**
	TOTAL POWER LABOR COST				**$773,012**
	TOTAL EXPENSES				**$98,088**
	TOTAL POWER BUDGET				**$871,100**

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

Exhibit G

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 **Name of vendor who has a business relationship with local governmental entity.** Power Engineers, Inc.

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.**

Chuck Sears

Name of Officer

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

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☒ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐ Yes ☒ No

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

no employment, business or family relationship exists

4 ☒ **I have no Conflict of Interest to disclose.**

5 DocuSigned by: Holger Peller 5B3E24EEA4334C7...

ıg business with the governmental entity

4/22/2020

Date

Certificate Of Completion

Envelope Id: A49D2E0ECC48463795AA0B9C426C8F83
Status: Completed
Subject: Please DocuSign: City Council Contract 6862 Capital Program- Power Engineers Management - PEI
Source Envelope:
Document Pages: 36
Signatures: 6
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Monisa Rogers
901B Texas Street
Denton, TX 76209
Monisa.Rogers@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
4/14/2020 1:33:09 PM
Holder: Monisa Rogers
Monisa.Rogers@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Monisa Rogers monisa.rogers@cityofdenton.com Senior Buyer City Of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	**Completed** Using IP Address: 198.49.140.104	Sent: 4/14/2020 1:40:41 PM Viewed: 4/14/2020 1:40:49 PM Signed: 4/14/2020 1:42:03 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DS LH Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 4/14/2020 1:42:05 PM Viewed: 4/15/2020 12:25:24 PM Signed: 4/15/2020 12:35:59 PM
Mack Reinwand mack.reinwand@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DocuSigned by: Mack Reinwand 7F9D328BF0204E5... Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 4/15/2020 12:36:02 PM Viewed: 4/20/2020 5:02:18 PM Signed: 4/21/2020 3:35:20 PM
Holger Peller holger.peller@powereng.com EVP Power Delivery POWER Engineers Incorporated Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/22/2020 2:41:42 PM ID: 05706695-df18-49ee-b250-99c7bc796967	DocuSigned by: Holger Peller 5B3E24EEA4334C7... Signature Adoption: Pre-selected Style Using IP Address: 209.141.115.2	Sent: 4/21/2020 3:35:22 PM Resent: 4/21/2020 4:48:28 PM Resent: 4/21/2020 4:50:10 PM Viewed: 4/22/2020 2:41:42 PM Signed: 4/22/2020 3:22:21 PM

Signer Events	Signature	Timestamp
Antonio Puente, □r. Antonio.Puente@cityofdenton.com Chief Financial Officer Security Level: Email, Account Authentication (None)	DocuSigned by: Antonio Puente, Jr. E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 4/22/2020 3:22:24 PM Viewed: 4/22/2020 9:43:43 PM Signed: 4/22/2020 9:44:05 PM
Electronic Record and Signature Disclosure: Accepted: 4/22/2020 9:43:43 PM ID: df40da9e-9864-4684-bd42-843afda387fd		
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)	**Completed** Using IP Address: 198.49.140.104	Sent: 4/22/2020 9:44:08 PM Viewed: 5/13/2020 8:21:35 AM Signed: 5/13/2020 8:22:03 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Todd Hileman Todd.Hileman@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by: Todd Hileman B776C711BA0D454... Signature Adoption: Pre-selected Style Using IP Address: 47.186.192.80	Sent: 5/13/2020 8:22:06 AM Viewed: 5/13/2020 9:02:23 AM Signed: 5/13/2020 9:02:29 AM
Electronic Record and Signature Disclosure: Accepted: 7/25/2017 11:02:14 AM ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21		
Rosa Rios rosa.rios@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)	DocuSigned by: Rosa Rios 1C5CA8C5E175493... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 5/13/2020 9:02:31 AM Viewed: 5/13/2020 9:16:28 AM Signed: 5/13/2020 9:17:01 AM
Electronic Record and Signature Disclosure: Accepted: 5/13/2020 9:16:28 AM ID: d7939c7b-4183-40e2-ae89-9b5bbb0840ae		
□n □erson Signer Events	**Signature**	**Timestamp**
Editor Deliver□ Events	**Status**	**Timestamp**
□gent Deliver□ Events	**Status**	**Timestamp**
□ntermediar□ Deliver□ Events	**Status**	**Timestamp**
Certified Deliver□ Events	**Status**	**Timestamp**
Car□on Cop□ Events	**Status**	**Timestamp**
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 4/14/2020 1:42:05 PM
Electronic Record and Signature Disclosure:		

Car□on Cop□ Events	Status	Timestamp
Not Offered via DocuSign		
Sherri Thurman sherri.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 4/22/2020 9:44:08 PM
□ane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 5/13/2020 8:22:06 AM
Zolaina Parker Zolaina.Parker@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 5/13/2020 8:22:06 AM
Chuck Sears chuck.sears@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 5/13/2020 9:17:03 AM

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Envelope Summar□ Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/13/2020 9:17:03 AM
Certified Delivered	Security Checked	5/13/2020 9:17:03 AM
Signing Complete	Security Checked	5/13/2020 9:17:03 AM
Completed	Security Checked	5/13/2020 9:17:03 AM

□a□ment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

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How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.

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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.

By checking the 'I Agree' box, I confirm that:

- 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.

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Docusign Transmittal Coversheet

File Name	6862
Purchasing Contact	Christa Christian
Contract Expiration	MAY 11, 2025

Docusign Envelope ID: F5369810-05AE-462A-B01C-8D00E332D7C9

Procurement & Compliance
901 B Texas St., Denton, TX 76209 • (940) 349-7100

December 16, 2022

Mr. Hugo Bonjour
Power Engineers, Inc.
16825 Northchase Drive, Suite 1200
Houston, Texas 77060
Hugo.Bonjour@powereng.com

Re: Letter Agreement to Amend (this "Amendment") File 6862 – DME CIP Management Services between the City of Denton ("COD") and Power Engineers, Inc., dated May 11, 2020 (the "Contract") – Amendment #1

Dear Mr. Bonjour,

Thank you for being such a valued partner. By signing this Amendment below, COD and Power Engineers, Inc agree that the Contract is hereby deemed amended to the updated Schedule of Charges, as shown in Attachment A.

Except as amended by this Amendment, the Contract is not otherwise amended and all other terms and conditions of the Contract remain in full force and effect, as amended hereby. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signatures transmitted electronically shall have the same effect as the delivery of original signatures.

The City of Denton reserves the right to re-evaluate pricing as the market conditions change and can ask your firm to provide updated proposed pricing, including, but not limited to, a decrease in pricing, as a result of any such change.

We look forward to future business with your firm.

Regards,

DocuSigned by:
Christa Christian
6A8263DE08F4429...

Christa Christian, CPPB
Procurement and Compliance
City of Denton

DocuSigned by:
Hugo Bonjour
42637D600EE24C5...

Hugo Bonjour, Senior Project Manager, P.E.
Power Engineers, Inc

3 AND ENERGIZATION, INC.
SCHEDULE OF CHARGES – 2023
DENTON MUNICIPAL ELECTRIC

This standard Schedule of Charges is for professional field testing and energization services. Unless agreed otherwise, charges for work on continuing projects will be based on the then current Schedule of Charges. A new Schedule of Charges will be issued to be effective January 1 of each new year and as necessary on an intermediate basis to accommodate new items or revised charges. Invoices will be submitted monthly and/or upon completion of the work and will be due and payable when issued. All accounts not paid within thirty (30) days after Owner's receipt of the invoice will bear a **SERVICE CHARGE OF 1.0% PER MONTH** for each month the invoice is unpaid.

GRADE	PERSONNEL CLASSIFICATION	
13, 14, 15	President Executive Vice President PTE Senior Project Manager IV	$242.00/hr.
12	PTE Senior Project Manager III	$242.00/hr.
11	PTE Senior Project Manager II	$225.00/hr.
10	PTE Field Service Manager PTE P&C Technician VI PTE Project Manager IV PTE Sales Manager V PTE Senior Project Manager I PTE Testing Supervisor V	$225.00/hr.
9	PTE Engineer VI PTE P&C Technician V PTE Project Manager III PTE Sales Manage IV PTE Senior Project Engineer II PTE Testing Supervisor IV	$217.00/hr.
8	PTE Engineer V PTE P&C Technician IV PTE Project Manager II PTE Sales Manager III PTE Test Technician VII PTE Testing Supervisor III PTE Training Manager	$193.00/hr.
7	PTE Engineer IV PTE P&C Technician III PTE Project Manager I PTE Sales Manager II PTE Test Technician VI PTE Testing Supervisor II	$167.00/hr.
6	PTE Engineer III PTE P&C Technician II PTE Sales Manager I PTE Test Technician V PTE Testing Supervisor I	$156.00/hr.
5	Project Administrator I PTE Asset Administrator III PTE Engineer II PTE P&C Technician I PTE Test Technician IV	$143.00/hr.
4	Project Manager Assistant III PTE Asset Administrator II PTE Engineer I PTE Staff Assistant III PTE Test Technician III	$131.00/hr.
3	Project Manager Assistant II PTE Asset Administrator I PTE Staff Assistant II PTE Test Technician II	$113.00/hr.
2	Project Manager Assistant I PTE Staff Assistant I PTE Test Technician I	$95.00/hr.
1	General Office Assistant I	$76.00/hr.

All rates shown are Straight time (S.T.) rates – S.T. for the first 40 hours per week. Overtime (O.T.) is for all time over 40 hours per week and will be invoiced at 1.50 times the S.T. rates. Premium time (P.T.) is for Sundays and Holidays and will be invoiced at 1.50 times the S.T. rates. All field service rates are based on portal-to-portal travel. Any forensic, legal, or other “expert witness” support shall be billed at the Project Manager, premium time rate. Personnel with specialized experience are employed by or on retainer to Contractor. Fees for these specialists are negotiated on an individual basis depending on the assignment.

Personnel with specialized experience are employed by or on retainer to POWER. Charges for these specialists are negotiated on an individual basis depending on the assignment. Professional time for depositions and testimony is charged at 1.5 times the rate for services; full-day minimums apply.

; AND ENERGIZATION, INC.
SCHEDULE OF CHARGES – 2023
DENTON MUNICIPAL ELECTRIC

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POWER OWNED TEST EQUIPMENT

Test Equipment will be billed at 20% of the labor billing charges, or at the daily rates set forth below:

Current Transformer Tester	$116.00 /day	$578.00 /week
1000 amp Current Source	$116.00 /day	$578.00 /week
20 kA Current Source	$346.00 /day	$1,733.00 /week
80 kA Current Source	$578.00 /day	$2,888.00 /week
10 Amp Ductor (DLRO)	$64.00 /day	$318.00 /week
100 Amp Ductor (DLRO)	$98.00 /day	$491.00 /week
Ground Resistance Tester	$127.00 /day	$635.00 /week
DC Hi-Pot	$127.00 /day	$635.00 /week
5kV Meggar	$64.00 /day	$318.00 /week
Watt-hour Standard	$127.00 /day	$635.00 /week
Field Oil Test Set	$87.00 /day	$433.00 /week
Phase Angle Meter	$64.00 /day	$318.00 /week
Power Factor Test Set	$346.00 /day	$1,733.00 /week
3 Phase Relay Test Set	$462.00 /day	$2,310.00 /week
1 Phase TTR Set	$75.00 /day	$375.00 /week
3 Phase TTR Set	$202.00 /day	$1,011.00 /week
Power Monitor	$87.00 /day	$433.00 /week
Recloser Test Set	$87.00 /day	$347.00 /week
Infrared Camera	$231.00 /day	$1,155.00 /week
Vehicle	$87.00 /day+fuel	$433.00 /week+fuel
or		
Mileage	$1.73 /Mile	

Other expenses such as rental equipment, photography, transportation, rental vehicles, shipping, outside computer services, lodging, meals, other reproduction, express mail, courier/delivery service, special supplies, or other out of pocket expenses are charged at cost plus an administrative charge of 5%.

Meals and lodging for test technicians and test supervisors will be invoiced at $180 per day or based on Federal rates published by the US General Services Administration current year rates for the continental US (GSA CONUS).

Lodging and meals will be reimbursed as per diem for field personnel and actual expenses occurred for Project Managers and other non-field personnel.

Pass through expenses for subcontractors are at cost plus an administrative charge of 10%. Training classes are provided on a fixed price basis.

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POWER Engineers Inc.
Proposed Schedule of Charges -2023
Denton Municipal Electric

Grade	Current DME Rates (2018)	2023 DME Rates
13,14,15	$214.00	$242.00
12	$214.00	$242.00
11	$199.00	$225.00
10	$199.00	$225.00
9	$192.00	$217.00
8	$171.00	$193.00
7	$148.00	$167.00
6	$138.00	$156.00
5	$127.00	$143.00
4	$116.00	$131.00
3	$100.00	$113.00
2	$84.00	$95.00
1	$67.00	$76.00
Total % Increase		13.0%
Per Year % Increase		3.1%

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POWER ENGINEERS, INC.
SCHEDULE OF CHARGES – 2023
DENTON MUNICIPAL ELECTRIC

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GRADE	PERSONNEL CLASSIFICATION	
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12	Project Manager Director Senior Project Manager III	$242.00/hr.
11	Senior Project Manager II Senior Program Manager II Principal Engineer II	$225.00/hr.
10	Senior Project Manager I Senior Program Manager I Senior Project Engineer III Senior Project Lead III Strategic Consultant III Principal Engineer I	$225.00/hr.
9	Project Manager III Senior Project Lead II Construction Manager III Senior Project Engineer II Strategic Consultant II Senior Consultant III Senior Engineer II	$217.00/hr.
8	Project Manager II Senior Project Lead I Strategic Consultant I Senior Consultant II Senior Project Engineer I Construction Manager II Senior Engineer I	$193.00/hr.
7	Project Manager I Project Lead II Construction Manager I Environmental Specialist IV Project Engineer II Engineer IV Designer V Project Administrator III Senior Consultant I	$167.00/hr.
6	Project Lead I Project Engineer I Engineer III Designer IV Environmental Specialist III Procurement Specialist III Scheduling Specialist III Project Administrator II Consultant III	$156.00/hr.
5	Engineer II Designer III Technician IV Environmental Specialist II Procurement Specialist II Scheduling Specialist II Project Administrator I Consultant II	$143.00/hr.
4	Engineer I Designer II Drafter IV Technician III Environmental Specialist I Procurement Specialist I Field Representative IV Scheduling Specialist I Project Managers Assistant III Consultant I	$131.00/hr.
3	Designer I Drafter III Technician II Field Representative III Staff Assistant II Project Managers Assistant II	$113.00/hr.
2	Drafter II Staff Assistant Field Representative II Project Managers Assistant I	$95.00/hr.
1	Drafter I General Office Assistant Field Representative I	$76.00/hr.

Personnel with specialized experience are employed by or on retainer to POWER. Charges for these specialists are negotiated on an individual basis depending on the assignment. Professional time for depositions and testimony is charged at 1.5 times the rate for services; full-day minimums apply.

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POWER ENGINEERS, INC.
SCHEDULE OF CHARGES – 2023
DENTON MUNICIPAL ELECTRIC

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REPRODUCTION

Drawings – Black & White

Large Scale Drawings (C Size)	$1.90/ea.
Large Scale Drawings (D Size)	$3.30/ea.
Large Scale Drawings (E Size)	$5.50/ea.

Drawings – Color

Large Scale Drawings (C Size)	$6.00/ea.
Large Scale Drawings (D Size)	$10.90/ea.
Large Scale Drawings (E Size)	$17.50/ea.

Documents – Black & White

Single-sided Copies	8 x 11 $0.11/ea.	11 x 17 $0.17/ea.
Double-sided Copies	8 x 11 $0.22/ea.	11 x 17 $0.34/ea.

Documents – Color

Single-sided Copies	8 x 11 $0.50/ea.	11 x 17 $1.00/ea.
Double-sided Copies	8 x 11 $1.00/ea.	
Spiral Comb		$2.65/ea.
3 Ring Binder		Dependent on size
Special Copy Center Projects (Labor)		$45.00/hr.

SURVEY EQUIPMENT

Survey Equip. to support field crew		$70.00/day
GPS Equipment 2 Units	$60.00/hour	$350.00/day
GPS Equipment 3 Units	$80.00/hour	$450.00/day

Other expenses including but not limited to subcontractors, airfare, lodging, meals, postage and shipping, purchases, rentals, are charged at cost plus a carrying and handling charge of 10%.

Communication Charge - including but not limited to VOIP charges, file sharing cloud services, and web collaboration sites, charged at 1% of labor billing charges.

CAD and Software Usage Charge – charged at 3% of labor billing charges. This charge covers CAD application and design software including: AutoCAD, MicroStation, Autodesk Revit, PLS-Cad, Smart Plant P&ID, electrical studies software, and other design software as required.

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Certificate Of Completion

Envelope Id: 83D8B446C49A4D59B6B26A7C17239450
Status: Completed
Subject: ***Purchasing Approval*** 6862 - AMENDMENT 1 - 2023 SCHEDULE OF CHARGES
Source Envelope:
Document Pages: 7
Signatures: 2
Certificate Pages: 5
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
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Envelope Originator:
Christa Christian
901B Texas Street
Denton, TX 76209
Christa.Christian@cityofdenton.com
IP Address: 198.49.140.104

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Signer Events	Signature	Timestamp
Christa Christian christa.christian@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by: Christa Christian 6A8263DE08F4429... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 12/16/2022 11:21:35 AM Viewed: 12/16/2022 11:21:46 AM Signed: 12/16/2022 11:22:05 AM
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Hugo Bonjour hugo.bonjour@powereng.com Security Level: Email, Account Authentication (None)	DocuSigned by: Hugo Bonjour 42637D600EE24C5... Signature Adoption: Pre-selected Style Using IP Address: 72.191.13.148	Sent: 12/16/2022 11:22:07 AM Viewed: 12/16/2022 11:30:25 AM Signed: 12/19/2022 9:55:19 AM
Electronic Record and Signature Disclosure: Accepted: 12/19/2022 9:43:11 AM ID: ce379b16-599e-4444-a959-0b6fdc326064		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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)	COPIED	Sent: 12/19/2022 9:55:21 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Carbon Copy Events	Status	Timestamp
Mark Zimmerer mark.zimmerer@cityofdenton.com Electric Engineering Supervisor Security Level: Email, Account Authentication (None)	COPIED	Sent: 12/19/2022 9:55:21 AM
Electronic Record and Signature Disclosure: Accepted: 11/22/2022 6:25:38 PM ID: 5080502d-7963-4595-b569-f8160389366d		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/16/2022 11:21:35 AM
Certified Delivered	Security Checked	12/16/2022 11:30:25 AM
Envelope Updated	Security Checked	12/16/2022 11:55:02 AM
Envelope Updated	Security Checked	12/19/2022 8:34:28 AM
Signing Complete	Security Checked	12/19/2022 9:55:19 AM
Completed	Security Checked	12/19/2022 9:55:21 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

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How to contact City of Denton:
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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 withdraw your consent with City of Denton
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, IS 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.

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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.

By checking the 'I Agree' box, I confirm that:

- 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

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Exhibit A

	Est Completion Date	Project Description
1	Feb. 2026	Hickory Substation
2	Feb. 2026	Industrial Substation TM Bypass
3	Feb. 2026	Brinker SS
4	Feb. 2026	Denton West - RDW
5	Fall 2026	Masch Branch Transformer Addition
6	Summer 2027	North Lakes SSVT
7	Summer 2027	Kings Row SSVT
8	Summer 2027	Underwood Substation
9	Summer 2027	DC Data center
10	Summer 2027	Jim Christal Transformer Addition
11	Summer 2027	Locust SSVT
12	Fall 2027	RD Wells SSVT
13	Spring 2028	Fort Worth Transformer Replacement
14	Summer 2028	Denton West - Brazos Tie-In

Certificate Of Completion

Envelope Id: F5369810-05AE-462A-B01C-8D00E332D7C9
Status: Completed
Subject: Complete with Docusign: 6862 - Assignment of Contract
Source Envelope:
Document Pages: 57
Signatures: 3
Certificate Pages: 5
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
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Envelope Originator:
Cheyenne Defee
901B Texas Street
Denton, TX 76209
cheyenne.defee@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
12/10/2025 2:34:26 PM
Holder: Cheyenne Defee
cheyenne.defee@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Dale Murphy Dale.Murphy@wsp.com Division Manager Security Level: Email, Account Authentication (None)	Signed by: Dale Murphy CCBCB04BA0804E2... Signature Adoption: Pre-selected Style Using IP Address: 165.225.10.83	Sent: 12/10/2025 2:54:19 PM Viewed: 12/10/2025 3:40:29 PM Signed: 12/11/2025 6:59:23 AM
Electronic Record and Signature Disclosure: Accepted: 12/11/2025 6:59:09 AM ID: 566dd854-3e49-492c-85bd-03826f072c17		
Hillary Jassey Hillary.Jassey@wsp.com Secretary WSP USA Inc. Security Level: Email, Account Authentication (None)	Signed by: Hillary Jassey E3B53893074F498... Signature Adoption: Pre-selected Style Using IP Address: 170.85.72.122	Sent: 12/11/2025 6:59:25 AM Viewed: 12/11/2025 8:35:29 AM Signed: 12/11/2025 8:35:46 AM
Electronic Record and Signature Disclosure: Accepted: 12/11/2025 8:35:29 AM ID: 763cd0b7-ab1b-43f0-a363-cead024badcc		
Lori Hewell Lori.Hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by: Lori Hewell 13E1D934887C40F... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 12/11/2025 8:35:48 AM Viewed: 12/11/2025 8:42:33 AM Signed: 12/11/2025 8:42:45 AM
Electronic Record and Signature Disclosure: Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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: 12/11/2025 8:42:47 AM
Navin Amalraj navin.amalraj@powereng.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 12/11/2025 8:42:48 AM
Ty Ragsdale Ty.Ragsdale@powereng.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 12/11/2025 8:42:49 AM
Hillary Jassey Hillary.Jassey@wsp.com Secretary WSP USA Inc. Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/11/2025 8:35:29 AM ID: 763cd0b7-ab1b-43f0-a363-cead024badcc	COPIED	Sent: 12/11/2025 8:42:50 AM
Dale Murphy Dale.Murphy@wsp.com Division Manager Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/11/2025 6:59:09 AM ID: 566dd854-3e49-492c-85bd-03826f072c17	COPIED	Sent: 12/11/2025 8:42:51 AM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/10/2025 2:54:19 PM
Certified Delivered	Security Checked	12/11/2025 8:42:33 AM
Signing Complete	Security Checked	12/11/2025 8:42:45 AM
Completed	Security Checked	12/11/2025 8:42:51 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT EXTENSION BETWEEN THE CITY OF DENTON AND WSP USA INC., FOR PROGRAM MANAGEMENT SERVICES FOR THE DENTON MUNICIPAL ELECTRIC CAPITAL IMPROVEMENT PLAN PROJECTS; AND DECLARING AN EFFECTIVE DATE (RFQ 6862 – EXTENDING A CONTRACT WITH WSP USA INC., UNTIL PROJECT COMPLETION).

WHEREAS, Ordinance 20-905 authorized a contract to Power Engineers, Inc. for program management, construction inspection services, and professional engineering services, for the Capital Improvement Program for Denton Municipal Electric, which is on file in the office of the Purchasing Agent; and

WHEREAS, on December 11, 2025, Purchasing executed an Assignment of Contract to WSP USA Inc.; and

WHEREAS, the staff having recommended, and the City Manager having recommended to the City Council that an extension to the existing purchasing authority approved by Ordinance 20-905 be authorized between the City and WSP USA Inc.; and

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

WHEREAS, the City Council finds that the action taken herein is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The authority to receive services from WSP USA Inc., authorized by Ordinance 20-905, is hereby extended under RFQ 6862 until project completion.

SECTION 3. The City Council delegates the authority to the City Manager to take any actions that may be required or permitted to be performed by the City of Denton under RFQ 6862 to the City Manager or their designee.

SECTION 4: 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

Docusign Envelope ID: BE1B020C-0084-42FA-9B7D-B2820B49DDB4

Docusign City Council Transmittal Coversheet

RFQ	6862
File Name	DME CIP Program Management Services, Extension
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

DS
LH

Docusign Envelope ID: BE1B020C-0084-42FA-9B7D-B2820B49DDB4

SECOND AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND WSP USA Inc.
PSA 6862

THE STATE OF TEXAS §

COUNTY OF DENTON §

THIS SECOND AMENDMENT TO CONTRACT 6862 ("Amendment") by and between the City of Denton, Texas ("City") and **WSP USA Inc.** Consultant"); to that certain contract executed on May 12, 2020, in the original not-to-exceed amount of $5,070,304 (the "Original Agreement"); amended on December 16, 2022 for a no cost change to the Schedule of Charges (collectively, the Original Agreement and the First Amendment are the "Agreement"); for services related to **DME CIP Program Management Services.**

WHEREAS, the City deems it necessary to further expand the term of services provided by Consultant to the City pursuant to the terms of the Agreement, and;

FURTHERMORE, the City deems it necessary to further expand the goods/services provided by Consultant to the City;

NOW THEREFORE, the City and Consultant (hereafter collectively referred to as the "Parties"), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. CONSULTANT is authorized to commence work under this contract upon execution of this AGREEMENT. CONSULTANT shall perform and complete its obligations herein in a prompt and continuous manner, so as to not delay the completion of the Project in accordance with the schedules as described in **Exhibit A**. The contract shall remain effective for a period which may reasonably be required for the completion of the Project, acceptance by an authorized representative of the OWNER, exhaustion of authorized funds, or termination as provided in this Agreement, whichever occurs first.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

Docusign Envelope ID: BE1B020C-0084-42FA-9B7D-B2820B49DDB4

IN WITNESS WHEREOF, the City and the Consultant, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date _____.

"CITY"

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

ATTEST:
INGRID REX, CITY SECRETARY

By: _____

"CONSULTANT"

WSP USA Inc.

By: Signed by: Sara Michaels 623DCCC7685F48B... SVP, Program Management
AUTHORIZED SIGNATURE, TITLE

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED as to financial and operational obligations and business terms.

Signed by: Antonio Puente, Jr. E3760944C2B54B5... Antonio Puente, Jr.
SIGNATURE PRINTED NAME

DME General Manager
TITLE

Electric
DEPARTMENT

Docusign Envelope ID: BE1B020C-0084-42FA-9B7D-B2820B49DDB4

Exhibit A

	Est Completion Date	Project Description
1	Feb. 2026	Hickory Substation
2	Feb. 2026	Industrial Substation TM Bypass
3	Feb. 2026	Brinker SS
4	Feb. 2026	Denton West - RDW
5	Fall 2026	Masch Branch Transformer Addition
6	Summer 2027	North Lakes SSVT
7	Summer 2027	Kings Row SSVT
8	Summer 2027	Underwood Substation
9	Summer 2027	DC Data center
10	Summer 2027	Jim Christal Transformer Addition
11	Summer 2027	Locust SSVT
12	Fall 2027	RD Wells SSVT
13	Spring 2028	Fort Worth Transformer Replacement
14	Summer 2028	Denton West - Brazos Tie-In

Docusign Envelope ID: BE1B020C-0084-42FA-9B7D-B2820B49DDB4

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.**

WSP USA Inc.

2 [X] **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 relations hip 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 [X] 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 [X] 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 [X] No

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

4 [X] **I have no Conflict of Interest to disclose.**

5 Signed by: Sara Michaels 623DGCC7685F49B...

Signature of vendor doing business with the governmental entity

1/8/2026
Date

Docusign Envelope ID: BE1B020C-0084-42FA-9B7D-B2820B49DDB4

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. 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

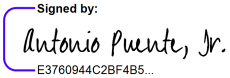
Envelope Id: BE1B020C-0084-42FA-9B7D-B2820B49DDB4
Status: Sent
Subject: Please DocuSign: City Council Contract 6862 - DME CIP Program Management Services, Extension
Source Envelope:
Document Pages: 6
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Christa Christian
901B Texas Street
Denton, TX 76209
Christa.Christian@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
12/15/2025 10:58:15 AM
Holder: Christa Christian
Christa.Christian@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Christa Christian christa.christian@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 12/15/2025 11:08:09 AM Viewed: 12/15/2025 11:08:19 AM Signed: 12/15/2025 11:09:00 AM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DS LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 12/15/2025 11:09:02 AM Viewed: 12/15/2025 12:31:28 PM Signed: 12/15/2025 12:31:28 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by: Marcella Lunn 4B070831B4AA438... Signature Adoption: Pre-selected Style Using IP Address: 2600:6c56:7f00:dc2:5084:64a2:ad66:c331	Sent: 12/15/2025 12:31:30 PM Viewed: 12/15/2025 1:46:20 PM Signed: 12/15/2025 1:48:35 PM
Sara Michaels sara.michaels@wsp.com SVP, Program Management Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/16/2025 12:15:58 PM ID: f38419f7-d51e-498a-b9c9-e2b29a10e65d	Signed by: Sara Michaels 623DCCC7685F49B... Signature Adoption: Pre-selected Style Using IP Address: 165.225.58.228	Sent: 12/15/2025 1:48:39 PM Resent: 12/16/2025 12:01:51 PM Resent: 12/31/2025 8:49:01 AM Resent: 1/8/2026 11:20:52 AM Viewed: 1/8/2026 5:40:33 PM Signed: 1/8/2026 5:43:30 PM

Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Denton Municipal Electric Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/8/2026 6:24:06 PM ID: deda79f1-8396-4bea-92ce-a408d0ebb63c	Signed by:  E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 2600:100c:b2be:fcde:1142:ae29:667d:587b Signed using mobile	Sent: 1/8/2026 5:43:33 PM Viewed: 1/8/2026 6:24:06 PM Signed: 1/8/2026 6:25:05 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: 1/8/2026 6:25:08 PM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingred Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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: 12/15/2025 11:09:03 AM

Carbon Copy Events	Status	Timestamp
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: 1/8/2026 6:25:08 PM Viewed: 1/9/2026 8:39:17 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Mark Zimmerer mark.zimmerer@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/8/2026 1:56:41 PM ID: 763029e7-d1af-4924-9879-bc8630a87479		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/15/2025 11:08:09 AM
Envelope Updated	Security Checked	12/16/2025 12:01:49 PM
Envelope Updated	Security Checked	12/16/2025 12:01:49 PM
Envelope Updated	Security Checked	12/16/2025 12:01:49 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract extension between the City of Denton and CJA Enterprises LLP through January 25, 2027, to continue the purchase of construction materials for the City of Denton Streets, Water, Wastewater, and various other departments; and declaring an effective date (IFB 7841 – extending a contract with CJA Enterprises LLP, to January 25, 2027). The Public Utilities Board recommends approval (6 - 0).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The proposed contract covers the supply of construction materials for various City departments involved in maintaining and reconstructing streets, sidewalks, drainage structures, utility ditch lines, landscape improvements, and restoration and sanding operations. Beneficial Reuse uses these materials to blend recycled organic matter with topsoil to produce a reusable resource.

The Dallas/Fort Worth area continues to see significant growth in the economy and highway construction. This has increased the demand for materials and labor, causing prices for asphalt, concrete, and other construction supplies to rise. Therefore, it is in the City's best interest to secure a fixed unit cost on an annual basis.

Extending this contract will allow the Streets and Water Department staff to continue supplying construction materials for the City of Denton.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On January 25, 2022, City Council approved the contract with CJA Enterprises LLP, in the combined not-to-exceed amount of $5,200,000 (Ordinance 22-138).

On February 9, 2026, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award a contract extension with CJA Enterprises LLP, to continue the purchase of construction materials for the City of Denton Streets, Water, Wastewater, and various other departments, to January 25, 2027.

PRINCIPAL PLACE OF BUSINESS

CJA Enterprises LLP
Denton, TX

SUSTAINABILITY MEASURES

Use recycled asphalt pavement (R.A.P.) material where appropriate to maintain the City's transportation system and help improve air quality. Beneficial Refuge uses a blend of recycled organic material and topsoil to create a reusable resource.

Currently, recycled asphalt pavement is used in the production of Hot Mix Asphalt. The material is also used to maintain the gravel roads within the City of Denton. This product also provides dust control and is less susceptible to weather.

ESTIMATED SCHEDULE OF PROJECT

This contract expires on January 25, 2027.

FISCAL INFORMATION

These products and services will be funded through departmental budgets on an as-needed basis. Requisitions will be entered on an as-needed basis. The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Original Ordinance and Contract
Exhibit 3: Ordinance and Amendment 1

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Chris Carroll, 940-349-7190.

Legal point of contact: Leah Bush at 940-349-8333.

ORDINANCE NO. 22-138

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CJA ENTERPRISES LLP, AS THE PRIMARY VENDOR, AND GREEN DREAM INTERNATIONAL LLC, AS THE SECONDARY VENDOR, FOR THE SUPPLY OF CONSTRUCTION MATERIALS FOR THE CITY OF DENTON STREETS, WATER, WASTEWATER, AND VARIOUS OTHER DEPARTMENTS; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 7841 – AWARDED TO CJA ENTERPRISES LLP – PRIMARY, AND GREEN DREAM INTERNATIONAL LLC - SECONDARY, FOR ONE (1) YEAR, WITH THE OPTION FOR THREE (3) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FOUR (4) YEAR NOT-TO-EXCEED AMOUNT OF $5,200,000.00).

WHEREAS, the City has solicited, received, and tabulated competitive bids for the purchase of necessary materials, equipment, supplies, or services in accordance with the procedures of state law and city ordinances; and

WHEREAS, the City Manager, or a designated employee, has reviewed and recommended that the herein described bids are the lowest responsible bids for the materials, equipment, supplies, or services as shown in the "Bid Proposals" submitted therefore; 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 following competitive bids for the materials, equipment, supplies, or services, as described in the "Bid Invitations", "Bid Proposals" or plans and specifications on file in the Office of the City's Purchasing Agent filed according to the bid number assigned hereto, are hereby accepted and approved as being the lowest responsible bids:

BID NUMBER	CONTRACTOR
7841	CJA Enterprises LLP
7841	Green Dream International LLC

SECTION 2. That the acceptance and approval of the above competitive bids shall not constitute a contract between the City and the person submitting the bid 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 Bid Invitations, Bid Proposals, and related documents.

SECTION 3. Should the City and the winning bidder(s) wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the bids, the City Manager, or their designated representative, is hereby authorized to execute a 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 Bid Proposal and related documents and to extend that contract as determined to be advantageous to the City of Denton.

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 Brian Beck and seconded by Jesse Davis. This ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	✓			
Vicki Byrd, District 1:	✓			
Brian Beck, District 2:	✓			
Jesse Davis, District 3:	✓			
Alison Maguire, District 4:	✓			
Deb Armintor, At Large Place 5:	✓			
Paul Meltzer, At Large Place 6:	✓			

PASSED AND APPROVED this the 25th day of January, 2022.

GERARD HUDSPETH, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____ Deputy City Secretary

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o, ou=City of Denton, email=marcella.lunn@cityofdenton.com, c=US
Date: 2022.01.04 09:25:03 -06'00'

DocuSign Envelope ID: 356BE01E-8470-4322-9987-051A5D2C0C90

Docusign City Council Transmittal Coversheet

IFB	7841
File Name	Supply of Construction Material
Purchasing Contact	Cori Power
City Council Target Date	JANUARY 25, 2022
Piggy Back Option	Yes
Contract Expiration	JANUARY 25, 2026
Ordinance	22-138

DS
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CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND CJA ENTERPRISES LLP
(Contract #7841)

THIS CONTRACT is made and entered into this date 01/25/2022, by and **CJA Enterprises LLP**, a Texas Limited Liability Partnership, whose address is 362 Crossroads Rd, Collinsville, TX 76233, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

SCOPE OF SERVICES

Contractor shall provide products in accordance with the City's IFB #7841 - Supply of Construction Material, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's IFB #7841 **(Exhibit "B" on file at the office of the Purchasing Agent**);
(c) City of Denton Standard Terms and Conditions **(Exhibit "C");**
(d) Certificate of Interested Parties Electronic Filing **(Exhibit "D");**
(e) Contractor's Proposal (**Exhibit "E"**);
(f) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "F")**

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

Prohibition on Contracts with Companies Boycotting Israel
Contractor acknowledges that in accordance with Chapter 2270 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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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.

Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization
Section 2252 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, Contractor***

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certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapter 2252, 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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

CONTRACTOR

BY: DocuSigned by: _____
1D3FA63DD6E8418...
AUTHORIZED SIGNATURE

Printed Name: Carla Peacock

Title: partner/owner

540-840-1960
PHONE NUMBER

astrideapp@msn.com
EMAIL ADDRESS

2021-834813
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: DocuSigned by: Sara Hensley
523BDB286B70423...
SARA HENSLEY, INTERIM CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: DocuSigned by: Rosa Rios
1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

DocuSigned by: ethan cox
A83AA619E731FDT...
SIGNATURE

ethan cox
PRINTED NAME

General Manager of Public Works
TITLE

Public Works
DEPARTMENT

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Exhibit A
Special Terms and Conditions

1. The Quantities

The quantities indicated on Exhibit E are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

2. Product Changes During Contract Term

The Contractor shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to purchasing@cityofdenton.com, with the above file number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the contractor's expense. Products that have been installed will be replaced at the contractor's expense.

3. Authorized Distributor

The Contractor shall be the manufacturer or authorized distributor of the proposed products. The distributor shall be authorized to sell to the City of Denton, and make available the manufacturer's representative as needed by the City.

4. Contract Terms

The contract term will be one (1) year, effective from date of award. The City and the Contractor shall have the option to renew this contract for an additional three (3) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Contractor's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

5. Price Escalation and De-escalation

On Contractor's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The Contractor should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

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Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

6. Total Contract Amount

CJA Enterprises LLP is awarded as the primary contractor for Section A – Bulk Utility Products Supply of Soil, Sand, Lime Aggregate and pricing shall be per Exhibit E attached. The cumulative contract for primary and secondary contractors for contract 7841 shall not exceed $5,200,000.

The primary contractor is expected to respond to the *initial contact** from The City within 4 hours during normal business hours. Normal business hours are Monday – Friday 7am- 4pm. If no response from primary contractor is received within 24 hours, the City has the right to call secondary contractor. Secondary contractor must also respond to *initial contact** within 4 hours. Calling upon a secondary contractor does not affect the contract with primary contractor.

**Initial Contact: The first phone call placed, or email sent from the City to the contractor.*

7. Delivery Lead Time

Contractor must provide a twenty-four (24) hour telephone number to receive messages from the City. The City will give a twelve (12) hour notice of intent to receive materials and attempt to give six (6) hour notice of cancellation.

*Response time*** for scheduled supply of construction materials is not to exceed 7 business days after the initial contact for standard requests. After the initial contact response, the supplier has three (3) business day to deliver materials to designated City location. If the Supplier can't meet the delivery schedule, then they must get written approval from the City department requesting the material.

If primary contractor is not able to meet delivery deadline, the City reserves the right to call secondary contractor. Calling upon a secondary contractor does not affect the contract with the primary vendor.

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***Response time: Time elapsed between initial contact from the City and the time contractor must be on-site working.*

8. Performance Liquidated Damages

The Contractor shall incur contractual payment losses, as initiated by the City for performance that falls short of specified performance standards as outlined below:

- Delivery beyond contracted lead times
- Performance below contracted levels (services only)

The Contractor shall be assessed a one (1%) percent fee each month when any one of the performance standards outlined above are not met in full. The Contractor shall be assessed a two (2%) percent profit fee each month when any two (2) or more performance standards outlined above are not met in full. At the end of each month, the City will review the monthly reports and determine the percentage of penalty to be assessed to the Contractor's monthly profit margin.

9. Supplemental Terms and Conditions

Authorized personnel shall have access to any Contractor's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples taken from regular shipments. If products tested fail to meet or exceed all conditions and requirements of the specifications, the cost of the sample and the cost of the testing shall be borne by the Contractor.

Payment will be made within 30 days after (1) applicable tests have been completed and materials are found to meet specifications or (2) the day on which the invoice for the materials was received.

All items must be F.O.B. delivered to the City of Denton Service Center or job site as directed at the time of the order, unless the City opts to pick up the materials.

A purchase order number should be referenced on all packing/delivery slips, shipping tickets, invoices, etc. Invoices and statements should be directed to:

CITY OF DENTON
ACCOUNTS PAYABLE
215 E. McKinney St.
Denton, Texas 76201

DocuSign Envelope ID: 356BE01E-8470-4322-9987-051A5D2C0C90

Exhibit C
City of Denton
Standard Purchase Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

10. **WORKFORCE**

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

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

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

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

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

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

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

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

12. **INVOICES**:

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

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13. **PAYMENT**:

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

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

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

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

i. delivery of defective or non-conforming deliverables by the Contractor;

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

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

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

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

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

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the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. **FINAL PAYMENT AND CLOSE-OUT**:
A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.
B. The making and acceptance of final payment will constitute:
i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. **RIGHT TO AUDIT**:
A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.
B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

18. **SUBCONTRACTORS**:
A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in

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writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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

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

19. **WARRANTY-PRICE**:

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

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

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

20. **WARRANTY – TITLE**: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

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

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above

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

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

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

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

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

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

30. **DELAYS**:
A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY**:
A. Definitions:

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

B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS,**

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

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

A. General Requirements:

i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

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

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

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viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage's indicated within the Contract.
xiv. The insurance coverage's specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

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

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

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

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

37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees

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

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

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

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

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

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

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percentage, brokerage or contingent fee.

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

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

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

45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed

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merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

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

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

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

49. **DISPUTE RESOLUTION**:

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

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of

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participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

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

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

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veterans Day
Thanksgiving
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

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

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

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**
The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State,

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

55. **EQUAL OPPORTUNITY**

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

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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Certificate".

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

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

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

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

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

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

63. **RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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

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

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

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

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

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Exhibit D
Certificate of Interested Parties Electronic Filing

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

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

The contractor shall:

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

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

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Exhibit E

Line #	Description	QTY	UOM	Unit
1	SECTION A- BULK UTILITY PRODUCTS SUPPLY OF SOIL, SAND, LIME AGGREGATE			
2	Top Soil Screened	7525	Cu. Yd	$21.56
2a	Top Soil Screened (Per Ton UOM Price)	9406.25	tons	$17.25
3	Field Sand - Backfill	1500	Cu. Yd	$12.81
3a	Field Sand - Backfill (Per Ton UOM Price)	1875	tons	$10.25
4	Screened Sand	16000	Cu. Yd	$12.81
4a	Screened Sand (Per Ton UOM Price)	20000	tons	$10.25
5	Pit Sand (Concrete)	1000	Tons	$23.50
6	Manufactured Sand for Concrete Mixture	2800	Tons	$17.45
7	Concrete Aggregate Class A, 1" - #4 Rock (Rewashed & Screened)	1000	Tons	$18.95
8	Concrete Aggregate 3/8" Down Rock	500	Tons	$17.95
9	1-3/4" + Down Flexible Base	1250	Tons	$16.70
10	1-1/2" + Down Flexible Base	5500	Tons	$16.45
11	5/8" + Down Flexible Base	5500	Tons	$16.70
12	Type A, Grade 1 Flexible Base	3000	Tons	$16.70
13	Crushed Stone #6-20 (for ice and snow control of city streets)	1500	Tons	$17.45
14	Limestone Screening	400	Tons	$16.95
15	1 1/2" Rock, Limestone (Washed & Screened)	200	Tons	$18.95
16	4" - 7 1/2" Gabion Limestone	100	Tons	$24.75
17	3/4" Rock, Limestone Utility Stone (Not Washed)	520	Tons	$18.95
18	8-12" Rip Rap Limestone	420	Tons	$30.00
19	12-18" Rip Rap Limestone	400	Tons	$30.00
20	24" Rip Rap Limestone	100	Tons	$45.50
21	30" Rip Rap Limestone	100	Tons	$45.50
22	36" Rip Rap Limestone	100	Tons	$48.00
23	Pea Gravel (Unwashed)	100	Tons	$18.50
24	Pea Gravel (Washed)	1300	Tons	$18.50
25	Select Fill	15250	Cu. Yd.	$12.56
26	R.A.P. (Asphalt Millings)	5000	Cu. Yd.	$22.81
26a	R.A.P. (Asphalt Millings) (Per Ton UOM Price)	6250	tons	$18.25
27	Decomposed Granite	300	Tons	$23.50
28	4-8" Colorado River Rock	80	Tons	$165.00
28a	There will be a fuel surcharge per load if no load available going north to pick up the rock		Per Load	$400.00
29	3-5" Bull Rock	25	Tons	$93.00

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Exhibit F

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 **Name of vendor who has a business relationship with local governmental entity.** CJA Enterprises LLP

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.**

none known

Name of Officer

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

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐ Yes ☐ No

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

none known

4 ☒ **I have no Conflict of Interest to disclose.**

5 DocuSigned by:

1D3FA62D7D6F8418...

Signature of vendor doing business with the governmental entity

1/2/2022

Date

DocuSign

Certificate Of Completion

Envelope Id: 356BE01E847043229987051A5D2C0C90
Status: Completed
Subject: Please DocuSign: City Council Contract 7841 - Supply of Construction Material - CJA Primary
Source Envelope:
Document Pages: 28
Signatures: 6
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Cori Power
901B Texas Street
Denton, TX 76209
cori.power@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
12/27/2021 4:02:30 PM
Holder: Cori Power
cori.power@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Cori Power cori.power@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	**Completed** Using IP Address: 198.49.140.104	Sent: 12/27/2021 4:10:44 PM Viewed: 12/27/2021 4:10:52 PM Signed: 12/28/2021 5:01:07 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DS LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 12/28/2021 5:01:09 PM Viewed: 12/29/2021 8:03:46 AM Signed: 12/29/2021 8:04:22 AM
Marcella Lunn marcella.lunn@cityofdenton.com Catherine Clifton, Interim City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DocuSigned by: Marcella Lunn 4B070831B4AA438... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 12/29/2021 8:04:25 AM Viewed: 12/29/2021 9:14:06 AM Signed: 12/29/2021 9:17:39 AM
Carla Peacock astrideapp@msn.com partner/owner Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 11/30/2017 11:48:59 AM ID: e044db71-9894-4519-8dcb-d1247604fedb	DocuSigned by: 1D3FA62DD6E8418... Signature Adoption: Drawn on Device Using IP Address: 67.44.192.87	Sent: 12/29/2021 9:17:41 AM Viewed: 12/30/2021 5:16:30 PM Signed: 1/2/2022 7:42:46 PM

Signer Events	Signature	Timestamp
ethan cox ethan.cox@cityofdenton.com General Manager of Public Works Security Level: Email, Account Authentication (None)	DocuSigned by: ethan cox A83AA619E7314D7... Signature Adoption: Pre-selected Style Using IP Address: 47.187.93.66	Sent: 1/2/2022 7:42:49 PM Viewed: 1/3/2022 8:17:22 AM Signed: 1/3/2022 8:17:39 AM
Electronic Record and Signature Disclosure: Accepted: 8/7/2018 4:24:18 PM ID: feebacc3-151e-47bb-af6d-be8889ffcb35		
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)	**Completed** Using IP Address: 198.49.140.104	Sent: 1/3/2022 8:17:41 AM Viewed: 1/26/2022 8:41:06 AM Signed: 1/26/2022 8:41:29 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Sara Hensley sara.hensley@cityofdenton.com Interim City Manager City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by: Sara Hensley 5236DB296270423... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/26/2022 8:41:32 AM Viewed: 1/26/2022 8:42:22 AM Signed: 1/26/2022 8:42:29 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Rosa Rios rosa.rios@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)	DocuSigned by: Rosa Rios 1C5CA8C5E175493... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 1/26/2022 8:42:33 AM Viewed: 1/26/2022 9:51:20 AM Signed: 1/26/2022 9:51:44 AM
Electronic Record and Signature Disclosure: Accepted: 1/26/2022 9:51:20 AM ID: ad345f20-af02-46da-8f8c-ff0afa488011		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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 Contract Administrator City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 12/28/2021 5:01:09 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Carbon Copy Events	Status	Timestamp
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: 1/3/2022 8:17:41 AM Viewed: 1/3/2022 9:01:52 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 1/26/2022 9:51:47 AM
Daniel Kremer Daniel.Kremer@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/23/2021 1:11:35 PM ID: 4bb60410-152d-4917-b877-ed2e9278d939	COPIED	Sent: 1/26/2022 9:51:48 AM
Tina Ek Tina.Ek@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/7/2022 8:54:17 AM ID: 6dc1f10e-d623-49fc-8804-8ca8b1569f82	COPIED	Sent: 1/26/2022 9:51:49 AM Viewed: 1/26/2022 10:09:23 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 1/26/2022 9:51:50 AM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/27/2021 4:10:44 PM
Certified Delivered	Security Checked	1/26/2022 9:51:20 AM
Signing Complete	Security Checked	1/26/2022 9:51:44 AM
Completed	Security Checked	1/26/2022 9:51:50 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT EXTENSION BETWEEN THE CITY OF DENTON AND CJA ENTERPRISES LLP THROUGH JANUARY 25, 2027, TO CONTINUE THE PURCHASE OF CONSTRUCTION MATERIALS FOR THE CITY OF DENTON STREETS, WATER, WASTEWATER, AND VARIOUS OTHER DEPARTMENTS; AND DECLARING AN EFFECTIVE DATE (IFB 7841 – EXTENDING A CONTRACT WITH CJA ENTERPRISES LLP, TO JANUARY 25, 2027).

WHEREAS, Ordinance 22-138 authorized a contract to CJA Enterprises LLP for the supply of construction materials for the City of Denton streets, water, wastewater, and various other departments, which is on file in the office of the Purchasing Agent; and

WHEREAS, the staff having recommended, and the City Manager having recommended to the City Council that an extension to the existing purchasing authority approved by Ordinance 22-138 be authorized between the City and CJA Enterprises LLP, to expire on January 25, 2027; and

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

WHEREAS, the City Council finds that the action taken herein is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The authority to receive services from CJA Enterprises LLP, authorized by Ordinance 22-138, is hereby extended under IFB 7841 to January 25, 2027.

SECTION 3. The City Council delegates the authority to the City Manager to take any actions that may be required or permitted to be performed by the City of Denton under IFB 7841 to the City Manager or their designee.

SECTION 4: 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

Docusign Envelope ID: A0D167B2-000D-41ED-8DF9-95983D900B19

Docusign City Council Transmittal Coversheet

IFB	7841
File Name	Supply of Construction Materials
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: A0D167B2-000D-41ED-8DF9-95983D900B19

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND **CJA ENTERPRISES LLP**

THIS FIRST AMENDMENT TO CONTRACT 7486 (this "Amendment") by and between the City of Denton, Texas ("City") and CJA Enterprises LLP ("Contractor") to that certain contract executed on January 25, 2022, in the original not-to-exceed amount of $5,200,000.00 (the "Agreement"); for services related to the the supply of construction material.

WHEREAS, Contractor has substantially completed he work called for in the Agreement, and the City deems it necessary to futher exand the services provided by Conractor to the City, and to provide an additional one (1) year term with this Amendment.

WHEREAS, this amendment incorporates any previously executed documents between the parties including but not limited to pricing adjustments.

WHEREAS, the City deems it necessary to further expand the goods/services provided by Contractor to the City; and

WHEREAS, the original not-to-exceed amount may not be increased by more than 25.0% as provided in Texas Local Government Code Sec. 252.048; and

NOW THEREFORE, the City and Contractor (hereafter collectively referred to as the "Parties"), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following First Amendment, which amends the following terms and conditions of the said Agreement, to wit:

> This Amendment modifies the Agreement amount to provide an additional one (1) year term for additional services and materials to be provided in accordance with the terms of the Agreement. The term of the Agreement is extended until **January 25, 2027.**

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the Contractor, have each executed this Amendment, by and through their respective duly authorized representatives and officers on this date_____.

Docusign Envelope ID: A0D167B2-000D-41ED-8DF9-95983D900B19

"CONTRACTOR"
CJA Enterprises LLP

By: DocuSigned by: owner/partner
1A3FA621DBE3428...
AUTHORIZED SIGNATURE, TITLE

"CITY"
CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

By: Signed by: Leah Bush
2A936B08B5D7485...

ATTEST:
INGRID REX, CITY SECRETARY

By: _____

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

Signed by: Stephen D Gay
SIGNATURE

Stephen D Gay
PRINTED NAME

General Manager
TITLE

Water Utilities and Street Operations
DEPARTMENT

Docusign Envelope ID: A0D167B2-000D-41ED-8DF9-95983D900B19

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.**

CJA Enterprises LLP

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.**

none known

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 relations hip 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:

1D3FA62DD6E8418...

Signature of vendor doing business with the governmental entity

1/12/2026

Date

Docusign Envelope ID: A0D167B2-000D-41ED-8DF9-95983D900B19

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. 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: A0D167B2-000D-41ED-8DF9-95983D900B19
Status: Sent
Subject: Please DocuSign: City Council Contract 7841 Supply of Construction Materials
Source Envelope:
Document Pages: 5
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Gabby Leeper
901B Texas Street
Denton, TX 76209
Gabby.Leeper@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
1/8/2026 11:20:16 AM
Holder: Gabby Leeper
Gabby.Leeper@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Gabby Leeper Gabby.Leeper@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	**Completed** Using IP Address: 198.49.140.10	Sent: 1/8/2026 11:27:44 AM Viewed: 1/8/2026 11:27:56 AM Signed: 1/8/2026 11:28:53 AM
Electronic Record and Signature Disclosure: Not Offered via Docusign		
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	Initial LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/8/2026 11:28:56 AM Viewed: 1/8/2026 1:29:28 PM Signed: 1/8/2026 1:29:37 PM
Electronic Record and Signature Disclosure: Not Offered via Docusign		
Leah Bush leah.bush@cityofdenton.com Security Level: Email, Account Authentication (None)	Signed by: Leah Bush 2A936B08B5D7485... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/8/2026 1:42:20 PM Viewed: 1/12/2026 1:54:05 PM Signed: 1/12/2026 2:28:02 PM
Electronic Record and Signature Disclosure: Accepted: 1/12/2026 1:54:05 PM ID: a4c5231c-84c4-4481-ae7a-6ee46e049fb5		
Carla Peacock astrideapp@msn.com partner/owner Security Level: Email, Account Authentication (None)	DocuSigned by: 1D3FA62DD6E8418... Signature Adoption: Drawn on Device Using IP Address: 64.31.221.109	Sent: 1/12/2026 2:28:06 PM Viewed: 1/12/2026 5:01:04 PM Signed: 1/12/2026 5:02:52 PM
Electronic Record and Signature Disclosure: Accepted: 11/30/2017 11:48:59 AM ID: e044db71-9894-4519-8dcb-d1247604fedb		

Signer Events	Signature	Timestamp
Stephen D Gay Stephen.Gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/12/2026 9:07:00 PM ID: cfae4d06-966e-4d27-8b01-1ea751e44507	Signed by:  FEB48BB9726E4A9... Signature Adoption: Pre-selected Style Using IP Address: 47.184.124.142 Signed using mobile	Sent: 1/12/2026 5:02:54 PM Viewed: 1/12/2026 9:07:00 PM Signed: 1/12/2026 9:08:03 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: 1/12/2026 9:08:06 PM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingred Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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: 1/8/2026 11:28:56 AM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 1/8/2026 1:42:23 PM

Carbon Copy Events	Status	Timestamp
Electronic Record and Signature Disclosure: Not Offered via Docusign		
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: 1/12/2026 9:08:05 PM Viewed: 1/13/2026 10:26:29 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/8/2026 11:27:44 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Freese and Nichols, Inc., for planning services for the Water Utilities Financial Planning and Support Project for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8213-012 – Professional Services Agreement for planning services awarded to Freese and Nichols, Inc., in the not-to-exceed amount of $1,049,620.00). The Public Utilities Board recommends approval (6 - 0).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

Water Utilities staff requests approval of a Professional Services Agreement with Freese and Nichols, Inc. (FNI) for the Water Utilities Financial Planning and Support Project. The scope of work includes two primary components. First, FNI will provide comprehensive funding planning assistance for programs administered by the Texas Water Development Board (TWDB) and the Water Infrastructure Finance and Innovation Act (WIFIA), administered by the United States Environmental Protection Agency (EPA). This support will span the full funding lifecycle for selected projects and includes preparation of critical pre-application documents, such as the Project Information Form (PIF) for State Revolving Fund (SRF) programs and the abridged application for the State Water Implementation Fund for Texas (SWIFT). FNI will also assist with the development of council resolutions, post-closing compliance, and ongoing reporting requirements. This includes guidance on specialized certifications, such as American and/or U.S. Iron and Steel provisions, and support with monthly or quarterly outlay reports.

The second component involves developing a project health reporting dashboard. FNI will design and implement custom, interactive dashboards in Power BI using available financial data. These dashboards will provide both high-level executive summaries and detailed drill-down capabilities to enhance financial oversight, compliance, and decision-making.

The agreement also includes a Special Services task, which extends the same funding assistance to support future potential funding applications. These services are crucial to maximizing funding success and enhancing financial transparency across Water Utilities' capital projects.

By leveraging alternative funding sources, the City can reduce the financial burden on ratepayers while continuing to invest in infrastructure that ensures safe, reliable, and sustainable water and wastewater services for the community.

Water Utilities initiated the selection process for an engineering firm for planning services for the Water Utilities Financial Planning and Support Project . The utility used its approved pre-qualified list of firms specializing in Water & Wastewater Planning, Master Plans, and Permitting. The seven pre-qualified firms for the project were: Kimley-Horn and Associates, Inc., Plummer, Freese and Nichols, Inc., Jacobs Engineering Group Inc., RPS Infrastructure, Inc., Carollo Engineers, Inc, and HDR Engineering, Inc. Water Utilities staff carefully evaluate candidates for engineering services. With a strong track record in planning, securing, and managing alternative funding, the staff recommends awarding a Professional Services Agreement to Freese and Nichols, Inc., in the amount not to exceed $1,049,620. Their expertise will support the successful and efficient delivery of critical water utility projects.

Request for Qualifications for an engineering services list for various water and wastewater utilities projects for the Water Utilities Department was solicited using the City's formal solicitation process. City Council approved a pre-qualified list of professional service firms on March 5, 2024 (Ordinance 24-390).

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On March 5, 2024, the City Council approved RFQ 8213 for a prequalified list of firms for engineering services for various water and wastewater utilities projects for the Water Utilities Department (Ordinance 24-390).

On February 9, 2026, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award a contract with Freese and Nichols, Inc., for planning services for the Water Utilities Financial Planning and Support Project for the Water Utilities Department, in a not-to-exceed amount of $1,049,620.

PRINCIPAL PLACE OF BUSINESS

Freese and Nichols, Inc.
Denton, TX

SUSTAINABILITY MEASURES

The City of Denton is seeking funding support for planning assistance to pursue alternative funding sources for critical water utility infrastructure. These improvements are crucial for maintaining safe and reliable water and wastewater services for the community. Accessing alternative funding helps reduce the financial burden on ratepayers while supporting long-term system resilience and environmental compliance.

ESTIMATED SCHEDULE OF PROJECT

The duration of the Water Utilities Funding Planning Support Project is anticipated to last through 2030.

FISCAL INFORMATION

These services will be funded from a combination of the accounts listed below.

Wastewater	640538541.1360.30200	$549,620
Water	630579517.1360.30200	$500,000

Requisition #173246 has been entered into the Purchasing software system in the amount of $1,049,620. The budgeted amount for this item is $1,049,620.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: David Brown, 940-349-8030.

Legal point of contact: Leah Bush at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC., FOR PLANNING SERVICES FOR THE WATER UTILITIES FINANCIAL PLANNING AND SUPPORT PROJECT FOR THE WATER UTILITIES DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8213-012 – PROFESSIONAL SERVICES AGREEMENT FOR PLANNING SERVICES AWARDED TO FREESE AND NICHOLS, INC., IN THE NOT-TO-EXCEED AMOUNT OF $1,049,620.00).

WHEREAS, on March 5, 2024, the City Council approved a pre-qualified engineer list for the Water and Wastewater Utilities Department (Ordinance 24-390), and the professional services provider (the "Provider") mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, this procurement was undertaken as part of the City's governmental function [Water and sewer service]; and

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Freese and Nichols, Inc., for planning services for the Water Utilities Financial Planning and Support Project for the Water Utilities Department, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. 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 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

PSA	8213-012
File Name	Water Utilities Funding Planning Support Project
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: EA492384-072A-40CC-8DFC-D9F9794D51CC

CITY OF DENTON, TEXAS

STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Freese and Nichols, Inc. with its corporate office at 101 South Locust Street, Suite 202, Denton, TX 76201 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Water Utilities Funding Planning Support Project (the "PROJECT").

SECTION 1
Scope of Services

A. The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.

B. Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

SECTION 2
Compensation and Term of Agreement

A. The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed $1,049,620 in the manner and in accordance with the fee schedule as set forth in Attachment A. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.

B. Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

SECTION 3
Terms of Payment

Payments to the ENGINEER will be made as follows:

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A. Invoice and Payment

(1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment A to reasonably substantiate the invoices.

(2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.

(3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.

(4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

(5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

SECTION 4
Obligations of the Engineer

A. General

The ENGINEER will serve as the CITY's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary services incidental thereto.

B. Standard of Care

The ENGINEER shall perform its services:

(1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and

(2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

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C. Subsurface Investigations

(1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.

(2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

D. Preparation of Engineering Drawings

The ENGINEER will provide to the CITY the original drawings of all plans in ink on reproducible mylar sheets and electronic files in .pdf format, or as otherwise approved by CITY, which shall become the property of the CITY. CITY may use such drawings in any manner it desires; provided, however, that the ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

E. Engineer's Personnel at Construction Site

(1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

(2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the

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PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ENGINEER shall inform the CITY.

(3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

F. Opinions of Probable Cost, Financial Considerations, and Schedules

(1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Attachment A.

(2) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.

G. Construction Progress Payments

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

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H. Record Drawings

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

I. Right to Audit

(1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.

(2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.

(3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

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J. INSURANCE

(1) ENGINEER'S INSURANCE

a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $1,000,000.00 per each occurrence with a $2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.

   i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the CITY. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.

   ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.

b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of "any auto", including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.

   i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.

c. Workers' Compensation – ENGINEER shall maintain workers compensation and employers liability insurance and, if necessary,

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commercial umbrella liability insurance with a limit of not less than $100,000.00 each accident for bodily injury by accident or $100,000.00 each employee for bodily injury by disease, with $500,000.00 policy limit.

i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.

d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of $1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

(2) GENERAL INSURANCE REQUIREMENTS

a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.

b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.

c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.

d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.

e. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.

f. Insurers for all policies must be authorized to do business in the State of

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Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.

g. Any deductible or self insured retention in excess of $25,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at it sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.

h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.

i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.

j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.

k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.

l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.

m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

K. Independent Consultant

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.

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L. Disclosure

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

M. Asbestos or Hazardous Substances

(1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.

(2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

N. Permitting Authorities - Design Changes

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

O. Schedule

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Attachment A to this AGREEMENT.

P. Equal Opportunity

(1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.

(2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and

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ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

SECTION 5
Obligations of the City

A. City-Furnished Data

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

B. Access to Facilities and Property

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

C. Advertisements, Permits, and Access

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

D. Timely Review

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Attachment A.

E. Prompt Notice

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

F. Asbestos or Hazardous Substances Release.

(1) CITY acknowledges ENGINEER will perform part of the work at CITY's

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facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.

(2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

G. Contractor Indemnification and Claims

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

H. Contractor Claims and Third-Party Beneficiaries

(1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:

> "Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."

(2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.

(3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.

(4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

I. CITY's Insurance

(1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.

(2) The CITY may secure Builders Risk/Installation insurance at the replacement

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cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

J. Litigation Assistance

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

K. Changes

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

SECTION 6
General Legal Provisions

A. Authorization to Proceed

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

B. Reuse of Project Documents

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

C. Force Majeure

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER’s performance of its obligations hereunder.

D. Termination

(1) This AGREEMENT may be terminated:

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a. by the City for its convenience upon 30 days' written notice to ENGINEER.

b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.

(2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:

a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;

b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;

c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.

(3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

E. Suspension, Delay, or Interruption to Work

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

F. Indemnification

IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.

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G. Assignment

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

H. Jurisdiction

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

I. Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

J. Observe and Comply

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES**.

K. Immigration Nationality Act

ENGINEER 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, ENGINEER shall provide CITY with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this AGREEMENT. ENGINEER 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 ENGINEER employee who is not legally eligible to perform such services. **ENGINEER SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY ENGINEER, ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** CITY, upon written notice to ENGINEER, shall have the

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right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

L. Prohibition on Contracts with Companies Boycotting Israel

Engineer 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, Engineer certifies that Engineer's signature provides written verification to the City that Engineer: (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.

M. 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, Engineer certifies that Engineer's signature provides written verification to the City that Engineer, 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.

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Engineer 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, Engineer certifies that Engineer's signature provides written verification to the City that Engineer: (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.

O. Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

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Engineer 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, Engineer certifies that Engineer's signature provides written verification to the City that Engineer: (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.

P. 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 Engineer 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.

Q. Prohibition Against Personal Interest in Contracts

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 23-1165 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

R. Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract

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unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

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

The contractor shall:

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

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

S. Agreement Documents

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. This AGREEMENT may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of this AGREEMENT:

Attachment A - Scope of Services, Compensation and Project Schedule

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

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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Duly executed by each party's designated representative to be effective on _____.

BY:
CITY OF DENTON, TEXAS

_____
Sara Hensley, City Manager

BY:
ENGINEER
Freese and Nichols, Inc.

Signed by:
250287AE3C534C4...
Principal/Vice President

Authorized Agent, Title

Full Name: James Naylor

_____
TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED as to financial and operational obligations and business terms.

Signed by:
Stephen D Gay
FEB48BB9728E4A9...
Signature

General Manager
Title

Water Utilities and Street Operations
Department

Date Signed: _____

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Signed by:
Leah Bush
2A936B08B5D7485...

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ATTACHMENT A

FREESE AND NICHOLS

Innovative approaches
Practical results
Outstanding service

801 Cherry Street, Suite 2800 □ Fort Worth, Texas 76102 □ 917-735-7300 □ fax 817-735-7491 www.freese.com

October 3, 2025

Sohil Manjiyani
Engineer
City of Denton, Department of Water Utilities
901-A Texas Street
Denton, Texas 76209

Re: Texas Water Development Board Funding Assistance and Project Health Reporting

Dear Mr. Manjiyani,

Freese and Nichols, Inc. (FNI) is pleased to submit this proposal for providing professional services to the City of Denton Water Utilities (CLIENT) for water-related funding projects and project health reporting.

PROJECT UNDERSTANDING
It is our understanding of the scope of work under this proposal is to assist the CLIENT with multiple applications and funding for the planning, design, or construction or any combination of these for water-related capital improvement projects. We also understand the CLIENT desires a dynamic dashboard for project health tracking and reporting.

SCOPE OF SERVICES
Freese and Nichols, Inc. (FNI) scope of services is included on the provided Attachment SC in connection with the project.

PROJECT SCHEDULE
FNI will commence work upon receipt and execution of contract or task order and agrees to complete the services per the schedule defined in Attachment SC or agreed upon for each task order as requested.

COMPENSATION
FNI proposes to provide services as described herein for the not-to-exceed fee of One Million Forty Nine Thousand, Six Hundred and Twenty Dollars ($1,049,620.00). We appreciate this opportunity to submit this proposal. If additional information or clarification is desired, please do not hesitate to contact us. If you agree with the services described above and wish for us to proceed with this assignment, please initiate contract proceedings.

Sincerely,
FREESE AND NICHOLS, INC.

James Naylor, P.E.
Principal/Vice-President

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ATTACHMENT A

SCOPE OF SERVICES

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

TASK A – TEXAS WATER DEVELOPMENT BOARD FUNDING ASSISTANCE

Texas Water Development Board Funding Assistance (Typical, can be replicated on multiple funding projects and multiple TWDB funding programs), assumes FNI is the CLIENT'S Engineer of Record. If FNI is NOT the CLIENT'S Engineer-of-Record (EOR), FNI will coordinate with the CLIENT'S EOR as needed for engineering/environmental related information.

FNI will assist the CLIENT with the TWDB application and funding process for the planning, design and construction of a chosen project. The funding requested can be for project planning, design, or construction or any combination of these.

EPA Funding Assistance (typical, can be replicated on multiple funding projects and multiple funding programs), assumes FNI is the CLIENT'S EOR . If FNI is NOT the CLIENT'S EOR, FNI will coordinate with the CLIENT'S Engineer of Record as needed for engineering/environmental related information.

FNI will assist the CLIENT with the EPA application and funding process for the planning, design and construction of a chosen project. The funding requested can be for project planning, design, or construction or any combination of these.

1. **Pre-application** (as applicable by program)
    a. FNI will conduct a Project Kickoff Meeting with CLIENT: Purpose of this meeting is to establish project communications protocols, confirm project goals and objectives, review scope, schedule, and budget, and coordinate initial project tasks.
    b. FNI will prepare the Projection Information Form (PIF) for SRF-related funding (Clean Water State Revolving Fund (CWSRF) and/or Drinking Water State Revolving Fund (DWSRF)) main programs, Lead Service Line Replacement program, and/or Emerging Contaminants programs in either/both the CWSRF and DWSRF. FNI will prepare the Abridged Application for funding from the State Water Implementation Fund for Texas (SWIFT) and/or Flood Infrastructure Fund (FIF).
    c. FNI will participate in a required pre-application conference with the CLIENT and funding agency if required by the funding program or requested by the CLIENT.
    d. FNI will coordinate with the CLIENT's Financial Advisor and Bond Counsel for fiscal/legal budget amounts as needed for PIFs and/or Abridged Applications or other pre-application activities/requirements.
    e. It is FNI's understanding the CLIENT has submitted a Letter of Interest to the EPA for funding assistance from the WIFIA program. FNI will assist the CLIENT as requested with coordination on pre-application activities.

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2. **Application**
    a. FNI will assist the CLIENT with the Council Application Resolutions and associated documents or advise the CLIENT and its bond counsel as appropriate.
    b. FNI will prepare the application, and all required additional documents, including coordination with the CLIENT.
    c. FNI will coordinate with the CLIENT'S Financial Advisor and Bond Counsel on the Financial and Legal sections of the application and on the financial sections of application budget forms.
    d. FNI will respond to agency comments and questions during the application administrative and application technical reviews.
    e. FNI will prepare for and attend a TWDB Board meeting or similar EPA meetings associated with each funding application and up to two (2) Council Meetings to support the agencies' funding process.
    f. FNI will coordinate with the CLIENT and the CLIENT'S Financial Advisor and Bond Counsel as needed to provide input and guidance on the closing process and required documentation. If FNI is NOT the CLIENT'S Engineer of Record, FNI will coordinate with the CLIENT'S Engineer of Record to provide input and guidance on engineering-related closing process and required documentation.
3. **Post-Closing (assumes agency funding award)**
    a. FNI will provide input and guidance on the funding the post-closing phases of planning, acquisition, design, bidding, and construction.
    b. If required by the funding program, FNI will assist with the quarterly/monthly Outlay reports and loan/grant draw requests, as appropriate, and submittal of expense invoicing, etc., if requested by the CLIENT.
    c. FNI will provide input and guidance on any funding program-specific certifications such as American and/or U.S. Iron and Steel, Davis-Bacon Act, and Build-America, Buy America provisions.
    d. FNI will provide input and guidance on construction change orders and the contract closing process with regards to agency requirements.
    e. FNI will coordinate with the EPA and the TWDB when a project is co-funded by programs administered by the two agencies.
    f. FNI assumes Subtasks A.4.a. through A.4.d. will continue from the closing of the funding through project close-out. The Pecan Creek WWTP project is understood to be the longest in duration and expected to last through 2030.

<u>TASK B – PROJECT HEALTH REPORTING</u>

FNI will provide professional services to help the CLIENT gain a clearer understanding of their projects through custom dashboards built in Power BI. These dashboards will consolidate project data, present timely and accurate information, and support actionable insights. They will offer both high-level executive summaries and detailed project drilldowns to enhance financial compliance and decision-making on project health and funding.

1. **Preliminary Phase**
    a. Data Request and Inventory
        i. The CLIENT will provide FNI with data exports from JD Edwards and any other internal systems they wish to incorporate into the dashboard prior to FNI beginning on a dashboard prototype.

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b. Exploratory Data Analysis & Quality Assessment
    i. Evaluate the completeness, accuracy, and structure of the data. FNI is not responsible for the accuracy of the data that is being provided; however, FNI will inform the CLIENT if anything is questionable upon our reviews of the data.
    ii. Identify missing values, duplicates, or inconsistencies in the data based on the dashboard scope definitions.
    iii. Check for necessary data transformations (e.g., formatting, projections, units).
    iv. Document findings in a data assessment report.
c. Identify Gaps & Request Additional Data (If Needed)
    i. Communicate data limitations or quality concerns to stakeholders.
    ii. Determine whether additional data sets are required or if data cleaning is necessary.
    iii. Discuss potential workarounds if certain data elements are unavailable.
    iv. Define what can and cannot be done based on available data.

2. **Dashboard Design Phase**
    a. Dashboard Design Meeting
        i. Gather input on key performance indicators (KPIs) and reporting needs.
        ii. Identify user roles (viewers, editors, administrators).
        iii. Discuss desired interactivity, filtering options, and accessibility requirements.
        iv. Present previously developed dashboards and document feedback.
        v. Define expectations for aesthetics and branding guidelines.
        vi. Discuss expectations for build out (in FNI environment, then transferred to the CLIENT's environment; directly in the CLIENT environment with use of laptop, etc.)
        vii. Discuss expectations for integration. This scope was developed assuming manual or python script facilitated integration. Direct integrations will require collaboration with the CLIENT's IT Department and are outside this scope of services.
    b. Develop Dashboard Plan & Workflow
        i. Outline the dashboard objectives and scopes.
        ii. Document key functionalities and user interactions.
        iii. Define data update frequency (live, daily, weekly, etc.).
        iv. Plan for scalability and future enhancements.
    c. Communicate Agreed-Upon Functionalities
        i. Develop wireframes or rough sketches of the dashboard layouts.
        ii. Confirm the inclusion of all requested functionalities.
        iii. Identify potential challenges in implementation.
        iv. Develop custom reporting functionality.
        v. Develop custom mapping functionality.
    d. Build Dashboard Prototype (Beta Version)
        i. Set up data connections and configure visual elements.
        ii. Implement filtering, drill-downs, and interactive components.
        iii. Test loading times, responsiveness, and performance.
        iv. Ensure data security and proper user permissions.
        v. Conduct internal testing for bugs or inconsistencies.
    e. Second Design Review & Refinements

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i. Present the Dashboard prototypes for feedback.
ii. Conduct usability testing with real users.
iii. Identify areas for improvement.
iv. Adjust visualizations, layouts, and interactivity as needed.
v. Determine if additional iterations are required before deployment.

f. Final Review, Testing & Deployment Preparation
i. Allocate buffer time for last-minute changes.
ii. Conduct final quality assurance (QA) testing.
iii. Document user instructions and create a help guide if needed.
iv. Train stakeholders on dashboard use and data updates.
v. Deploy the dashboard and monitor performance post-launch.
vi. Provide up to eight hours of additional technical support

Deliverables

a. Data Assessment Report of original findings
b. Prototype (Beta version) (up to three)
c. Final Power BI dashboards (up to three)
d. User instructions
e. Up to eight hours of additional technical support

TASK C – PROJECT MANAGEMENT, COORDINATION, QUALITY CONTROL

1. Monthly billing activities
2. Monthly status reports
3. Periodic project meetings
4. Project/program/deliverable QA/QC reviews

ARTICLE II

SPECIAL SERVICES: FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project upon request of the CLIENT.

TASK A - ADDITIONAL TEXAS WATER DEVELOPMENT BOARD FUNDING ASSISTANCE

1. FNI will provide the CLIENT with the services outlined in Basic Services Items 1. through 4. above for the FIRST additional funding application.
2. FNI will provide the CLIENT with the services outlined in Basic Services Items 1. through 4. above for the SECOND additional funding application.

ARTICLE III

ADDITIONAL SERVICES: Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. FNI will not perform Additional Services without prior written authorization from the CLIENT.

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ARTICLE IV

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the Basic Services in accordance with the following schedule:

TASK A: 2,190 calendar days from Notice to Proceed.
(Timeframe corresponds to the Pecan Creek WWTP project lifespan. Additional Basic Services under this contract will be completed via future task orders as authorized by the CLIENT.)

TASK B: 180 days from Notice to Proceed

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Client or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

ARTICLE V

RESPONSIBILITIES OF CLIENT: Client shall perform the following in a timely manner so as not to delay the services of FNI:

A. Designate in writing a person to act as Client's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define Client's policies and decisions with respect to FNI's services for the Project.

B. Provide all criteria and full information as to Client's requirements for the Project.

C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.

E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.

F. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

G. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client may require or FNI may reasonably request with regard to legal issues pertaining to the Project.

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H. Give prompt written notice to FNI whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services.

I. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.

J. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

Client's Designated Representative:
Sohil Manjiyani
Project Manager/Engineer
sohil.manjiyani@cityofdenton.com
(940) 349-8917

FNI's Designated Representative:
Franzi Davis
Project Manager
franzi.davis@freese.com
(817) 735-7541

FNI's Accounting Representative:
Raquel Longoria
Operations Analyst
raquel.longoria@freese.com
(817) 735-7256

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ATTACHMENT A

ARTICLE VII

COMPENSATION: The following is the breakdown of the proposed not-to-exceed fee in accordance with the Attachment CO.

TASK	SUB TASK FEE	TASK FEE
BASIC SERVICES		
Task A – Texas Water Development Board Funding Assistance		$284,130
1. Pre-Application	$12,010	
2. Application	$69,950	
3. Post Closing	$202,170	
Task B – Project Health Reporting		$82,860
1. Preliminary Phase	$37,880	
2. Dashboard Design Phase	$44,980	
Task D – Project Management / Coordination / Quality Control		$71,990
1. PM, Meetings, QC	$71,990	
Total Basic Services		**$438,980**
SPECIAL SERVICES		
Task A – Texas Water Development Board Funding Assistance		$610,640
1. Special Services Task 1. First Additional Funding Application	$305,320	
2. Special Services Task 2. Second Additional Funding Application	$305,320	
Total Special Services		**$610,640**
TOTAL FEE		
TOTAL FEE		**$1,049,620**

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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.**

Freese and Nichols Inc.

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.**

N/A

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 relations hip 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 Signed by:

250287AF3C534C4...

Signature of vendor doing business with the governmental entity

1/8/2026

Date

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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. 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.

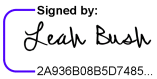
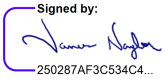
Certificate Of Completion

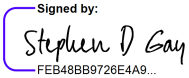
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Source Envelope:
Document Pages: 30
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Erica Garcia
901B Texas Street
Denton, TX 76209
erica.garcia@cityofdenton.com
IP Address: 198.49.140.10

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Status: Original
12/29/2025 2:44:42 PM
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erica.garcia@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Erica Garcia erica.garcia@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 12/29/2025 2:47:36 PM Viewed: 12/29/2025 2:47:46 PM Signed: 12/29/2025 2:49:53 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 12/29/2025 2:49:55 PM Viewed: 12/29/2025 4:18:35 PM Signed: 12/29/2025 4:19:00 PM
Leah Bush leah.bush@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/31/2025 11:44:49 AM ID: 7b7ce27d-2b15-4ce4-852c-8900f8d3d967	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 12/29/2025 4:25:43 PM Viewed: 12/31/2025 11:44:49 AM Signed: 12/31/2025 12:56:09 PM
James Naylor james.naylor@freese.com Principal/Vice President Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/31/2025 12:56:49 PM ID: 490cbb8c-e78f-416c-aded-f906eadd0be2	 Signature Adoption: Uploaded Signature Image Using IP Address: 2a09:bac3:c430:96::f:388 Signed using mobile	Sent: 12/31/2025 12:56:12 PM Resent: 1/5/2026 7:52:32 PM Viewed: 1/8/2026 9:50:52 AM Signed: 1/8/2026 9:01:27 PM

Signer Events	Signature	Timestamp
Stephen D Gay stephen.gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/9/2026 9:17:17 AM ID: f7f33bb1-47e1-46af-9cf8-e3f30a6a834e	Signed by:  FEB48BB9726E4A9... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/8/2026 9:01:31 PM Viewed: 1/9/2026 9:17:17 AM Signed: 1/9/2026 9:18:48 AM
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: 1/9/2026 9:18:51 AM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingred Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

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Editor Delivery Events	Status	Timestamp

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: 12/29/2025 2:49:56 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 12/29/2025 4:25:46 PM

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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: 1/9/2026 9:18:51 AM Viewed: 1/9/2026 10:43:17 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
David Brown David.Brown@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 10/2/2025 10:49:22 AM ID: ae29c722-3235-4146-98a2-e5c5378d30ca		

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Notary Events	Signature	Timestamp

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Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive proposals under IFB 8903 for Heat Exchanger Replacement for the Pecan Creek Water Reclamation Plant for the Water Utilities Department; and providing an effective date (IFB 8903). The Public Utilities Board recommends approval (6 - 0).

INFORMATION/BACKGROUND

The Pecan Creek Water Reclamation Plant (PCWRP), Denton's sole wastewater treatment facility, has been in operation for more than 60 years. A recent evaluation identified the need to repair or replace several major components, including a critical piece of equipment: the tubed heat exchanger. This system maintains the temperatures required for efficient sludge processing, which reduces waste volume and prepares byproducts for the City's Beneficial Reuse Program. Ensuring reliable sludge handling is essential for maintaining regulatory compliance and supporting ongoing plant operations.

Staff solicited proposals for the replacement of the PCWRP tubed heat exchanger. Only one (1) proposal was received, and the submitted cost was approximately 40% higher than the City's estimate. Staff recommends rejecting the proposal and will reevaluate the project scope and explore alternative delivery methods to ensure a more competitive and cost-effective outcome.

In accordance with the Local Government Code 252.043, the City Council may reject any and all bids.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On February 9, 2026, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Staff recommends rejection of all proposals for IFB 8903 Heat Exchanger Replacement for the Pecan Creek Water Reclamation Plant for the Water Utilities Department.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Ordinance

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Katherine Koch, 940-349-8480.

Legal point of contact: Leah Bush at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, REJECTING ANY AND ALL COMPETITIVE PROPOSALS UNDER IFB 8903 FOR HEAT EXCHANGER REPLACEMENT FOR THE PECAN CREEK WATER RECLAMATION PLANT FOR THE WATER UTILITIES DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE (IFB 8903).

WHEREAS, the City has solicited, received, and tabulated competitive proposals to evaluate Heat Exchanger Replacement for the Pecan Creek Water Reclamation Plant (IFB 8903) in accordance with the procedures of state laws and the City's ordinances; and

WHEREAS, the City staff recommends, and the City Council has determined, that it is in the best interest of the City that the herein described proposals should be rejected; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. All competitive proposals, as described in the "Request for Proposal", "Bid Proposals", or plans and specifications on file in the Office of the City's Purchasing Agent filed according to the bid number assigned herein (IFB 8903 – Heat Exchanger Replacement for the Pecan Creek Water Reclamation Plant) are hereby rejected.

SECTION 2. The City Manager, or their designee, is hereby authorized to execute all necessary documents for the rejection of said proposals. The City Manager, or their designee, is hereby authorized, in their discretion, to re-advertise to receive competitive bids, or proceed otherwise, to procure goods and services described in IFB 8903.

SECTION 3. 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 the IFB 8903 to reject said proposals to the City Manager, or their designee.

SECTION 4. 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Gage & Cade Construction, LLC, for the Public Disposal Facility Repairs for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8915 – awarded to Gage & Cade Construction, LLC, in the not-to-exceed amount of $579,952.00). The Public Utilities Board recommends approval (6 - 0).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The Solid Waste and Recycling Department operates the Public Disposal Facility (PDF), located at the City of Denton Landfill. The PDF includes a recyclables collection and storage area, as well as a designated citizen drop-off area. This facility operates under the City's Texas Commission on Environmental Quality (TCEQ) Municipal Solid Waste Permit #1590(B).

The purpose of the PDF is to provide a safe, controlled environment by separating public customers from commercial haulers and the active landfill working face. This separation reduces the risks associated with interactions between the public and landfill operations, including waste collection vehicles, heavy equipment, and construction machinery.

The construction of the Public Disposal Facility Repairs has a total estimated cost of $579,952. This estimate includes a $552,335 total base bid amount and a contingency of $27,617. A contingency allowance, if any, is for the sole use of the City and will be subject to written authorization by the City's Project Manager and Program Manager.

Competitive Sealed Proposals were sent to 1,351 prospective suppliers. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Two (2) proposals were received, references were checked, and proposals were evaluated based upon published criteria, including past performance, key personnel, schedule, safety, and price. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, Gage & Cade Construction, LLC was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	911, 912, 913, & 914
Notifications sent for Solicitation sent in IonWave:	1,351
Number of Suppliers that viewed Solicitation in IonWave:	37
HUB-Historically Underutilized Business Invitations sent out:	164
SBE-Small Business Enterprise Invitations sent out:	424
Responses from Solicitation:	2

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On February 9, 2026, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award a contract with Gage & Cade Construction, LLC, for the Public Disposal Facility Repairs for the Solid Waste and Recycling Department, in a not-to-exceed amount of $579,952.

PRINCIPAL PLACE OF BUSINESS

Gage & Cade Construction, LLC
Bertram, TX

ESTIMATED SCHEDULE OF PROJECT

Delivery of the items will occur within 120 days after receipt of order.

FISCAL INFORMATION

These items/services will be funded from Solid Waste & Recycling capital project account 665246595. Requisition # 173813 has been entered into the Purchasing software system in the amount of $552,335. The budgeted amount for this item is $579,952.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Pricing Evaluation
Exhibit 3: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Arturo Garcia, 940-349-8021.

Legal point of contact: Leah Bush at 940-349-8333.

Exhibit 2
CSP 8915 - Pricing Evaluation for Public Disposal Facility Repairs

	Gage & Cade Construction, LLC	Hammett Excavation, Inc
Respondent's Business Name:		
Principal Place of Business (City and State):	**Bertram, TX**	Dodd City, TX
Total Bid	**$552,335.00**	$798,864.93

Contingency:	**$27,617.00**
Total Contract NTE Amount:	**$579,952.00**

Evaluation		
Scoring Criteria	**Gage & Cade Construction, LLC**	Hammett Excavation, Inc
Offeror's Key Personnel - 10%	**6.67**	7.33
Quality, Reputation, and Ability to Complete Similar Projects on Schedule and Within Budget - 10%	**5.33**	5.33
Detailed Schedule and Written Plan - 25%	**16.67**	11.67
Offeror's Safety Record - 5%	**3.67**	3.00
Price, Total Cost of Ownership - 50%	**50.00**	34.57
Total Score:	**82.34**	61.90

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH GAGE & CADE CONSTRUCTION, LLC, FOR THE PUBLIC DISPOSAL FACILITY REPAIRS FOR THE SOLID WASTE AND RECYCLING DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8915 – AWARDED TO GAGE & CADE CONSTRUCTION, LLC, IN THE NOT-TO-EXCEED AMOUNT OF $579,952.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the Public Disposal Facility Repairs for the Solid Waste and Recycling 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 competitive sealed 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 competitive sealed proposal for materials, equipment, supplies, or services shown in the "Competitive Sealed 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 competitive sealed proposal.

CSP NUMBER	CONTRACTOR	AMOUNT
8915	Gage & Cade Construction, LLC	$579,952.00

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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

FILE	8915
File Name	PUBLIC DISPOSAL FACILITY REPAIRS
Purchasing Contact	Crystal Westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

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STIPULATED SUM VERTICAL CONSTRUCTION CONTRACT

BY AND BETWEEN

CITY OF DENTON

AND

GAGE & CADE CONSTRUCTION, LLC

Docusign Envelope ID: 36C11A82-F5AD-4ABD-96EA-846F34496760

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STIPULATED SUM VERTICAL CONSTRUCTION CONTRACT

This Stipulated Sum Vertical Construction Contract (this "Agreement") made as of the ____ day of _____ in the year 20____ (the "Effective Date") between City of Denton, a Texas home rule municipal corporation located at 215 East McKinney Street Denton, Texas 76201 (the "Owner" or "City") and Gage & Cade Construction, LLC at 1107 County Road 264, Bertram, TX 78605 (the "Contractor") for the following Project:

CSP #8915 PUBLIC DISPOSAL FACILITY REPAIRS

The Owner and Contractor agree as follows:

Article 1. THE CONTRACT DOCUMENTS

Section 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in the above table of contents, documents issued as part of the solicitation for the Project, this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. In the event any provision contained in this Agreement conflicts with any provision contained in the Contract Documents, the more stringent provision for the Contractor, as interpreted by the Owner, shall govern.

Section 1.2 If, and to the extent of, any inconsistency, ambiguity, discrepancy or error in the Contract Documents (referred to collectively in this Section 1.2 as discrepancy), the Contractor shall immediately seek clarification from Biggs & Mathews Environmental, Inc. (the "Design Professional" or "Architect" or "Engineer" as reference may be made in the Contract Documents) and notify the Owner and Contractor that clarification has been requested. In the event that the Design Professional fails to clarify such discrepancy, within a reasonable time under the circumstances, the Contractor shall proceed with the Work without the clarification based on written permission from the Owner, and give precedence to the Contract Documents in the following descending order of priority:

a. Modifications issued after execution of the Owner-Contractor Agreement, including all exhibits not specifically referenced in this Section 1.2;
b. the Owner-Contractor Agreement;

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c. Addenda issued prior to the execution of the Owner-Contractor Agreement, with the Addenda bearing the latest date taking precedence;
d. the General Conditions of the Contract for Construction;
e. Exhibit “B” - Drawings and Specifications;

Article 2. THE WORK OF THIS CONTRACT

Section 2.1 The Contractor shall in a good workmanlike manner, fully execute the Work described in, and reasonably inferable by the Contractor as necessary to provide the results intended by fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others: and the Contractor at its sole cost, risk, and expense shall construct, equip, provide purchase, pay for, and furnish all of the Work in accordance with such Contract Documents. and governmental codes and regulations as they apply to performance of the Work.

Section 2.2 An Index of Drawings and Specifications which have been furnished to the Contractor as of the date of this Agreement is set forth in Exhibit “B” – Drawings and Specifications.

Section 2.3 The Contractor shall not be entitled to any adjustments in the Contract Sum or the Contract Time as a result of any action, or failure to act, in connection with any work or other services performed by the Contractor, or any entity affiliated with the Contractor, for portions of the Project other than the Work, such as, without limitation, other projects for this Owner or nearby the Project site, whether such work or other services are performed under contract with the Owner or an independent third party.

Section 2.4 The Contractor shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements unless such modifications are accepted by the Owner in a Change Order or Construction Change Directive. The Contractor shall not be entitled to receive any additional fees as a result of any modification requests or recommendations submitted by the Contractor.

Section 2.5 The Contractor shall furnish only skilled and properly trained staff for the performance of the Work. The key members of the Contractor's staff shall be persons agreed upon with the Owner and Contractor and identified in Exhibit "C" – Key Personnel, which is attached hereto and incorporated herein for all purposes.

a. Such key members of the Contractor's staff shall not be changed without the written consent of the Owner and Contractor, unless such person becomes unable to perform any required duties due to death, disability or termination of employment with the

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Contractor. If a key member is no longer capable of performing in the capacity described in Exhibit "C" – Key Personnel, the Owner, Design Professional, and the Contractor shall agree on a mutually acceptable substitute.

b. During the performance of the Work, the Contractor shall keep a competent superintendent at the Project site, who is fully authorized to act on behalf of the Contractor. Notice from the Owner, Contractor or the Design Professional to such superintendent, in connection with defective Work, instructions for performance of the Work or any and all other issues shall be considered notice of such issues to the Contractor.

Article 3. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Section 3.1 The construction of the Work to be performed under this Contract shall be commenced within three (3) calendar days after receipt of a building permit and Owner's Notice to Proceed.

Issuance of a Notice to Proceed for construction of the Work is subject to Owners acceptance of the Contractor's proposed Construction Management Plan, and receipt of a building permit.

The Contractor shall notify the Owner in writing, with confirmation of receipt, not less than three (3) business days before commencing the Work on the Project site to permit timely filing of mortgages, mechanics' liens, and other security interests.

Section 3.2 The Contract Time shall be measured from the date of Notice to Proceed.

Section 3.3 Substantial Completion

a. Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute the Work and shall achieve Substantial Completion of the entire Work by 90 days.
b. If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, shall be as specified in Section 8.6 of Exhibit A - General Conditions for the Contract for Construction.

Section 3.4 Final Completion

a. Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute the Work and shall achieve final completion of the entire Work by 120 days.

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b. If the Contractor fails to achieve final completion as provided in this Section 3.3, liquidated damages, shall be as specified in Section 8.6 of Exhibit A - General Conditions for the Contract for Construction.

Article 4. CONTRACT SUM

Section 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be five hundred fifty-two thousand three hundred thirty-five Dollars ($552,335.00), subject to additions and deductions as provided in the Contract Documents. At the sole option of the City, five (5) percent contingency in the amount of twenty-seven thousand six hundred seventeen Dollars ($27,617.00) may be used for a total not-to-exceed amount of five hundred seventy-nine thousand nine hundred fifty-two Dollars ($579,952.00).

Section 4.2 Alternates

a. Alternates, if any, included in the Contract Sum:

   See Exhibit "D" – Alternates-none

b. Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Provided, however, that the Contractor shall furnish the Owner with no less than fourteen (14) days prior written notice of the date upon which any of the alternatives set forth in Exhibit "D" – Alternates, must be accepted by the Owner in order for the Contractor to perform the Work covered by such alternates for the price(s) set forth therein; and without any adjustment to a Contractual Milestone date, the Contractor's Construction Schedule or the Contract Time. Upon acceptance, the Owner shall issue a Modification to this Agreement.

   See Exhibit "D" – Alternates-none

Section 4.3 Allowances, if any, included in the Contract Sum:

See Exhibit "E" – Allowances-none

Section 4.4 Unit prices, if any are set forth in Exhibit "F" – Unit Costs, and such unit prices are considered complete and include all materials, equipment, labor, delivery, installation, overhead, and profit; and any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

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See Exhibit "F" – Unit Costs

Section 4.5 Liquidated damages, if any:
See Exhibit A - General Conditions for the Contract for Construction

Section 4.6 Other:

Section 4.7 By executing this Agreement and furnishing the Owner with both Exhibit "E" – Allowances and Exhibit "G" – Initial Schedule of Values, the Contractor represents and warrants that the Contract Documents, materials, and information furnished by the Contractor as of the date of this Agreement, and the ongoing discussions and meetings between the Contractor and the Owner and Design Professional have described the scope, construction requirements and design intent for the Work in detail sufficient to enable the Contractor to firmly establish the Contract Sum and the Contract Time. The Contractor shall not be permitted to claim any adjustment in either the Contract Sum or Contract Time prior to Notice to Proceed in connections with the completion of the Work except as described in the Contract Documents.

Article 5. PAYMENTS

Section 5.1 Progress Payments

a. Based upon Applications for Payment including all supporting documentation required by the Owner and submitted to the Design Professional and Owner by the Contractor; its review by the Design Professional and Owner; and Certificates for Payment issued by the Design Professional and Certificates for Payment issued by the Design Professional, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.
b. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
c. Provided that a certifiable Application for Payment is approved by the Design Professional not later than the «twenty-fifth (25th) » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « thirtieth (30th) » day of the « following » month. If a certifiable Application for Payment is received by the Design Professional after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « thirty » (« 30 ») calendar days after the Design Professional approves the Application for Payment.
d. Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor and approved in advance by the Owner and Design Professional in accordance with the Contract Documents and the Construction Management Plan. The schedule of values shall allocate the entire Contract Sum among

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the various portions of the Work and be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner and Design Professional may require. This schedule of values, unless objected to by the Owner or Design Professional, shall be used as a basis for reviewing the Contractor's Applications for Payment.

e. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

f. In accordance with Exhibit A - General Conditions for the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

   i. The amount of each progress payment shall first include:

      .1 That portion of the Contract Sum properly allocable to completed Work;

      .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

      .3 That portion of Construction Change Directives that the Design Professional determines, in the Design Professional's professional judgment, to be reasonably justified.

   ii. The amount of each progress payment shall then be reduced by:

      .1 The aggregate of any amounts previously paid by the Owner;

      .2 The amount, if any, for Work that remains uncorrected and for which the Contractor or Design Professional has previously withheld or nullified a Certificate for Payment as provided in Article 9 of Exhibit A - General Conditions for the Contract for Construction;

      .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

      .4 For Work performed or defects discovered since the last payment application, any amount for which the Design Professional may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of Exhibit A - General Conditions for the Contract for Construction; and

      .5 Retainage withheld pursuant to Section 5.1.g.

      .6

g. Retainage

   i. For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

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« Five Percent (5.0%) »

h. Omitted.

i. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

j. Each Application for Payment shall, without limitation, conform with the requirements of Exhibit A - General Conditions for the Contract for Construction, as amended.

k. In taking action on the Contractor's Applications for Payment, the Owner and Design Professional shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Owner or Design Professional have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with this Section 5.1.k or other supporting data; that the Owner or Design Professional have made exhaustive or continuous on-site inspections; or that the Owner or Design Professional have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

l. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site, and even with such approval the Contractor shall follow the procedures in the Contract Documents for such payments.

m. In addition to other required items, the final Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Texas all in a form acceptable to the Owner:

.1 A current sworn statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contract has entered into subcontracts; the amount of each such subcontract; the amount requested for any Subcontractor or material supplier in the Application for Payment; and the amount to be paid to the Contractor from such final payment;

.2 A current, duly executed waiver of mechanics' and material suppliers' liens from the Contractor conditional upon establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment;

.3 A current Subcontractor's lien waiver for the current period, conditional only on payment from the Contractor, and duly executed, acknowledged sworn statement showing all Sub-subcontractors and material suppliers with whom the

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Subcontractor has entered into sub-subcontracts, the amount of each such sub-subcontract, the amount requested for any Sub-subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Sub-subcontractor from such final payment to the Subcontractor;

.4 A current, duly executed unconditional final waiver of mechanics' and material suppliers' liens from the Contractor and all Subcontractors and, when deemed appropriate by the Owner and Design Professional, from material suppliers and Sub-subcontractors establishing payment or satisfaction of payments of all amounts requested by the Contractor on behalf of such entities or persons in any previous Applications for Payment;

.5 A final certificate of occupancy issued by the appropriate governmental body in which the project is located;

.6 All maintenance and operating manuals;

.7 Digitally marked, fully accessible electronic files (not "plot files" or "PDFs") of both field record drawings and specifications reflecting "as-built" conditions;

.8 Digitally marked, accurately dimensioned, and fully accessible electronic files (not "plot files" or "PDFs") of drawings reflecting the location of any concealed utilities, mechanical or electrical systems, and components;

.9 any special guarantees or warranties required by the Contract Documents;

.10 assignments of all guarantees and warranties from subcontractors, vendors, suppliers, or manufacturers;

.11 a list of the primary contact names, email addresses, physical addresses, and telephone numbers of all Subcontractors and any other persons providing guarantees and warranties;

.12 all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner, or the Design Professional; and

.13 If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

Section 5.2 Final Payment

a. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of Exhibit A - General Conditions for the Contract for Construction, and to satisfy other requirements, if any, which necessarily survive beyond final payment; and

.2 a final Certificate for Payment has been issued by the Design Professional; and.

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.3 the Contractor has provided, and the Owner has accepted as correct, all the information and documents required under Section 5.1.m above; and

.4 a complete release of all claims arising out of, related to or connected with Contractor's performance of the respective Phase under this Agreement, and any claims of Subcontractors, subject to any claims reserved in accordance with the terms of the General Conditions and an affidavit that so far as Contractor has knowledge or information, the release includes and covers all materials and services over which Contractor has control for which a claim could be filed, subject to any claims reserved in accordance with the terms of the General Conditions.

b. The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Design Professional's final Certificate for Payment and the Contractor has provided Owner with all required documentation.

Section 5.3 Interest

Payments are due and payable within thirty (30) days of the date the Owner receives the Construction Manager's approvable invoice, unless a different date for payment is provided under this Agreement. Amounts unpaid shall bear interest at the legal rate allowed by Texas Government Code Ch. 2251.

Article 6. DISPUTE RESOLUTION

Section 6.1 Initial Decision Maker

The Owner will serve as the Initial Decision Maker pursuant to Article 15 of Exhibit A - General Conditions for the Contract for Construction.

Section 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation or other alternative dispute resolution method as mutually agreed by the parties ("ADR") pursuant to Article 15 of Exhibit A - General Conditions for the Contract for Construction, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

Article 7. TERMINATION OR SUSPENSION

Section 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of Exhibit A - General Conditions for the Contract for Construction, as amended.

If the Contract is terminated for the Owner's convenience in accordance with Article 14 of Exhibit A - General Conditions for the Contract for Construction, then the Owner shall pay the

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Contractor a compensation calculated in the manner as specified in Section 14.4.c of Exhibit A - General Conditions for the Contract for Construction, as amended.

Section 7.2 The Work may be suspended by the Owner as provided in Article 14 of Exhibit A - General Conditions for the Contract for Construction, as amended.

Section 7.3 In the event of such termination by the Owner, the amount to be paid to the Contractor shall not exceed the amount the Contractor would have been entitled to receive under Article 5 above.

Section 7.4 In no event shall the Contractor be entitled to receive "Lost Opportunity Costs", defined as unabsorbed overhead costs or unrealized profit on this Work, future work for this Owner, other owner(s), other work, foregone opportunities for the Contractor, or other costs not directly and verifiably associated with services actually performed or Work successfully completed under this Agreement.

Article 8. MISCELLANEOUS PROVISIONS

Section 8.1 All references in this Agreement to Exhibit A, shall mean the Exhibit A - General Conditions for the Contract for Construction, as modified and amended by the parties hereto. Where reference is made in this Agreement to a provision of another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

Section 8.2 The Owner's representative:

City of Denton
Arturo Garcia
Project Manager
901B Texas Street
Denton, Texas 76209
(940) 349-8021
arturo.garcia@cityofdenton.com

Section 8.3 The Contractor's representative:
Gage & Cade Construction, LLC
Jason Reeves
1107 County Road 264
Bertram, TX 8605
(512)379-8176
jason@gageandcadeconstruction.com

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Section 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

Section 8.5 Insurance and Bonds

a. The Owner and the Contractor shall purchase and maintain insurance as set forth in Exhibit A - General Conditions for the Contract for Construction, Insurance and Bonds, and elsewhere in the Contract Documents.

Section 8.6 « Not Used. »

Section 8.7 Other Conditions and Services:

a. The Contractor represents and warrants the following to the Owner (in addition to any other representation and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and final completion of the Work:

.1 The Contractor is financially solvent, capable of obtaining adequate insurance, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;

.2 The Contractor is able to furnish the physical infrastructure, tools, materials, supplies, equipment and supervision, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 The Contractor is authorized to do business in the City of Denton, and the State of Texas and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the Project;

.4 The Contractor's execution of this Agreement and performance thereof is within the Contractor's duly-authorized powers;

.5 The Contractor's duly-authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated its observations with the requirements of the Contract Documents;

.6 The Contractor possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of this size, complexity and nature of this particular Project and will perform the Work with the care, skill and diligence of such a contractor;

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.7 The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contactor by law with respect to the Contractor's duties, obligations, and performance hereunder; and

.8 The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the proper, timely and diligent prosecution of the Work.

b. In the event any provision contained in this Agreement conflicts with any provision contained in the Contract Documents, the more stringent provision for the Contractor, as interpreted by the Owner, shall govern.

c. Some or all of the Owner's duties, approvals and actions required under this Agreement may be provided by third parties by mutual agreement of the Owner and such third parties. When notified in writing of the specific duties and responsibilities of such third party, the Contractor will recognize the actions and approvals of the third party as sufficient to fulfill the Owner's responsibilities under this Agreement.

d. The Contractor shall provide sufficient supporting documentation in form and with a level of detail wholly acceptable to the Owner and Contractor to substantiate any Application for Payment, request for Change to the Contract Sum or Contract Time, and all contract Allowances provided within the Contractor's Contract Sum for this scope of work. Failure to timely provide all supporting documentation, in and of itself, may result in rejection of the Application for Payment or requested change to the Contract Sum or Contract Time, or payment for work charged to the Allowance(s).

e. Proof of purchase and warehouse insurance naming the Owner, Contractor and Design Professional as additional insureds, together with inspection rights for the Owner, Contractor and Design Professional is to be provided for any billed materials by the Contractor for the work not physically stored at the Project site.

f. Time limits set out in or under this Agreement are solely for the protection and benefit of the Owner and create no third-party beneficiary rights in any other party.

g. Notices. All legal notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:
Arturo Garcia
Project Manager
City of Denton
901B Texas Street
Denton, Texas 76201
arturo.garcia@cityofdenton.com

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City of Denton
ATTN: Contract 8915; Purchasing Manager
901B Texas Street
Denton, Texas 76209
purchasing@cityofdenton.com

And with a copy to City Attorney's point of contact:

City Attorney
City of Denton
215 East McKinney St.
Denton, TX 76201
legal@cityofdenton.com

If to Contractor:
Gage & Cade Construction, LLC
Jason Reeves
1107 County Road 264
Bertram, TX 8605
(512)379-8176
jason@gageandcadeconstruction.com

If to Design Professional:
Biggs & Mathews Environmental, Inc.
Gregory Adams
1700 Robert Road, STE 100
Mansfield, TX 76063
(817)563-1144
gadams@biggsandmathews.com

h. All Exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.
i. The numbering and captions of the sections are set forth only for convenience and reference and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
j. The parties agree that they will execute any further instrument or instruments, and that they will perform any act or acts, which are or may become necessary to effectuate any of the terms or provisions of this Agreement.

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k. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Owner or Contractor.
l. This Agreement has been created jointly and ambiguity cannot be construed against either party.
m. This Agreement is and shall be subject to those provisions required of political subdivisions by the laws of the State of Texas. The Contractor understands that the Owner is a Texas home rule municipality and that the project is subject to applicable provisions of Texas law including bid requirements, bonding, and final settlement provisions.
n. Contractor understands that certain information, including this Agreement, are public records available for public inspection and copying under the Texas Open Records Act., Texas Government Code Ch. 552, as amended, and other applicable laws.
o. The Owner represents that there are sufficient funds available to undertake this Project.
p. No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the governmental or sovereign immunities, rights, benefits, or protections of the Owner.
q. Contractor warrants that the products, processes, techniques and methodologies provided by Contractor shall not infringe upon the copyright, patent or other proprietary rights of others.
r. Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement. Contractor warrants that to the best of Contractor's knowledge, there exists no actual or potential conflict of interest, and no financial or substantial interest as may be prohibited by Texas law, the Charter, or Code of Ethics of the City of Denton between Contractor and Owner.
s. Contractor shall comply with the disclosure and reporting requirements in Local Government Code Chapters 171 and 176, and Texas Government Code Sec. 2252.908. Under Sec. 2252.908, if City Council approval is required to award this Agreement or if this Agreement has a value of at least $1,000,000, the City may not enter into the Agreement unless the Contractor submits a disclosure of interested parties to the City at the time the executed Agreement is presented to the City. The disclosure must be made on the form prescribed by the Texas Ethics Commission and the City is required to submit a copy of the disclosure statement to the Texas Ethics Commission not later than the 30th day after the disclosure is received by the City.
t. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.
u. Contractor understands and agrees that TIME IS OF THE ESSENCE.

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v. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto. Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

w. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

x. COMPLIANCE WITH CERTAIN STATE LAW

.1 Prohibition on Contracts with Companies Boycotting Israel. Contractor 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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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.

.2 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Contractor 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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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.

.3 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations. Contractor 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

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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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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.

.4 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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, 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.

.5 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.

.6 Pursuant to Chapter 2258, Texas Government Code, all contractors and any Subcontractor involved in the construction of a public work project shall pay not less than the prevailing rates as per diem wages in the locality at the time of construction to all laborers, workmen and mechanics employed by them in the execution of this contract. Contractor shall assure that these requirements are met for the Project and shall insure that every contract or subcontract relating to the Work requires, on behalf of Owner, that the prevailing wage rates be paid.

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.7 The Contractor shall be provided an applicable Department of Labor Wage Rate Determination for use on the Project required by Chapter 2258.022, Texas Government Code. In the event the Owner does not provide this Labor Wage Rate Determination, the Contractor shall request it in writing in a timely manner, so as not to delay the Construction Manager's initial subcontractor procurement process during preconstruction. The Construction Manager shall, if requested by the Owner, assist the Owner in conducting a survey of the wages paid, by labor class, on projects of a similar type in a similar location.

Article 9. ENUMERATION OF CONTRACT DOCUMENTS

Section 9.1 This Agreement is comprised of the following documents:

.1 Stipulated Sum Vertical Construction Contract

.2 Exhibit "A" – General Conditions of the Contract for Construction

.3 Exhibit "B" – Drawings and Specifications (On File with Purchasing Manager)

.4 Addenda, if any:

See Exhibit "B" – Drawings and Specifications (On File with Purchasing Manager)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.5 Other Exhibits:

Exhibit "C" – Key Personnel
Exhibit "D" – Alternates -none
Exhibit "E" – Allowances -none
Exhibit "F" – Unit Costs
Exhibit "G" – Initial Schedule of Values-none
Exhibit "H" – Contractor's Construction Schedule
Exhibit "I" – Escrow Agreement-none
Exhibit "J" – Conflict of Interest Questionnaire
Exhibit "K" – Proposal Form
Exhibit "L" – Prevailing Wage Rates
Exhibit "Y" – Contractor's Insurance Certificate(s) and Bonds (To be Completed after Contract Award)

.6 Other documents, if any, listed below:

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« »

This Agreement entered into as of the day and year first written above.

CONTRACTOR:
GAGE & CADE CONTRUCTION, LLC

DocuSigned by:
BY: Jason Reeves
A619B99E2C2448D...

JASON REEVES
TITLE Senior Vice President

CITY:
CITY OF DENTON, TEXAS

BY: _____

SARA HENSLEY
CITY MANAGER

THIS AGREEMENT HAS BEEN

BOTH REVIEWED AND APPROVED

as to financial and operational obligations and business terms.

Signed by:
Brenda Haney
C3C63BE563154A1...

Brenda Haney
SIGNATURE PRINTED NAME

Director
TITLE

Solid Waste & Recycling
DEPARTMENT

ATTEST:

INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:

MACK REINWAND, CITY ATTORNEY

Signed by:
BY: Leah Bush
2A936B08B5D7485...

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Section 00 72 00
Exhibit A – General Conditions
for the following PROJECT:
Public Disposal Facility Repairs

THE OWNER:

City of Denton
215 East McKinney Street
Denton, Texas 76201

THE DESIGN PROFESSIONAL:

Biggs & Mathews Environmental, Inc.
1700 Robert Road, Suite 100
Mansfield, Texas 76063

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Article 1. GENERAL PROVISIONS

Section 1.1 Basic Definitions

a. The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Proposal Documents, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Design Professional. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

b. The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Design Professional or the Design Professional's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Design Professional or the Design Professional's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Design Professional shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Professional's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party. The terms "Agreement" and "Contract" shall be used interchangeably to have the same meaning as defined in this Section 1.1.b.

c. The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, supplies, skill, supervision, transportation, support services, facilities and other resources necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the Work identified by the Contract Documents. The Work may constitute the whole or a part of the Project.

d. The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

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e. The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

f. The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

g. 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 the Design Professional's consultants under their respective professional services agreements. Design Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, the Project Manual and other similar materials.

h. Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions.

i. The Indemnitees

The Owner, which includes the Mayor, members of the City Council, employees, agents, assigns, and other city officers, the Owner's consultants, the Design Professional, Design Professional's consultants, and the agents and employees of any of them shall hereafter be known as the "Indemnitees".

j. Construction Management Plan

The Construction Management Plan is prepared by the Contractor for its use in managing the Work and is not a Contract Document. The Construction Management Plan must include, at a minimum and without limitation, the following separate deliverables, which are subject to review and approval by the Design Professional and Owner:

i. Safety and Logistics Plan;
ii. Contractor's Construction Schedule;
iii. Cost Management Plan, Control Estimate and Schedule of Values;
iv. Quality Management, Commissioning and Turnover Plan; and
v. Information Management System.

k. As-Built Documents

The As-Built Documents are the Drawings, Specifications, and addenda thereto that may be updated by the Contractor to accurately reflect the actual Work in place, including without limitation, the incorporation of Change Orders, responses to the Contractor's requests for information, Design Professional's supplemental instructions, field modifications, and other similar changes made to the Work during construction. The As-Built documents shall conform to the format and compatibility requirements of Section 3.10.1.i.

l. Work Breakdown Structure

The project's Work Breakdown Structure ("WBS") is a deliverable-oriented, hierarchical organization of the Project components to be executed by the Owner, and its accompanying numbering system. The WBS will be mutually agreed upon by the Owner and Design Professional and used by the Contractor.

m. Equal to (or Approved Equal)

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Products by manufacturers and information about those products other than those products specified in the Contract Documents which the Contractor may submit for substitution as equal to those products specified in the Contract Documents; which may be incorporated in the Work after using the process specified in the Contract Documents for review and acceptance by the Design Professional and acceptance of same by the Owner.

n. Underground Facilities
All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

o. Force Majeure
An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

p. Knowledge
The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the Work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the Work and in accordance with the highest standards in the construction profession.

q. Proposal
The offer or proposal of an Offeror submitted on the prescribed form setting forth the prices for the Work to be performed.

r. Offeror
The individual or entity that submits a Proposal directly to City.

s. Proposal Documents
The Proposal Requirements and the proposed Contract Documents including all addenda.

t. Proposal Requirements
The Advertisement or Request for Proposal, Invitation to Offerors, Instructions to Offerors, Offeror's Bond or other Proposal security, the Proposal Form, and the Proposal with any attachments.

u. Notice of Award
A written notice given by City to the Successful Offeror stating that upon timely compliance by the Successful Offeror with the conditions precedent listed in such notice, City will sign and deliver the Agreement.

v. Calendar Day

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A day consisting of 24 hours measures from midnight to the next midnight. A “day” or “Day” unless otherwise defined shall mean a Calendar Day.

w. Business Day
A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.

x. Notice to Proceed
A written instrument from the Owner to the Contractor requiring the Contractor to proceed with performance of activities, including, but not limited to development of submittals, ordering of materials, and any other services (the “Preconstruction Services”) required to prepare for and expedite the construction of the Work as required by the Contract Documents; and complete the Work (the “Construction Services”).

Section 1.2 Correlation and Intent of the Contract Documents

a. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Where a conflict occurs between or within standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence and coordination of the Contract Documents are as follows:

.1 Any addenda and modifications to the Drawings and Specifications take precedence over any earlier Contract Documents.

.2 Should there be a conflict within the Specifications, or within the Drawings, or between the Drawings and Specification, the Design Professional shall decide which stipulation will provide the best installation and its decision shall be final.

.3 The Drawing and Specifications are intended to coordinate with each other. Anything shown on the Drawings but not mentioned in the Specification or vice-versa, or anything not expressly set forth in either, but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both without any extra charge.

.4 The Drawings, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the Contractor, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. Each Contractor, Subcontractor, and Sub-subcontractor shall properly coordinate its work with that of the Owner and all Separate Contractors. It is not within the scope of the Drawings to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of each Contractor to plan, coordinate, and install its work in such a manner so as to conform to the structure. Any conflict within the Drawings shall be referred to the Design Professional for disposition prior to the installation of any affected work.

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.5 Figured dimensions contained in the Contract Documents shall be accurately followed, even though they differ from scaled measurements. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Design Professional as to the dimensions to be used. Larger scale Drawings shall have preference over smaller scale drawings, but discrepancies shall be referred to the Design Professional for interpretation.

.6 Underground Facilities

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions:

City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

reviewing and checking all information and data;

verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and

the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

Not Shown or Indicated: If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith, identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.

If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 7.

Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

.7 Reliance by Contractor on Technical Data:

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Contractor is provided certain technical data with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or

any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

i. The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

b. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

c. Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

Section 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents that are a part of this Contract.

Section 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

Section 1.5 Ownership and Use of Design Documents

a. Submittal or distribution of the Design Documents or any portion thereof to meet official laws, statutes, ordinances and regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

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b. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Design Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Design Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Design Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

Section 1.6 Notice

a. Except as otherwise provided in Section 1.6.b, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement. In the event notice is provided by mail, it shall be sent certified return receipt requested.
b. Notice of Claims as provided in Section 15.1.c shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

Section 1.7 Digital Data Use and Transmission

a. The parties shall agree upon protocols governing the transmission and use of Design Documents or any other information or documentation in digital form. The parties will establish the protocols for the development, use, transmission, and exchange of digital data in writing, as mutually agreed.
b. The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner, without limitation, all electronic and hard copies of any Project-related materials, records, notices, memoranda, recordings, drawings, specifications, mock-ups and any other documents furnished by the Owner or the Design Professional to the Contractor.

Section 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without written agreement to protocols governing the use of, and reliance on, the information contained in the model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

Section 1.9 The representations and warranties contained in the Contract Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

Article 2. OWNER

Section 2.1 General

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a. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.a, the Design Professional does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

b. The Owner shall furnish the following information to a person, including the Design Professional or Contractor, who makes a request for information under Texas Government Code Chapter 2253, related to a payment or performance bond: (1) a certified copy of a payment bond and any attachment to the bond; (2) the public work contract for which the bond was given; and (3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.

c. The Owner may obtain independent review(s) of the Design Professional's Design Documents, or of any document or other materials submitted by the Contractor, by a separate architect, engineer, contractor, cost estimator or any other consultant they deem necessary and put under contract to or cause to be employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Design Professional and Contractor shall cooperate with such Owner's other consultants fully and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the Owner to obtain an independent review or imply that the Owner is in any way assuming responsibility for the work of the Design Professional and Contractor.

Section 2.2 Evidence of the Owner's Financial Arrangements

a. Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

b. Following commencement of the Work and within ten (10) business days of written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.b, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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c. After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.
d. Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information. Notwithstanding the above, all Agreements with the Owner shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.

Section 2.3 Information and Services Required of the Owner

a. Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.a, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
b. The Owner shall retain a Design Professional lawfully licensed to practice architecture or engineering as applicable, or an entity lawfully practicing architecture or engineering, as applicable, in the jurisdiction where the Project is located. That person or entity is identified as the Design Professional in the Agreement and is referred to throughout the Contract Documents as if singular in number.
c. If the employment of the Design Professional terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Design Professional.
d. The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
e. The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.
f. Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.b.
g. The foregoing are, without limitation and in addition to, the other duties and responsibilities of the Owner specified in Article 6; Article 9; and Article 11.

Section 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the

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Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.c nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

Section 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within forty-eight (48) hours from receipt of written notice from the Owner or Design Professional to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Design Professional may, at the direction of the Owner, pursuant to Section 9.5.a, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Design Professional, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

Section 2.6 Extent of Owner Rights

a. The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents; at law; or in equity.
b. In no event shall the Owner or Design Professional have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Notwithstanding anything else herein, and without limitation, any review(s), independent or otherwise, or approval(s) by the Owner or Design Professional of the Design Documents, the Contract Documents, the Contractor's Construction Management Plan(s), the Contractor's Construction Schedule, shop drawings, submittals, meeting minutes or other Contractor's services, deliverables or activities; nor the exercising of any of the rights and authority granted the Owner or Design Professional in the Contract Documents shall in any way reduce, diminish, or otherwise affect the Contractor's responsibilities, duties and accountability to the Owner for, without limitation, the construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Contract Documents.
c. The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project for cause but without cost to the Owner. Such requests from the Owner will be made in writing and may be done directly or indirectly through the Design Professional/Engineer or on-site representative. "Cause" may include, but is not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the project, the facility or others, poor management, cause delay or delays, will not strictly adhere to facility procedures and project requirements either willfully

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or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

Article 3. CONTRACTOR

Section 3.1 General

a. The Contractor is the person or entity identified as such in the Contract or Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located, Denton County, Texas. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.
b. The Contractor shall perform the Work in accordance with the Contract Documents.
c. The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

Section 3.2 Review of Contract Documents and Field Conditions by Contractor

a. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner and Design Professional assume no responsibility or liability for the physical condition or safety of the Project site, or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner and Design Professional shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.a.
b. Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.d, shall take field measurements of and verify any existing conditions related to that portion of the Work, and shall observe and verify the impact of any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Design Professional any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for

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information in such form as the Design Professional may require. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Design Professional, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction per Section 12.2. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

c. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Design Professional any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Design Professional may require.
d. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Design Professional issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.b or 3.2.c, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.b or 3.2.c, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.g, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Design Professional for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents in its capacity as a contractor and not as a design professional.

Section 3.3 Supervision and Construction Procedures

a. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work in accordance with the Contract Documents.
b. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.
c. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
d. The Contractor shall carefully check its own work and that of Subcontractors as the Work is being performed.
e. During the finishing stages of the project, the Contractor shall make frequent inspections of the Work, with the applicable Subcontractor(s) involved, if any, with seven (7) days advance notice to the Design Professional, and the Contractor shall identify incorrect and faulty Work.
f. The Contractor shall ensure that incorrect or faulty Work is corrected immediately.
g. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in their

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administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

Section 3.4 Labor and Materials

a. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

b. The Contractor is encouraged to consider products and systems that improve the project and retain the character of the products specified, but do not alter the intent of the project. However, except in the case of minor changes in the Work authorized by the Design Professional in accordance with Sections 3.12.h or 7.4, the Contractor may make substitutions only by a formal request for substitution of products in place of those specified with the consent of the Owner, after evaluation by the Design Professional in accordance with the conditions set forth below and elsewhere in the Contract Documents, and a Change Order or Construction Change Directive. The Contractor must submit to the Design Professional and the Owner, for each proposed substitution:

.1 A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog “cut sheets”, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;

.2 A written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable;

.3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable;

.4 The adjustment, if any, in the time of completion of the Contract and the Contractor’s Construction Schedule in the event the substitution is acceptable;

.5 An affidavit stating that (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Design Professional;

.6 Proposals for substitutions shall be submitted electronically to the Design Professional and the Owner’s other consultants, if any, in sufficient time to allow no less than ten (10) business days for their respective reviews;

.7 No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein; and

.8 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (1) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (2) specified products are unavailable through no fault of the Contractor; (3) subsequent information discloses the

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inability of specified products to perform properly or to fit in the designated space; (4) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (5) when, in the judgment of the Owner or the Design Professional, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations; and

.9 Whether or not any proposed substitution is accepted by the Owner, the Owner's other consultants, if any (if any), or the Design Professional, the Contractor shall reimburse the Owner for any fees charged by the Design Professional, and the Owner's other consultants for evaluating each proposed substitute.

c. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.
d. All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.
e. The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Design Professional or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade; and

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

Section 3.5 Warranty

a. The Contractor warrants to the Owner and Design Professional that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal

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wear and tear and normal usage. If required by the Design Professional, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **THE CONTRACTOR SHALL DEFEND AND HOLD THE OWNER HARMLESS AGAINST ANY CLAIM, DEMAND, LOSS, OR DAMAGE BY ANY BREACH OF THIS WARRANTY, AND CONTRACTOR ACKNOWLEDGES IT SHALL NOT LIMIT SUCH WARRANTY BY THE PROVISIONS OF SECTION 12.2.**

b. All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner and shall commence in accordance with Section 9.8.d.

c. When written warranties are specified, the document shall include the following information:
Name and address of Project and Owner;
Article, materials, or systems covered;
Name and address of Installer;
Name and address of Contractor; and
Signature of individual authorized to sign contracts for the company issuing the warranty.

d. The following minimum warranty terms shall be incorporated:

.1 Duration shall be one year or as otherwise specified, dated from the Date of Substantial Completion;

.2 The article, material or system is free from defective materials and workmanship;

.3 Costs of repair or replacement shall not accrue to the Owner, including, without limitation, repair or replacement of other work disturbed by, or because of, repair or replacement; and

.4 The warranty period of two years, or as otherwise specified, shall recommence upon the identification and completion by Contractor and acceptance by Owner of any warranty claim during the initial two-year (2) warranty period.

e. Warranties which are provided by a manufacturer for its product shall be received by the Contractor, filled out and filed with the manufacturer or other appropriate entity in coordination with the Owner. Certificates or registration stubs shall be included with the record documents submitted for the Owner upon completion of the Work. The Owner shall administrate manufacturer's warranties/guarantees after expiration of the Contractor's warranty.

f. Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Contract Documents before final completion and written acceptance by the Design Professional and Owner shall not be construed as evidence of the Design Professional's or the Owner's acceptance of same, or the commencement of any warranty periods.

g. The Owner has the privilege of such temporary or trial usage, for such reasonable time as the Owner, or the Design Professional deem proper. The Contractor shall make no claims for damage or injury to, or breaking of, any parts of such work which may be caused by weakness or insufficiency of structural parts, or by defective materials or workmanship.

h. The Contractor may, without cost to the Owner, make such trial usage. However, trials shall only be conducted with the Design Professional's prior approval and under its observation as may be required by either of them. Equipment and/or materials shall be replaced or returned to "as new" condition prior to acceptance by the Owner.

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i. The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

j. If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one (1) year period following the date of Substantial Completion described in Section 12.2.b.

Section 3.6 Taxes

The Contractor shall, to the extent not exempted under Section 13.11.i herein, pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. In no event shall the Owner pay the Contractor for taxes that were not properly due or for which the Owner is exempt from paying under Texas law.

Section 3.7 Permits, Fees, Notices and Compliance with Laws

a. Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit. The Owner shall also pay for any applicable gas, water, sewer and electrical service application fees; assessments against the property, including property tax, developmental excise and similar taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

b. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

c. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with Contract Documents, and without notice to the Design Professional that the Contract Documents are at variance with applicable laws, ordinances, rules, or regulations, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the Drawings, Specifications, or other Contract Documents, except where the Contract Documents call for Work or materials of higher standards than those required by codes or ordinances, in which case, the Contract Documents shall govern. Nothing contained in the Contract Documents shall be construed as authority for the Contractor to violate any applicable codes or ordinances in effect at the site.

d. Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Design Professional before conditions are disturbed and in no event later than

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seven (7) days after first observance of the conditions. The Design Professional will promptly investigate such conditions and, if, in the Design Professional's opinion, they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If, in the Design Professional's opinion, the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Design Professional's recommendation, that party may submit a Claim as provided in Article 15.

i. In no event shall any adjustment in the Contract Sum or Contract Time be made for conditions which should have been known to the Contractor or would have been noticed by a Contractor of similar size and experience pursuant to its on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the site which have been made available to the Contractor or have been performed by the Contractor or its Subcontractors; are part of the Contract Documents; or are part of the materials provided by the Contractor to be used in constructing the improvements.

e. If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Design Professional. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

f. The Contractor shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including, but not limited to, all immigration, environmental and safety laws, statutes, rules, codes, orders and regulations.

.1 The Contractor shall also maintain at all times during the term of the this Agreement (and for the time otherwise required by law) all records required by the United States Citizenship and Immigration Services ("USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees and shall respond at all times during the term of this Agreement in a timely fashion to any inspection request related to such I-9 forms by the Contractor, Owner or governmental agency or authority;

.2 Furthermore, during the term of this Agreement, and for the time otherwise required by law, Contractor shall cause its officers, directors, managers, agents, and employees to cooperate fully in all respects with any audit, inquiry, inspection, or investigation that may be conducted by the USCIS of the Contractor or any of its employees or subcontractors;

.3 The Contractor shall immediately, and in any event within two (2) hours of Contractor's first notice of an event described in this Section 3.7.f notify the Owner in writing and by in-person voice communications (not voicemail) of any unscheduled inspections, raids, investigations, inquiries, visits, or audits

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conducted by the USCIS, OSHA, or any other governmental agency or authority related to environmental, immigration, or employee safety issues of the Contractor, its agents, employees, its Design Professional, Subcontractors, or Sub-subcontractors;

.4 The Contractor shall, on a monthly basis during the term of this Agreement, conduct an audit of the I-9 forms for its employees and shall promptly correct any defects or deficiencies that are identified as a result of such audit;

.5 The Owner may, at its sole discretion, terminate this Agreement immediately if, at any time during the term of this Agreement, the Contractor violates or is in breach of any provision of this Section 3.7.f or the USCIS determines that Contractor has not complied with any of the immigration laws, statutes, rules, codes, or regulations of the United States or any applicable state laws or regulations, or any applicable local ordinances, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and any successor statutes thereto;

.6 If an employee of the Contractor or if the Contractor is later determined to not have valid I-9 information then that employee shall be removed and barred from the Project site at the Contractor's expense; and

.7 The Contractor shall require the Subcontractors, Sub-subcontractors and material suppliers to make the representations and warranties set forth in this Section 3.7.f and to be bound by the same requirements set forth herein.

Section 3.8 Allowances

a. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.
b. Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.b.1 and (2) changes in Contractor's costs under Section 3.8.b.2.

c. Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

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Section 3.9 Superintendent

a. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work including, but not limited to, weekends, evenings and nights, or as otherwise reasonably and mutually agreed in writing with the Owner, until all punch list items have been completed to the satisfaction of the Design Professional. No subcontractor shall perform work on the site without the presence of the Superintendent or Assistant Superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.
b. The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Design Professional of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or the Design Professional may notify the Contractor, stating whether the Owner or the Design Professional (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Design Professional to provide notice within the 14-day period shall constitute notice of no reasonable objection.
c. All of the Contractor's proposed on-site personnel must be approved by the Design Professional and Owner. The Contractor shall not employ a proposed superintendent to whom the Owner or Design Professional has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the Contractor's on-site personnel must be preceded by written notification of the Design Professional and Owner no less than seven (7) business days before the anticipated event. Such proposed changes must be approved by the Design Professional and Owner. The Contractor shall designate a second person in charge in writing in the event the Superintendent is temporarily absent due to illness, vacation, or any other cause(s).

Section 3.10 Contractor's Construction and Submittal Schedules

i. Where the Contract is based on a Stipulated Sum, the Contractor, immediately after being awarded the Work, and before execution of the Agreement, shall meet at a Preconstruction Conference with the Owner for the purpose of reviewing the Contractor's proposed Construction Management Plan; assisting the Owner with further developing the Master Project Schedule; and integrating the Work of the Contractor into that of the Owner and all Separate Contractors, if any.
ii. The Contractor's Project Schedule must include all the following:
    .1 Use precedence format, critical path method scheduling without the use of artificial activity constraints or "negative float";
    .2 Use software, techniques and methods satisfactory to the Owner;
    .3 Provide an electronic and graphic representation of all activities and events that will occur during performance of the Work;
    .4 Identify each subproject, to include, without limitation preconstruction, construction, commissioning, turnover of the Work, and Owner's occupancy;
    .5 Set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Contractual Milestone Dates");

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.6 Upon review by the Design Professional and written review and acceptance by the Owner of the Contractual Milestone Dates, the Contractor's Project Schedule shall be deemed part of the Contract Documents and provided to the Owner as a submittal;

.7 If not accepted, the Contractor's Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and resubmitted for acceptance;

.8 Submission of an updated Contractor's Project Schedule with each Application for Payment shall be a mandatory condition precedent to the payment by the Owner to the Contractor pursuant to an Application for Payment, and the Owner shall not be obligated to make payment if the Contractor fails to include an updated Contractor's Project Schedule reflecting the then-current conditions on the Project and the anticipated progress of Work based on those conditions; and

.9 All requests for change orders, modifications or additional compensation from the Contractor affecting the Contract Time or Contract Sum shall include a detailed schedule with both data and graphics showing the specific effect of the changed, modified or differing condition(s) on the critical path of the Contractor's Project Schedule.

iii. The Contractor, prior to preparing the Construction Management Plan and attending the Preconstruction Conference, will have reviewed the sequences, durations, sequencing and dependencies of activities, material deliveries, and sequenced man-hour staffing to complete the Work. Work activities which have an installed value of twenty thousand dollars ($20,000) or more will be broken down into major products or operations except where mutually agreed otherwise by Contractor and Owner, and these values cost-loaded into the Contractor's Project Schedule as deemed necessary by the Owner. Upon request by the Owner, the Contractor shall support values given for each work activity with data that will substantiate its correctness. The Owner may require the Contractor to show separate work activities and Contractual Milestones for, as examples only and without limitation: Substructure Completion; Superstructure Completion; Building Exterior Skin Completion; Interior Finishes Completion; Owner's Beneficial Occupancy, and other similar dates the Owner, at its sole discretion deems important to the Project.

iv. In the event the Contractor does not timely provide the Contractor's Construction Management Plan with an acceptable Contractor's Project Schedule containing such elements, information, and processes in a form and with a level of detail acceptable to the Design Professional and the Owner, the Owner may, at the Owner's discretion, unilaterally generate the target Contractor's Project Schedule at the Contractor's expense, and impose such schedule, sequences, logic, and/or durations on the Contractor as it deems necessary to complete the Work, or the Owner may declare the Contractor in breach of contract. Whether or not the Owner decides to implement this option, all other contractual provisions relating to breach of contract will continue to be in full force and apply without modification. The Owner may deduct from the Contractor's Application(s) for Payment the amount paid by the Owner for generating the Contractor's Project Schedule.

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v. Upon completion of the Master Project Schedule, and acceptance by the Owner and all Separate Contractors, the Master Project Schedule shall supersede previously submitted schedules. Each updated Master Project Schedule shall supersede previous updates.

b. The Contractor shall, at the Preconstruction Conference, and as a sub-system of its Contractor's Project Schedule, prepare an easily isolated, sorted and separately viewed submittal schedule, and thereafter update it as necessary to maintain a current submittal schedule, and shall submit such schedule(s) for the Design Professional's approval. The Design Professional's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's Construction Schedule, and (2) allow the Design Professional reasonable time to review submittals. If the Contractor fails to submit an approvable submittal schedule thirty (30) days prior to the date established for commencement of the Work, the Contractor shall not mobilize on site, or be entitled to any increase in Contract Sum or extension of Contract Time based on the delay of the Work or time required for review of submittals during the prosecution of the Work.

c. The Contractor shall perform the Work in general accordance with the most recent Contractor's Project Schedules submitted to the Owner and Design Professional and incorporated into the approved Master Project Schedule.

d. The Owner together with the Contractor, will monitor the Master Project Schedule, and incorporate the Contractor's updates to its portions of this overall schedule. As all Separate Contractors are also obligated to follow the Master Project Schedule and their respective schedules therein, they will be required to actively cooperate and participate in the preparation and updating of their portion of this schedule, as well as updating the overall Master Project Schedule by the Owner. The Contractor will be kept updated on all significant Master Project Schedule changes materially affecting the Contractor's Project Schedule.

e. The Contractor will produce a Short Interval Schedule containing activities for not less than one (1) previous week and the next three (3) weeks, and which focuses on the major weekly work activities of each subsystem. At each weekly meeting this Short Interval Schedule will be reviewed by the Contractor with all affected Subcontractors and the Owner.

f. In the event of substantial delay, if excusable under the Contract, for which extension of the Contract Time has or will be granted, the Owner will review and may require revision by the appropriate contractor(s) of affected component of the Master Project Schedule as required by the specific applicable situation(s), and with the cooperation of the Separate Contractors on the Project.

g. The Contractor shall, at mutually agreed intervals, submit to the Owner and Design Professional a progress report stating, without limitation, labor forces mobilized and working on site; areas worked in or on; percent complete of current work activities; any potential schedule or coordination problems; material deliveries received; site visitors; and other information as required by the Owner.

h. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Contractor's Project Schedule and shall promptly advise the Owner of any delays or potential delays. The accepted Contractor's Project Schedule shall be updated to reflect actual conditions as frequently as mutually agreed by the Contractor and Owner; but in no event less frequently than with each Application for Payment; and at other times as may be reasonably requested by the Owner or Design Professional. In the event any progress report or schedule update indicates any

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actual or potential delays, the Contractor shall, using both the most currently approved Contractor's Project Schedule as a baseline for comparison, and a written narrative, propose an affirmative plan to correct the delay (hereinafter referred to as the "Proposed Recovery Schedule") which must include the following:

.1 The Proposed Recovery Schedule will show the results of working additional shift or days, adding additional labor, and any of the other actions specified in Section 8.4, if necessary, all as described in the accompanying narrative;

.2 The Proposed Recovery Schedule will be reviewed by the Owner, and the Contractor will promptly and diligently make all adjustments to the Proposed Recovery Schedule reasonably requested as a result of such review.

.3 The Proposed Recovery Schedule shall become the most current, approved Contractor's Project Schedule upon its approval by the Owner, issuance of a Change Order for the purpose by the Design Professional; and signing of such Change Order by the Contractor, Design Professional, and Owner, in that order; and

.4 In no event shall any progress report, schedule update or Proposed Recovery Schedule constitute an adjustment in the Contract Time, any Contractual Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

i. In the event either the Owner or Design Professional determine that the performance of the Work, as of a Contractual Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation those further specified in Section 8.4.

j. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10 and Section 8.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Contractual Milestone Date or completion date set forth in the Contract Documents.

k. The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of any part of the Owner's organization or any stakeholders or invitees thereof. The Contractor shall, upon the Owner's or Design Professional's request, reschedule such portion of the Work during hours when the interference to the Owner's organization, or any stakeholders or invitees thereof, will be minimized or eliminated. Any postponement, rescheduling, or performance of the Work under this Section 3.10.k may be grounds for an extension of the Contract Time, if permitted under Section 8.3.a; and an equitable adjustment in the Contract Sum if the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents; and to the extent such rescheduling or postponement is required for the convenience of the Owner.

l. Documents and Samples at the Site

The Contractor shall make available, to the Owner, Design Professional or their designees, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and

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selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy and delivered to the Design Professional for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall make available to the Owner or Design Professional for inspection and copying the record copy of the drawings, specifications, addenda, Change Orders and other Modifications, including all such documents maintained by the Contractor in electronic format, upon reasonable request of the Owner or Design Professional and, in any event, within twenty-four (24) hours of receipt by Contractor of a request from Owner or Design Professional for such review and/or copying. The Owner or Design Professional may request the record copy of the As-Built Documents, specifications, addenda, Change Orders and other modifications of the Work to be updated before Substantial Completion to reflect the most current condition of the Project, as additional Cost of the Work paid as a Change Order at the Owner's expense. The Owner or Design Professional may require the Contractor to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the Owner's expense.

i. The Contractor shall provide final electronic files and one "hard" copy of the Drawings and Specifications to the Owner updated to reflect the final condition of the Project with the final Application for Payment as a condition precedent to final payment.

Section 3.12 Shop Drawings, Product Data and Samples

a. Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
b. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
c. Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.
d. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Design Professional is subject to the limitations of Section 4.2.g. Informational submittals upon which the Design Professional is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Design Professional without action.
e. The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Design Professional, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, after Contractor has verified the information contained within said submittals is in accordance with representations required by Section 3.12.f and in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

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f. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Design Professional that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents and (4) verified the information contained within said submittals is in accordance with all applicable Federal, state and local codes or ordinances in effect at the site.

g. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Design Professional. Should the Contractor, Subcontractors, or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

h. The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Design Professional of such deviation at the time of submittal and (1) the Design Professional has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Design Professional's approval thereof.

i. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Design Professional on previous submittals. In the absence of such notice, the Design Professional's approval of a resubmission shall not apply to such revisions.

    i. Copies of all approved Shop Drawings, Product Data, Samples and similar submittals shall be preserved in an orderly manner and delivered by the Contractor to the Owner upon Final Completion.

j. The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

    i. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor, the Owner and the Design Professional will specify all performance and design criteria that such services must satisfy in the Contract Documents. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional who shall comply with reasonable

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requirements of the Owner regarding qualifications and insurance. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Professional. The Owner and the Design Professional shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Design Professional have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.j, the Design Professional will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

ii. If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Owner and the Design Professional at the time and in the form specified by the Design Professional.

Section 3.13 Use of Site, Delivery and Storage

a. The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
b. The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner before using any portion of the site.
c. The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto, which includes, but is not limited to, the all the following duties and acknowledgments:

.1 The Contractor acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract;

.2 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions;

.3 The Contractor shall be responsible for the mitigation and/or abatement of all noise, dust, fumes, traffic or other by-product of construction activity that, in the opinion of the Owner or the Design Professional, have an adverse affect on the quality of life or productivity for Project stakeholders, the Owner's current operations, or the Owner's employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the Owner and Design Professional;

.4 The Contractor shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the Owner and Design Professional. Repeat

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offenses will cause the Owner or Design Professional to require, through the Contractor, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site;

.5 The Contractor shall, at a minimum, secure the site by erecting and maintaining a 6'-0" chain link fence around the perimeter of the construction site. This fence shall remain intact until such time the site becomes secure in the opinion of the Contractor, as a result of construction progress (by way of example, and without limitation, completion of site grading and backfill, installation of doors and windows, etc.);

.6 The Contractor shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use; and

.7 The Contractor is advised that the project site area is subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.

d. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas, which includes, but is not limited to, all of the following duties:

.1 The access to the site shall be maintained in compliance with all local, state, and Federal code and life safety requirements for ingress by first responders and other similar emergency requirements;

.2 The Contractor shall inform the Owner, Design Professional and any officials referenced in Section 3.13.f in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to Owner's and Design Professional's approval, such approval not to be unreasonably withheld;

.3 The Owner shall be responsible for snow removal to the limits of the construction site only so far that the Contractor will have access to the entrance to the construction area; and

.4 Snow removal within the limits of work and/or for the purpose of performing and protecting work by individual contractors is the duty of the Contractor.

e. During the performance of the Work, the Contractor, its Subcontractors, Sub-subcontractors, suppliers and their employees agree they shall:

.1 Use such entrances to the construction site that may be designated by the Owner;

.2 Perform the Work at such times of the day and days of the week as may be designated by the Owner; and

.3 Accept that these entrances and times may be reviewed and changed from time to time by the Owner.

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f. The Contractor shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Owner to proceed has been given to the Contractor. If the utility service must be interrupted, the Contractor shall, at Contractor's sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the city manager, the mayor, the city or county clerk, etc. as applicable) and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give the most effective notice to such utility users.

g. The Contractor shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed on the job and shall properly store and protect same at the Contractor's expense.

h. Notwithstanding any other provision herein, the Contractor shall take all necessary measures to store materials on site for which payment has been requested by the Contractor or been made by the Owner so that they shall not deteriorate, be damaged or be stolen, which includes, but is not limited to, all the following:

.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor;

.2 Protection of construction materials and equipment stored at the Project site from fire, weather, burglary, pilferage, vandalism and mischief, damage, and all other adversity; and the care and protection of materials and Work installed in the building is solely the responsibility of the Contractor;

.3 The Contractor shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the Owner; and

.4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.

i. The Contractor shall not deliver any materials to the site which are not to be installed by same Contractor without fifteen (15) day's advance notice in writing to the Owner of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the Contractor and a representative of the Owner, who shall agree, and the Contractor shall document such agreement in writing:

.1 The materials delivered are undamaged, or if damaged, such damage is documented by digital photo(s);

.2 They are in the quantities shown on the purchase order, invoice or bill of lading accompanying the shipment or delivery or otherwise provided;

.3 The storage conditions are adequate for the purposes; and

.4 The Contractor has accepted responsibility for insurance and ongoing protection per Section 10.2 for such material until it is released to a third party authorized in writing by the Owner to receive it.

Section 3.14 Cutting and Patching

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a. The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.
b. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

Section 3.15 Cleaning Up

a. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.
b. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

Section 3.16 Access to Work

The Contractor shall provide the Owner and Design Professional and their representatives with access to the Work in preparation and progress at all times wherever located, and shall provide proper and safe facilities for such access.

Section 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall defend and hold the Owner and Design Professional harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Design Professional. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Design Professional.

Section 3.18 Indemnification

a. CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES

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WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF CONTRACTOR OR ANY SUBCONTRACTORS, INVITEES, AND ANY OTHER THIRD PARTIES OR PERSONS FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE, IN ANY WAY ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT OWNER FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES FOR INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE, AGENT OR REPRESENATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER THE CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF INDEMNITEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS AN INDEMNITY BY CONTRACTOR FOR THE BENEFIT OF THE OWNER FROM THE CONSEQUENCES OF OWNER'S NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR EMPLOYEE OF ANY OF ITS SUBCONTRACTORS.

IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF THE CONTRACTOR, ANY SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY SUB-CONTRACTOR UNDER WORKMEN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

INDEMNIFIED ITEMS SHALL INCLUDE, BUT NOT BE LIMITED TO, ATTORNEYS' FEES AND COSTS, COURT COSTS AND SETTLEMENT COSTS, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

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THE CONTRACTOR IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE DESIGN PROFESSIONAL, ANY LICENSED ENGINEER, OR AN AGENT, SERVANT, OR EMPLOYEE OF THE DESIGN PROFESSIONAL OR LICENSED ENGINEER FROM LIABILITY THAT MAY ARISE FROM DEFECTS IN THE PLANS, DESIGNS OR SPECIFICATIONS OR NEGLIGENCE ON THE PART OF THE DESIGN PROFESSIONAL OR LICENSED ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES ARISING FROM THE CONTRACT AND THE PLANS DESIGNS OR SPECIFICATIONS THAT ARE PART OF THE CONSTRUCTION CONTRACT AS SET FORTH IN CHAPTER 130 OF THE TEXAS CIVIL PRACTICE AND REMEDIES CODE.

b. THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS SECTION 3.18 SHALL ALSO SPECIFICALLY INCLUDE, WITHOUT LIMITATION, ALL FINES, PENALTIES, DAMAGES, LIABILITY, SAFETY VIOLATIONS, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES), AND PUNITIVE DAMAGES, IF ANY, ARISING OUT OF, OR IN CONNECTION WITH ANY:

.1 VIOLATION OF OR FAILURE COMPLY WITH ANY LAW, STATUTE, ORDINANCE, RULE, REGULATION, CODE OR REQUIREMENT OF A PUBLIC AUTHORITY THAT BEARS UPON THE PERFORMANCE OF THE WORK BY THE CONTRACTOR, A SUBCONTRACTOR OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE;

.2 MEANS, PROCEDURES, TECHNIQUES, SAFETY PRECAUTIONS, OR SEQUENCES OF EXECUTION OR PERFORMANCE OF THE WORK; AND

.3 FAILURE TO SECURE AND PAY FOR PERMITS, FEES, APPROVALS, LICENSES, AND INSPECTION AS REQUIRED UNDER THE CONTRACT DOCUMENTS, OR ANY VIOLATION OF ANY PERMIT OR OTHER APPROVAL OF A PUBLIC AUTHORITY APPLICABLE TO THE WORK, BY THE CONTRACTOR, A SUBCONTRACTOR, OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE.

c. THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS ALL OF THE INDEMNITEES SET OUT IN SECTION 3.18.a FROM AND AGAINST ANY COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY ANY OF THE INDEMNITEES IN ENFORCING ANY OF THE CONTRACTOR'S DEFENSE, INDEMNITY, AND HOLD-HARMLESS OBLIGATIONS UNDER THIS CONTRACT.

Article 4. DESIGN PROFESSIONAL

Section 4.1 General

a. The Design Professional is the person or entity retained by the Owner pursuant to Section 2.3.b and identified as such in the Agreement.

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b. Duties, responsibilities, and limitations of authority of the Design Professional as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Design Professional. Consent shall not be unreasonably withheld.

Section 4.2 Administration of the Contract

a. The Design Professional will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Design Professional issues the final Certificate for Payment. The Design Professional will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

b. The Design Professional will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, as the Work progresses and when fully completed, will be in accordance with the Contract Documents. However, the Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Professional will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.a.

c. On the basis of the site visits, the Design Professional will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Design Professional will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

   i. **NEITHER THE OWNER NOR THE DESIGN PROFESSIONAL NOR THE OWNER'S OTHER CONSULTANTS SHALL BE RESPONSIBLE OR LIABLE FOR THE SAFETY PROGRAM(S) DEVELOPED BY THE CONTRACTOR OR ITS SUBCONTRACTORS FOR THE SAFETY OF PERSONS AND PROPERTY, OR FOR COMPLIANCE WITH STATUTES, RULES, REGULATIONS, AND ORDERS APPLICABLE TO CONDUCT THE WORK. SHOULD ANY CONTRACTOR OR THEIR SUBCONTRACTOR(S), OR THE SUB-SUBCONTRACTOR(S) MAKE A CLAIM AGAINST THE INDEMNITEES, OR SHOULD THEY OR ANY GOVERNMENTAL ENTITY BRING ANY ACTION OR LEVY ORAND FINE OR PENALTY AGAINST THE INDEMNITEES ON ACCOUNT OF ANY SAFETY-RELATED DAMAGE OR VIOLATION OF LAW ALLEGED TO HAVE BEEN SUSTAINED, THE CONTRACTOR AGREES THAT IT WILL HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH VIOLATION, FINE, CLAIM OR SUIT, AND THAT IT WILL REIMBURSE THE INDEMNITEES THE COST OF DEFENDING SUCH SUIT,**

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AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THEREFROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.

d. Communications

The Owner and Contractor shall include the Design Professional in all communications about the Design Professional's services or professional responsibilities. The Owner shall promptly notify the Design Professional of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Design Professional's consultants shall be through the Design Professional. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

i. Failure of Contractor to give the Owner or Design Professional written notice of Contractor's objections, within three (3) business days, to directives, instructions, interpretations, or minutes from the Owner or Design Professional, shall constitute final and conclusive consent on the part of the Contractor to such directives, instructions, interpretations, or minutes of the Owner or Design Professional.

ii. Any written notice from the Owner or Design Professional to the Contractor shall be sufficiently given when delivered to the last known business address of the Contractor, or to its registered or authorized agent, representative, or officer. Any written notice from the Contractor to the Owner shall be sufficiently given when personally delivered to the Owner's Office, Attn: Project Manager, or at such other address and to the attention of such person as the Owner may from time to time designate in writing.

e. Based on the Design Professional's evaluations of the Contractor's Applications for Payment, the Design Professional will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

f. The Design Professional has authority to reject Work that does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable, the Design Professional will have the authority to require inspection or testing of the Work in accordance with Sections 13.4.b and 13.4.c, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

g. The Design Professional will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Professional's action will be taken in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor

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as required by the Contract Documents. The Design Professional's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 1.2, 3.2.a, 3.3, 3.5, 3.12, and 13.9. The Design Professional's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

h. The Design Professional will prepare Change Orders and Construction Change Directives and may order minor changes in the Work as provided in Section 7.4. The Design Professional will investigate and make recommendations regarding concealed and unknown conditions as provided in Section 3.7.d.

i. The Design Professional will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

j. If the Owner and Design Professional agree, the Design Professional will provide one or more Project representatives to assist in carrying out the Design Professional's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

k. The Design Professional will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

l. Interpretations of the Design Professional will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations, the Design Professional will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

m. The Design Professional's opinions on matters relating to aesthetic effect will be considered by the Owner when making the Owner's determination on these issues and the Owner's decision will be final if consistent with the intent expressed in the Contract Documents. Such Owner's determination shall be communicated through the Design Professional.

n. The Design Professional will review and respond to requests for information about the Contract Documents. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Design Professional will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

Article 5. SUBCONTRACTORS

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Section 5.1 Definitions

a. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.
b. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

Section 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

a. Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Design Professional of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Design Professional may notify the Contractor whether the Owner or the Design Professional (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Design Professional to provide notice within the 14-day period shall constitute notice of no reasonable objection.
b. The Contractor shall not contract with a proposed person or entity to whom the Owner or Design Professional has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
c. If the Owner or Design Professional has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Professional has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.
d. The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Design Professional makes reasonable objection to such substitution.
e. Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.
f. The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

Section 5.3 Subcontractual Relations

a. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner , the Owner's other consultants and Design

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Professional. Each subcontract agreement shall preserve and protect the rights of the Owner , the Owner's other consultants, and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available for review for each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Notwithstanding the above, all Agreements with the Owner shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.

b. All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as an Exhibit, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. The Contractor's subcontractors, however, are not intended third-party beneficiaries of this Agreement by pass through, assignment, or otherwise, except as provided in the Contract Documents, and the Owner shall not be bound to Contractor's subcontract agreements.
c. Whenever the Contractor receives payment pursuant to the Contract Documents, the Contractor shall make payments to each of its Subcontractors of any amounts actually received which were included in the Contractor's Application for Payment to the Owner for such subcontracts unless otherwise allowed to withhold payment by the terms and conditions of the subcontract or as allowed by law. The Contractor shall make such payments within ten (10) days of receipt of payment from the Owner in the same manner as the Owner is required to pay the Contractor under the Contract Documents if the Subcontractor is satisfactorily performing under its contract with the Contractor. Such payments from Owner to Contractor shall be imposed with an express trust to assure that payment is made to all Project Subcontractors, Sub-subcontractors, and suppliers. In addition to the express trust imposed upon such funds and the fiduciary duties incumbent upon the Contractor, Texas Property Code Chapter 162 shall apply.
d. The Contractor shall monitor the Subcontractors, who shall pay all suppliers, Sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the Subcontractor any amounts actually received which were included in the Subcontractor's request for payment to the Contractor for such persons, within ten (10) days of receipt of payment from the Contractor. The construction payments made by the Contractor to the Subcontractor shall be trust funds as set forth in Chapter 162 of the Texas Property Code. If the Subcontractor fails to make such payments in the required manner, the Subcontractor shall pay said suppliers, Sub-subcontractors, and laborers interest as set forth in Chapter 162 of the Texas Property Code.
e. At the time the Subcontractor submits a request for payment to the Contractor, the Subcontractor shall also submit to the Contractor a list of the Subcontractor's suppliers, Sub-subcontractors, and laborers. The Contractor shall be relieved of the requirements of this Section regarding payment in ten (10) days and interest payments until the Subcontractor submits such list. If the Contractor fails to make timely payments to the Subcontractor as required by this Section, the Contractor shall pay the Subcontractor interest as calculated under the provisions of Chapter 2251 of the

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Texas Government Code. Nothing in this Section 5.3 shall be construed to affect the retention provisions of any contract.

f. The provisions of this Section 5.3 shall be made a part of each contract between the Contractor and each Subcontractor, either expressly or by incorporation by reference to this Section of the Contract Documents.

Section 5.4 Contingent Assignment of Subcontracts

a. Each subcontract agreement for a portion of the Work may be assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

b. If the Work in connection with a subcontract has been suspended for more than thirty (30) days, after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct verifiable costs incurred by such Subcontractor as a result of the suspension.

c. Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity, including the performance bond Surety's takeover or completion contractor, which shall relieve the Owner of any legal responsibility under the subcontract.

d. Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the assignment of the Subcontractor to the Owner after suspension and termination of the Contract, as provided in this Section 5.4. This Section 5.4 shall be construed to prohibit a pass through or assignment of rights, unless authorized by the Owner in writing

Section 5.5 Owner Payments to Subcontractors

a. In the event of any default hereunder by the Contractor, or in the event the Owner or Design Professional fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the Contractor.

b. Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

Article 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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Section 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

a. The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.
b. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
c. The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.
d. Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.
e. The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are listed in and identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

Section 6.2 Mutual Responsibility

a. The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
b. If part of the Contractor's Work depends on proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Design Professional of any apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Design Professional of these apparent discrepancies or defects prior to

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proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.

c. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

d. The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.e.

e. The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

f. Should the Contractor wrongfully delay or cause damage to the work or property of any Separate Contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such Separate Contractor sues or initiates a judicial proceeding against the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense. The Owner may fund the defense of such proceedings contemplated by this Section but, in any event, if any judgment or award against the Owner arises therefrom, the Contractor shall pay to satisfy it to the extent of Contractor's responsibility.

g. SHOULD ANY SUCH SEPARATE CONTRACTOR WRONGFULLY DELAYED OR DAMAGED BY THE CONTRACTOR OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE PER SECTION 6.2.f MAKE A CLAIM AGAINST THE INDEMNITEES, OR BRING ANY ACTION AGAINST THE INDEMNITEES, ON ACCOUNT OF THE DAMAGE ALLEGED TO HAVE BEEN SO SUSTAINED, THE CONTRACTOR SHALL HOLD THE INDEMNITEES HARMLESS AND DEFEND THEM AGAINST ANY SUCH CLAIM OR SUIT, AND SHALL REIMBURSE TO THE INDEMNITEES THE COST INCLUDING, WITHOUT LIMITATION, REASONABLE, ADDITIONAL ATTORNEY'S FEES INCURRED DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THERE FROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.

h. Should the Contractor be caused damage by any Owner's Separate Contractor(s)'s work, by reason of such Owner's Separate Contractor's failure to perform properly under its contract with the Owner, no action will lie against the Owner, and the Owner shall have no liability therefor, but the Contractor may assert its claims for damages directly against such Owner's Separate Contractor and the Owner shall reasonably assist the Contractor. by assign such rights to Contractor, unless otherwise prohibited under Texas law.

i. Inasmuch as the completion of the building within the prescribed time is dependent very largely upon the close and active cooperation of all those engaged therein, it is, therefore expressly understood and agreed that each contractor shall lay out and install its work at such time(s) and in such manner as to not delay or interfere with the carrying forward of the work of the other contractors.

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j. Where the work of one contractor directly affects the conditions of the work of another contractor including, as examples only, and not limited to, providing shoring for backfilling, providing protective covering for painting, providing adequate bracing of door jambs, etc., the contractor performing the work which will adversely affect another contractor's work shall be responsible for providing adequate protection based upon methods used to perform its work.

Section 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, or the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Design Professional will allocate the cost among those responsible, which allocation shall be final.

Article 7. CHANGES IN THE WORK

Section 7.1 General

a. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
b. A Change Order shall be based upon agreement among the Owner, Contractor, and Design Professional. A Construction Change Directive requires agreement by the Owner and Design Professional and may or may not be agreed to by the Contractor. An order for a minor change in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and reasonably inferable from the intent of the Contract Documents may be issued by the Design Professional alone.
c. Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 or as otherwise provided herein, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

Section 7.2 Change Orders

a. A Change Order is a written instrument prepared by the Design Professional and signed by the Owner, Contractor, and Design Professional stating their agreement upon all of the following:
    .1 The change in the Work;
    .2 The amount of the adjustment, if any, in the Contract Sum; and
    .3 The extent of the adjustment, if any, in the Contract Time.

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b. Methods used in determining adjustments to the Contract Sum may include those listed in Sections 7.3.c, 7.3.g and 7.3.j.

c. Agreement on any Change Order constitutes a final settlement of all past and future claims, at law or in equity, concerning all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, delays, all direct and indirect costs, any claim for damages associated with such change, and any and all adjustments to the Contract Sum and the construction schedule.

d. Change Orders Requiring City Council Approval
The Contract Sum may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Denton City Council is required if a Change Order involves a decrease or an increase of $50,000.01 or more. The original Contract Sum also may not be increased under this Section 7.2 by more than twenty-five percent (25.0%) over the entire duration of the Project. The original Contract Sum may not be increased by more than twenty-five percent (25%) over the entire duration of the Project for any reason; nor may it be decreased by more than twenty-five percent (25%) without the consent of the Contractor, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the Contractor under this Section 7.2, the additional time required to obtain City Council approval shall not be factored into any past or future claim for delays or calculated as a part of the Change Order request.

Section 7.3 Construction Change Directives

a. A Construction Change Directive is a written order prepared by the Design Professional and signed by the Owner and Design Professional, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

b. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

c. If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed fee; or

.4 As provided in Section 7.3.d.

d. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Design Professional shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit calculated using the sum of the actual costs allowed in Sections 7.3.d.1 through 7.3.d.5, and using the percentages as

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set forth in Section 7.3.1 below. In such case, and also under Section 7.3.c, the Contractor shall keep and present, in such form as the Design Professional may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.d shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Design Professional;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Additional, verifiable payroll and subsistence costs incurred by the Contractor, Subcontractor, and Sub-subcontractor of field personnel directly attributable to the change.

e. If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

f. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Professional of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

g. A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

h. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Design Professional. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

i. Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Design Professional will make an interim recommendation for purposes of monthly certification for payment for those costs and certify for payment the amount that the Design Professional recommends, in the Design Professional's professional judgment, to be reasonably justified. The Design Professional's interim recommendation of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

j. When the Owner and Contractor agree with a recommendation made by the Design Professional concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Design Professional will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

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k. If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Design Professional for determination. The Design Professional may consult with the Owner in connection with such determination either at the direction of the Owner or at the Design Professional's discretion. If the Contractor does not ultimately agree with the Design Professional's determination, the Contractor may assert a Claim in accordance with Article 15.

l. In Subparagraph 7.3.d, the allowance for the combined total of onsite and offsite overhead and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, fee percentage of the Cost of Work stated in Section 5.1.a of the Stipulated Sum Agreement plus actual direct jobsite costs associated with the additional work, if any;

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, fee percentage of the Cost of Work stated in the Stipulated Sum Agreement, if any, plus actual direct jobsite costs associated with the additional work, if any;

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.d;

.6 Under no circumstance shall costs of the Contractor's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work under 7.3.d Conversely, the Contractor shall be compensated for their labor within the overhead and profit percentage specified in this Section 7.3.l;

.7 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also;

.8 When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any; and

.9 Overtime, when specifically authorized by the Owner and not as a requirement for the Contractor to fulfill its obligations under this Agreement, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

Section 7.4 Minor Changes in the Work

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The Design Professional may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Design Professional's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Design Professional and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Design Professional's order for a minor change without prior notice to the Design Professional that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

Section 7.5 Supporting Information

Notwithstanding the above, requests for an adjustment in the Contract Sum or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner and Design Professional. The Contractor shall also comply with all provisions of Articles 8 and 15 with respect to claims. The required information shall be provided by the Contractor in less than twenty-one (21) days from the Contractor's request for an adjustment in the Contract Sum or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the Owner or Design Professional.

Article 8. TIME

Section 8.1 Definitions

a. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
b. The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.
c. The date of Substantial Completion is the date certified by the Design Professional in accordance with Section 9.8.
d. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

Section 8.2 Progress and Completion

a. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
b. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a Notice to Proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of any additional necessary documents.
c. Attention is directed to the fact that the Work is urgently needed by the Owner; for this reason it shall be agreed that the Contractor will substantially complete all Work under the Contract within the time established in the Contract Documents and the most recently approved Contractor's

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Project Schedule. The Contractor shall begin the Work on the date of commencement as defined in the Contract Documents; carry the Work forward with adequate resources; furnish, without limitation such labor, supervision, materials, facilities, and equipment; and work such hours, including night shifts, overtime operations, and Sundays and/or holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the most recently approved Contractor's Project Schedule.

d. The Contractor shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in the Contract Documents, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the Owner in writing.
e. The Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the Contractor as well as the respective Separate Contractors.
f. The Contractor shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.
g. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

Section 8.3 Delays and Extensions of Time

a. If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Design Professional, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, implementation of Federal law or policies, unusual delay in transportation, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.f.ii, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation; or (5) by other causes that the Design Professional recommends may, justify delay, then the Contract Time may be extended for such reasonable time as the Owner may determine.
b. Claims relating to time shall be made in accordance with applicable provisions of Article 15.
c. This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.
d. Any claims for extension of time shall be made in writing to the Owner and Design Professional not more than ten (10) days after commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the Contractor should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.
e. Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at http://gis.ncdc.noaa.gov/ website/ims-cdo/sod/viewer.htm or other data as mutually agreed by the Owner and Contractor for the Project area.

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f. In allowing delays for weather, the Owner will be entitled to consider weather conditions prevailing throughout the entire Contract period. The Owner and Contractor will together reconcile actual working days lost and gained over the entire Contract period every ninety (90) days. The Contractor shall then adjust the schedule activities accordingly for both the Contractor's weather float reserves and Owner's float reserves where those activities are carried in the Contractor's Project Schedule (if any).Extensions of time due to weather or other allowable reasons will be granted on the basis of one-and-four-tenths (1.4) calendar days credit for every working day lost, with each separate extension figured to the nearest whole calendar day.

g. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

Section 8.4 Contractor's Obligations After Delay

a. If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or Contractor's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the Owner after consultation with the Design Professional that the Work will not be completed within the Contract Time or in accordance with the Contractor's Construction Schedule, due to delays caused by the Contractor or its subcontractors, the Contractor agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the Owner or Design Professional, as required to substantially eliminate, in the judgment of the Owner, the backlog of Contractor's Work on the Project:

    .1 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;

    .2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;

    .3 Reschedule activities to achieve maximum practical concurrence of accomplishment; and

    .4 Do whatever else is reasonably required by the Owner or Design Professional.

b. These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Contractor's Construction Schedule.

c. In the event of a delay, the Owner Design Professional may also require the Contractor to immediately submit a Proposed Recovery Schedule as specified in Section 3.10.h above. If the Proposed Recovery Schedule is not satisfactory, the Design Professional may unilaterally establish a new Proposed Recovery Schedule acceptable to the Owner; issue it as a Construction Change Directive; and the Contractor shall comply therewith. The Owner may also require the Contractor to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the Owner, or Design Professional.

d. Failure of the Contractor to substantially comply with the requirements of this Section 8.4 shall be considered grounds for a determination by the Owner, after consultation with the Design

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Professional, that the Contactor is in breach of this Agreement by failing to prosecute the Work and that of the Project so as to ensure its completion within both the Contract Time and the updated Contractor's Construction Schedule.

e. Likewise, in the event the progress of the Project falls behind the predictions of the Master Project Schedule through no fault of the Contractor, the Owner or Design Professional may request, and the Contractor may agree to take one or more of the Extraordinary Measures, with the Owner bearing the cost for such measures by Change Order.
f. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 8.4, except as specifically noted otherwise in Section 8.4.e.

Section 8.5 Owner's Rights After Delay

a. In the event that any Contractor fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved Contractor's Project Schedule, the Owner or the Design Professional shall have the right to impose any or all of the following options:

.1 Require the Contractor to substantiate the capability to get back on schedule within ten (10) business days;

.2 Require the Contractor to take some or all of the Extraordinary Measures, and do whatever else is required by the Owner or Design Professional until Contractor confirms, to the satisfaction of the Owner and Design Professional, the progress of the Work is in compliance and congruence with the most recently approved Contractor's Construction Schedule, such measures being at no extra cost to Owner and Design Professional;

.3 Withhold progress payment, or portions thereof, until such time as the Contractor is in compliance with the most recently approved Contractor's Project Schedule; and

.4 Contact or visit the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at Contractor's expense.

Section 8.6 Liquidated Damages

a. Should the Contractor fail to substantially complete the Work on, or before, the original date set forth in the Contract, or on or before the revised date as granted by extensions to Contract Time, the Owner may at its sole discretion permit the Contractor to proceed, and in such case, there shall be deducted from any monies due or which may become due the Contractor, a sum as specified herein, for each and every calendar day that the Work shall remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the Owner. Liquidated damages are intended to compensate the Owner for the Contractor's failure to meet the deadlines set forth herein, and shall not excuse the Contractor from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The Contractor agrees that the sums in Section 8.6.b are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an

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adequate remedy. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no termination has occurred.

b. Contractor shall pay as liquidated damages to the Owner: the sums shown in the table below for each calendar day that expires after the date set forth in the Contract for Final Completion of the Work.

First Week Late	Second Week Late	Third & Fourth Weeks Late	Every Day After the Fourth Week Late
$1000/day	$1000/day	$1000/day	$1500/day

c. The parties acknowledge, covenant, and agree that the daily basis and the amount set forth above for liquidated damages are reasonable because of the unique nature of the Project as a benefit to the public; the fact that inconvenience to the public will be one of the significant impacts of any failure by the Contractor to timely complete the Work; and that it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to the Owner and the public.

d. Permitting the Contractor to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract. The Contractor acknowledges the Owner receives no benefits from early completion of the Project or the Work, therefore all rights, if any, to an early completion bonus or other increases in the Contract Sum for such early completion are hereby waived by the Contractor.

Article 9. PAYMENTS AND COMPLETION

Section 9.1 Contract Sum

a. The Contract Sum is stated in the Agreement and, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

b. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

Section 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum or the Cost of the Work, the Contractor shall meet with the Design Professional, at the Preconstruction Conference with a proposed Schedule of Values as specified in Section 3.10. The Contractor's Schedule of Values will be reviewed by the Owner and Design Professional in the context of the Contractor's proposed Construction Management Plan, including, but not limited to, the Contractor's Construction Schedule therein. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the Contractor's Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to

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the Contractor's and Subcontractor's contract amount(s). The Schedule of Values shall allocate the entire Contract Sum to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the Owner and Design Professional may require. This Schedule, of Values, unless objected to by the Owner or Design Professional, shall be used as a basis for reviewing the Contractor's Applications for Payment.

Section 9.3 Applications for Payment

a. At least ten days before the date established for each progress payment, the Contractor shall submit to the Design Professional an itemized Application for Payment prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Design Professional require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers and shall reflect retainage if provided for in the Contract Documents. The Application for Payment shall be notarized and include other documentation as reasonably required by the Owner; submitted electronically.
    i. As provided in Section 7.3.i, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim recommendations of the Design Professional, but not yet included in Change Orders.
    ii. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.
    iii. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and Design Professional and in compliance with all applicable statutes:
        .1 A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;
        .2 Duly executed statutory conditional waivers of mechanics' and material suppliers' lien for progress payments with teach payment application; and appropriate statutory unconditional waivers of mechanics' and material suppliers' liens for progress payments; and appropriate statutory unconditional waivers for final payments from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment;
        .3 An updated Contractor's Construction Schedule per Section 3.10 clearly showing the actual progress of the Work for each activity against the Work

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previously scheduled to be completed during the period, and against targeted activities' previously approved completion dates; and

.4 With every Payment Request for the Work, contractor will submit an affidavit stating that the contractor has complied with the requirements of Chapter 2258, Texas Government Code. The parties hereto agree that any electronic copy of such affidavit shall be treated as an original for all intents and purposes;

.4 If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer; and.

.5 Notwithstanding the above, Applications for Payment shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Design Professional, and shall include, at a minimum, an updated monthly Contractor's Construction Schedule clearly and graphically comparing the actual "work-in-place" completed to the Work previously projected to be complete for the period. Failure to provide this information in the proper form may be, in and of itself, grounds for rejection of the Application for Payment, at the discretion of the Design Professional.

b. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the stored materials and equipment which must be properly tagged as to material and job identification; must be available for inspection by the Design Professional; and such requests for payment must be accompanied by documentary evidence as specified, without limitation, in Sections 3.13 and 11.3, which supports the request's validity; quantity and value of materials; proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of Insurance or otherwise protects the Owner's interests. Such request shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Such materials shall be:

.1 Protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, and the Lender;

.2 Specifically marked for use on the Project; and

.3 Segregated from other materials at the storage facility.

c. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

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d. THE CONTRACTOR FURTHER EXPRESSLY UNDERTAKES TO DEFEND THE INDEMNITEES, AT THE CONTRACTOR'S SOLE EXPENSE, AGAINST ANY ACTIONS, LAWSUITS, OR PROCEEDINGS BROUGHT AGAINST THE INDEMNITEES AS A RESULT OF LIENS OR VERIFIED CLAIMS FILED AGAINST THE WORK, THE SITE OF ANY OF THE WORK, THE PROJECT SITE AND ANY IMPROVEMENTS THEREON, PAYMENTS DUE THE CONTRACTOR, THE PROJECT BOND OR ANY PORTION OF THE PROPERTY OF ANY OF THE INDEMNITEES (REFERRED TO COLLECTIVELY AS "LIENS OR VERIFIED CLAIMS" IN THIS SECTION 9.3.d). THE CONTRACTOR HEREBY AGREES TO INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH LIENS OR VERIFIED CLAIMS AND AGREES TO PAY ANY JUDGMENT OR LIENS OR VERIFIED CLAIMS RESULTING FROM ANY SUCH ACTIONS, LAWSUITS, OR PROCEEDINGS.

Section 9.4 Certificates for Payment

a. The Design Professional will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Design Professional recommends is properly due, and notify the Contractor and Owner of the Design Professional's reasons for withholding certification in part as provided in Section 9.5.a; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Design Professional's reason for withholding certification in whole as provided in Section 9.5.a.

b. The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional's evaluation of the Work and the data in the Application for Payment, that, to the best of the Design Professional's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Design Professional. However, the issuance of a Certificate for Payment will not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

c. Certification will be issued for ninety-five percent (95%) of the amount requested by the Contractor and approved by the Design Professional to be properly due until the Contractor is ninety-five percent (95%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that, should the Contractor at any time fail to keep current with the approved progress schedule, fail to assure payment to Subcontractors, Sub-

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subcontractors and suppliers as required hereunder; or fail to promptly and diligently correct Work that does not comply with the Contract Documents, certification of ninety-five percent (95%) shall automatically again become effective and shall apply as long as the Contractor lags behind such progress or fails to assure such payment.

Section 9.5 Decisions to Withhold Certification

a. The Design Professional may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Design Professional's opinion the representations to the Owner required by Section 9.4.b cannot be made. If the Design Professional is unable to certify payment in the amount of the Application, the Design Professional will notify the Contractor and Owner as provided in Section 9.4.a. If the Contractor and Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Certificate for Payment for the amount for which the Design Professional is able to make such representations to the Owner. The Design Professional may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Professional's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.b, because of any of the following:

    .1 defective Work not remedied;

    .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

    .3 failure of the Contractor to make payments properly to Subcontractors, Sub-subcontractors and suppliers or for labor, materials or equipment;

    .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

    .5 damage to the Owner or a Separate Contractor;

    .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

    .7 repeated failure to carry out the Work in accordance with the Contract Documents;

    .8 Contractor's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;

    .9 failure to fully execute the Contract with all associated documents as required;

    .10 bond claims, or liens, filed for any portion of the Work; or

    .11 failure of the Contractor to comply with any provisions of the Contract Documents, including without limitation Section 8.4.

b. Omitted

c. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld less all associated damages, costs and expenses, suffered or accrued by the Owner or Design Professional. In the event the Design Professional nullifies a previously

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issued Project Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Contractor shall promptly reimburse to the Owner amounts the latter had previously paid pursuant to the nullified project Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until and unless the reasons for nullification of the previously issued project Certificate for Payment have been remedied and all associated damages, costs, and expenses of Owner and Design Professional have been paid by the Contractor.

d. If the Design Professional withholds certification for payment under Section 9.5.a.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Design Professional and the Contractor shall reflect such payment on its next Application for Payment.
e. The Contractor shall not stop work or terminate the Contract if the Design Professional should refuse to issue any certificate because the Application for Payment does not conform with the requirements of Sections 9.3, 9.4, 9.5 or any other portion of these General Conditions, as supplemented herein.

Section 9.6 Progress Payments

a. After the Design Professional has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Design Professional.
b. The Contractor shall pay each Subcontractor, Sub-subcontractor and supplier, no later than ten (10) days after receipt of payment from the Owner the amount to which the Subcontractor, Sub-subcontractor and supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's, Sub-subcontractor's and supplier's portion of the Work, unless otherwise allowed by the provisions of the subcontract or by law. The Contractor shall notify Owner in advance and in writing of any payment(s) to be withheld from any Subcontractor. The Contractor shall, by appropriate agreement with each Subcontractor, Sub-subcontractor and supplier, require each to make payments to their Sub-subcontractors and suppliers in a similar manner.
c. The Design Professional will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Design Professional and Owner on account of portions of the Work done by such Subcontractor.
d. The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Design Professional shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.
e. The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.b, 9.6.c and 9.6.d.

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f. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of any Work.

g. The Contractor shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner unless allowed by the terms and conditions of the subcontract as stated in Section 5.3.C of the Agreement or by law. The Contractor shall notify Owner in advance and in writing of any payment(s) to be withheld from any Subcontractor. Sums withheld by the Owner from the Contractor for deficiencies solely attributable to the Contractor shall not be grounds for the Contractor to withhold sums due to any Subcontractor. All sums paid to the Contractor for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the Contractor for payment to those persons to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

h. PROVIDED THE OWNER HAS FULFILLED ITS PAYMENT OBLIGATIONS UNDER THE CONTRACT DOCUMENTS, THE CONTRACTOR SHALL DEFEND AND INDEMNIFY THE OWNER FROM ALL LOSS, LIABILITY, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES AND LITIGATION EXPENSES, ARISING OUT OF ANY LIEN CLAIM OR OTHER CLAIM FOR PAYMENT BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER. UPON RECEIPT OF NOTICE OF A LIEN CLAIM OR OTHER CLAIM FOR PAYMENT, THE OWNER SHALL NOTIFY THE CONTRACTOR. IF APPROVED BY THE APPLICABLE COURT, WHEN REQUIRED, THE CONTRACTOR MAY SUBSTITUTE A SURETY BOND FOR THE PROPERTY AGAINST WHICH THE LIEN OR OTHER CLAIM FOR PAYMENT HAS BEEN ASSERTED.

i. To the extent Contractor has received payment in accordance with the terms of this Agreement, the Contractor agrees to keep the Work and the site of the Project and all project bonds free and clear of all bond claim and verified claims related to labor and materials furnished in connection with the Work.

j. If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, at the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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Section 9.7 Failure of Payment

If the Design Professional does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within the date established in the Contract Documents, the amount certified by the Design Professional, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Design Professional, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

Section 9.8 Substantial Completion

a. "Substantial Completion" is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, all major systems are operational, and all safety features are completed and Owner's receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the Owner. In addition to the other requirements of the Contract Documents, and without limitation, the Contractor must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the Contractor shall be deemed to have achieved Substantial Completion.
b. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Professional a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor will also provide the Design Professional a comprehensive list of all claims previously and properly made in writing and identified by the Contractor as unsettled at the time of Substantial Completion.
c. Upon receipt of the Contractor's list, the Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Design Professional. In such case, the Contractor shall then submit a request for another inspection by the Design Professional to determine Substantial Completion.
d. When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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e. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

f. The Contractor's acceptance of payment per Section 9.8.e shall constitute a waiver for all purposes of all claims or causes of action by the Contractor against the Owner and the Design Professional, except those previously and properly made in writing and identified in the list provided by the Contractor as unsettled at the time of Substantial Completion per Sections 9.8.b.

Section 9.9 Partial Occupancy or Use

a. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, as such occupancy or use is consented to by the insurer and required under Section 11.3 provided it is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Professional as provided under Section 9.8.b. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Owner.

b. Immediately prior to such partial occupancy or use, the Owner, Contractor, and Design Professional shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

c. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

Section 9.10 Final Completion and Final Payment

a. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional will promptly make such inspection. When the Design Professional finds the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professional will promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Design Professional's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.b as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under Section 3.5 or otherwise required pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Design Professional as part of the final

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Application for Payment. The final Certificate for Payment will not be issued by the Design Professional until all warranties and guarantees have been received and accepted by the Owner. "Final Completion" occurs when all the conditions of this Section and the Contract Documents are met as set forth herein.

b. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Design Professional and Owner; (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect; (3) a written statement satisfactory to the Owner that the insurance will cover the period required by the Contract Documents; (4) consent of surety to final payment; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract for Construction, to the extent and in such form as may be designated by the Owner and Owner's lender; (6) certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Design Professional are complete and accurate in all respects; and (7)evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including, but not limited to, (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Design Professional's review and delivery to the Owner; (iv) delivery to the Owner of printed operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor may furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the

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Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and attorneys' fees.

i. In addition to items listed in 9.10.b to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local authorities having jurisdiction.

c. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Design Professional so confirms, the Owner shall, upon application by the Contractor and certification by the Design Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Design Professional prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

d. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 bond claims, Claims, liquidated damages, security interests, or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents;

.3 terms of special warranties required by the Contract Documents;

.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or

.5 gross negligence, willful misconduct, or fraudulent concealment in connection with the performance of the Contract.

e. Application for and acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee against the Owner or Design Professional except those previously made in writing and identified by that payee arising after the waiver given at Substantial Completion payment described in Sections 9.8.b and 9.8.f.

f. In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor being responsible for excess Design Professional's and other Owner's consultant(s)' fees beyond their original scope of services required to achieve final completion ("Excess Fees"). Excess Fees will be deducted from the amount due the Contractor.

Article 10. PROTECTION OF PERSONS AND PROPERTY

Section 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor's and all

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Subcontractors' Safety Programs shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations.

Section 10.2 Safety of Persons and Property

a. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to all of the following:
    .1 employees on the Work and other persons who may be affected thereby;
    .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
    .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
b. The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.
c. The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.
d. When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and the Contractor shall give the Owner and the Design Professional reasonable advance written notice of such planned activities.
e. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.a.2 and 10.2.a.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.a.2 and 10.2.a.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Design Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.
f. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Design Professional.
g. The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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h. Injury or Damage to Person or Property
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

i. The Contractor shall immediately report in writing to the Owner and Design Professional all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately electronically, as well as by telephone or messenger to the Owner and the Design Professional.

Section 10.3 Hazardous Materials and Substances

a. Hazardous materials include any material in such quantity, concentration, and physical or chemical characteristics including, but not limited to, ignitability or toxicity, so as to be capable of posing an unreasonable risk to health, safety and/or property if released into the atmosphere, transported, stored, or disposed of. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Design Professional of the condition in writing.

.1 For the purposes of this section, the following terms have the below meanings (however, each definition should be read as broadly as possible to incorporate similar hazardous materials or substances:

Asbestos: any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

Petroleum: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

Hazardous Waste: any solid waste listed as hazardous or which possesses one or more hazardous characteristics.

b. Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Design Professional the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or

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substance. The Contractor and the Design Professional will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Design Professional has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Design Professional have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order duly processed and approved, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, both as specified in Article 7. The term "rendered harmless" shall be interpreted to mean, without limitation that levels of hazardous materials, including, but not limited to, asbestos and polychlorinated biphenyls, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

c. Omitted.

d. The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

e. Omitted.

f. <u>THE CONTRACTOR SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.a, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE OWNER'S FAULT OR NEGLIGENCE.</u>

Section 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

Section 10.5 Site Visits

Anyone other than the Owner's designated representatives, the Design Professional, the Design Professional's consultants, and the Owner's other consultants visiting the job site who is not employed by a Contractor shall be required to register with the Contractor's site office before proceeding onto the job site.

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Article 11. INSURANCE AND BONDS

Section 11.1 Contractor's Liability Insurance

a. The Contractor shall purchase and maintain in a company or companies lawfully authorized to do business in Texas and as further qualified in Paragraph 11.6, such insurance as will protect the Contractor and the Indemnitees from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed; including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees; or persons or entities exempt by statute from the requirements of Section 11.1.a.1, but required by the Contract Documents to provide the insurance required by that Section;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle, including pollution clean-up if hauling hazardous materials; and

.7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than ten (10) years following final payment.

.8 Claims for damages to the Work, and/or materials and equipment used/stored at the Work, as may be covered under any Builder's Risk insurance policy.

b. The Contractor's Commercial General Liability Insurance should be written on ISO Form CG 00 01 10 01 or its equivalent and provide the following:

.1 Premises/operations (Including X-C-U coverages);

.2 Independent contractors;

.3 Products and completed operations with a per project aggregate limit, which coverage shall be maintained for a period of ten (10) years from the date of the Final Payment;

.4 Personal injury (libel, slander, false arrest) liability with employment exclusion deleted;

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.5 Blanket Contractual, including, but not limited to, a specified provision for the Contractor's obligations under Section 3.18 of the Contract Documents;

.6 Broad form property damage including, but not limited to, completed operations;

.7 Primary and Non-Contributory endorsement in favor of Indemnitees; and

.8 Contain a Waiver of Subrogation in favor of Indemnitees.

c. Professional Errors and Omissions Liability Insurance is required for all licensed and certified professionals, including, but not limited to, contractors, engineers, Design Professionals, design-build and design professionals as follows:

.1 The retroactive date preceding the date of the contract; and

.2 An extended reporting period of three (3) years past substantial completion.

d. Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

e. The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in this Article 11, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work; and for such duration as required in the Contract Documents; policies of insurance issued by a responsible carriers acceptable to the Owner, and in form and substance satisfactory to the Owner, that afford the coverages set forth in the Schedule of Insurance, attached to the Contract and made a part of it as Exhibit "YX" – Contractor's Insurance Certificate(s). All such insurance shall be written on an occurrence basis, with the sole exception of Professional Errors and Omissions Liability Insurance. In the event professional liability coverage is not available on "an occurrence" basis, a "claims made" basis policy with effective and retroactive dates prior to the effective date of the Contract Documents and an extended reporting period of at least three (3) years beyond Substantial Completion or as otherwise required by the Contract Documents, whichever is greater, may be substituted with the written consent and approval of the Owner and Design Professional. The Contractor's completed operations coverage shall be maintained until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

f. The Contractor agrees to deliver to the Design Professional, for transmittal to the Owner with a copy to the Design Professional within ten (10) days of the date of the Owner-Contractor Agreement and prior to bringing any equipment or personnel onto the site of the Work or the Project site, and thereafter upon renewal or replacement of each required policy of insurance, certified copies of all required insurance policies procured by the Contractor under or pursuant to this Article 11 or, with the written consent of the Owner and Design Professional, Certificates of

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Insurance in form and substance satisfactory to the Owner and Design Professional evidencing the required coverages with limits not less than those specified in Section 11.1.k below and all endorsements as required in Article 11 herein. The coverage afforded under any insurance policy obtained under or pursuant to this Section 11.1 shall be primary to any valid and collectible insurance carried separately by any of the Indemnitees. Furthermore, all policies and Certificates of Insurance shall expressly provide that no less than thirty (30) days prior written notice (ten (10) days for non-payment of premium) shall be given the Design Professional and Owner in the event of material alteration, cancellation, nonrenewal or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.b and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.e. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

g. Certificates of Insurance with the following or similar wording are not acceptable: "Failure to notify the certificate holder shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."

h. In no event shall any failure of the Design Professional to receive certified copies or certificates of policies required under Paragraph 11.1.f or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the Contractor's obligations to obtain insurance pursuant to this Article 11.

i. When any required insurance, due to the attainment of normal expiration date or renewal date, shall expire, the Contractor shall furnish to the Design Professional Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy forty-five (45) days prior to renewal date. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differ in any way from the previous policy, the Contractor shall also furnish the Design Professional with a certified copy of the renewal or replacement policy unless the Owner provide the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and Design Professional and written by carriers acceptable to the Owner and Design Professional.

j. Any Aggregate limit under the Contractor's liability insurance, shall by endorsement, apply to this Project separately.

k. The Contractor shall notify the Owner and Design Professional in writing of any reduction in collectible limits (aggregate limits) by an amount in excess of Fifty Thousand Dollars ($50,000), and the Contractor shall promptly procure, at no expense to the Owner, such additional coverage as necessary to restore the valid and collectible limits of such insurance to that required under the Contract Documents.

l. The Contractor shall cause each Subcontractor to procure insurance congruent with the Contractor's insurance requirements as specified in the Contract Documents and satisfactory to the Owner and Design Professional and name each of the Indemnitees as additional insureds under the Subcontractor's commercial general liability, automobile and umbrella excess liability

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policies. The additional insured endorsement included on the Subcontractor's commercial general liability policy shall state that coverage is afforded the additional insureds with respect to claims arising out of all on-going and completed operations performed by or on behalf of the Contractor. Each policy shall contain a Waiver of Subrogation in favor of the Indemnities, provide for forty-five (45) day notice of cancellation or non-renewal, and be primary without contribution if the additional insureds have other insurance that is applicable to the loss. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

m. The Indemnitees shall also be shown as "Additional Insureds" on the property, commercial general liability, automobile liability and umbrella (excess) liability policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided listing the Indemnities as Additional Insureds, using ISO forms CG2010, CG2037, CA0070, CA0032 or their equivalents, and approved as to form by Owner.
n. A "waiver of subrogation" clause in favor of the Owner will be attached to the workers compensation, commercial general liability, umbrella (excess) liability, automobile and the any applicable property insurance policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided showing waivers of subrogation in favor of the Indemnities using ISO forms CG2404, CA0070, CA0032, WC0003 or their equivalents, and approved as to form by Owner.
o. The Owner reserves the right to review the insurance requirements during the effective period of its Agreement with the Contractor, and provide a written request for the Contractor to make any reasonable and commercially available adjustments to insurance coverages and\or limits when deemed reasonably prudent by the Owner based upon its unilateral interpretation of changes in statutory law, court decisions or the Owner's potential increase in exposure to loss.
p. Neither Contractor, Subcontractor, Sub-subcontractor, nor any of their insurance carrier's liability obligations shall be limited to the minimum limits of coverage of insurance maintained or required to be maintained by the Contract Documents.

Section 11.2 Owner's Liability Insurance

a. The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

Section 11.3 Property Insurance

a. The Contractor shall purchase and maintain "builder's risk" property insurance, or comparable coverage, for the full replacement cost value thereof, for (i) the Work that is to be done, (ii) all insurable items of Work, title to which has been acquired by Owner in accordance with the Contract Documents and (iii) all materials to be incorporated in the Work, if such materials are in or upon the Premises, or in transit to Premises, whether or not title has been acquired by Owner. Such insurance shall not cover any property owned, leased, or otherwise used in connection with the Work by Contractor, Contractor's subcontractors or the agents or employees of them, that is not forming a permanent part of the Project. This insurance shall include the interests of Owner, Contractor, and Subcontractors and shall provide coverage against loss for "direct physical damage" (previously known as "all risk" coverage) including, but not limited to, without

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duplication of coverage, fire, extended coverage, vandalism and malicious mischief, theft, collapse, earthquake, flood, sprinkler leakage, windstorm, testing and startup, temporary buildings and debris removal including demolition and increased cost of construction occasioned by enforcement of any applicable legal requirements.

b. Any coverage related to the builder's risk property insurance maintained by Contractor for time including delay in opening and/or extra expenses shall inure to the benefit of Owner only. Owner shall be the only party insured under such policy, with the sole exception that the Contractor may be entitled to payment of its fee and general conditions associated with the reconstruction, less any deductible.
c. The Contractor's insurance shall cover against loss for "direct physical damage" (previously known as "all risk" coverage) with sufficient limits to protect the full replacement cost value of the Work.
d. If by the terms of the property insurance there is a deductible amount, in the event of a loss covered by such insurance, Contractor shall be responsible for all deductibles per occurrence which shall be considered a Cost of the Work for all insurable items of Work and materials to be incorporated in the Work, title to which has not been acquired by Owner in accordance with the Contract Documents. Except for Contractor's deductible risk, Owner is bearing all risk of loss to the Property for which Owner, Contractor, and others have an insurable or financial interest during construction, and, in the event of a loss to the property during construction, Owner agrees to rely solely to the proceeds of the Builder's Risk Insurance which Owner Contractor has agreed to furnish.
e. To the extent permitted by law, Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) Owner's Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. Owner or Contractor, as appropriate, shall require of Owner's Separate Contractors, if any, and the subcontractors, sub-subcontractors, agents, and employees of any of them, by written appropriate agreement, similar waivers each in favor of other parties enumerated herein.
f. To the degree allowed by the insurer, Owner and Contractor shall each have its policies endorsed to provide for a waiver of the right of subrogation against the other respective party.
g. Any loss insured pursuant to this Section 11.3 Property Insurance is to be adjusted by Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. Contractor shall pay each Subcontractor a just share of any insurance monies received by Contractor, and by appropriate written agreement, shall require each Subcontractor to make payments to its Sub-subcontractors in similar manner.
h. Upon request, Owner shall make available for inspection by Contractor a copy of all policies to be furnished by Owner.

Section 11.4 Performance, Maintenance, and Payment Bond

a. The Contractor must furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Such bonds shall be issued in an amount equal to the total Contract Sum by a surety company licensed in the state where the

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Project is located, with a current A.M. Best rating of at least A- X, included on the U.S. Treasury Department's listing of approved sureties, and acceptable to the Owner and Design Professional, or as expressly agreed otherwise by the Owner and Design Professional in writing.

.1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment and shall satisfy the requirements Texas Government Code Chapters 2253 and 2269.

.2 The Performance Bond, Maintenance Bond, and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.

.3 Every Bond under this Section 11.4.a must display the Surety's Bond Number and a rider including the following provisions, which shall be attached to each Bond:

a) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents;

b) Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived; and

c) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

b. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.
c. The Bond Form shall be in a form provided by the Owner.
d. Additional Performance, Maintenance, and Payment Bonds may be recommended by the Design Professional and required by the Owner, at the Owner's sole discretion, from any Subcontractor. The Owner will pay such actual, additional expenditures as Cost of the Work using the process specified in Article 7 for Changes in the Work. All such bonds shall be in form and substance satisfactory to the Owner and Design Professional.
e. The Contractor shall deliver the required bonds to the Owner no later than three (3) business days following the date of the Agreement is entered into, or if the Work is to be commenced prior to the date the Agreement is entered into, in response to a notification of award. The Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.
f. The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

Section11.5 Adjustment and Settlement of Insured Loss

a. 11.5.1 Omitted.
b. Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have fourteen (14) days from receipt of notice to object to the proposed settlement or

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allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

Section 11.6 Insurance Companies

All insurance coverage procured by the Contractor shall be provided by insurance companies having current policyholder ratings no lower than "A- X" by A.M. Best and acceptable by the Owner and Design Professional, or as expressly agreed otherwise by the Owner, Contractor and Owner in writing. Such companies must be licensed to do business in the State of Texas.

Section 11.7 Failure to Purchase Insurance

If one or more of the Indemnitees, or the Contractor is damaged by the failure of either the Owner or the Contractor to purchase or maintain the insurance required under this Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees and court and settlement expenses) properly attributable to the failure.

Section 11.8 Insurance Limits Required

The following insurance limits are the minimums to be carried by the Design Professional, the Design Professional's consultants, the Owner's other consultants, the Contractor, and the Subcontractors, Sub-subcontractors, and suppliers, unless higher limits are required by their respective Agreements or Texas law (in which case those limits shall control):

.1 Automobile Liability
$1,000,000 Combined Single Limit

.2 Commercial General Liability
$1,000,000 Aggregate, Per Occurrence and Personal Injury
$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal and Advertising Injury
$500,000 Fire Damage
$5,000 Medical Payments

.3 Worker's Compensation
Statutory Limits
$1,000,000 Employers Liability

.4 Umbrella or Excess Liability
$10,000,000 Per Occurrence

.5 Contractor's Environmental Impairment/Pollution coverage
$1,000,000 Occurrence or Claim

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$2,000,000 Policy Aggregate

.6 Builder's Risk (where applicable)

100% of the total value of the work

a. Limits for primary policies may differ from those shown when Umbrella or Excess Liability insurance is provided, as long as all coverage is equal to or greater than the minimum limits required herein.

Article 12. UNCOVERING AND CORRECTION OF WORK

Section 12.1 Uncovering of Work

a. If a portion of the Work is covered contrary to the Design Professional's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Design Professional, be uncovered for the Design Professional's examination and be replaced at the Contractor's expense without change in the Contract Time.

b. If a portion of the Work has been covered that the Design Professional has not specifically requested to examine prior to its being covered, the Design Professional may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

Section 12.2 Correction of Work

a. Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Design Professional or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, specifically including but not limited to additional testing and inspections, the cost of uncovering and replacement; the cost of any additional supervision, material, labor, equipment, rental charges, home office overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work of both the Contractor and the Project, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions; as well as compensation for the Design Professional's services and expenses made necessary thereby, shall be at the Contractor's expense.

i. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable or for which the Contractor is otherwise responsible.

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b. After Substantial Completion

i. In addition to the Contractor's obligations under Section 3.5, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.a, or by terms of any applicable special warranty required by the Contract Documents, or within such longer period of time as may be prescribed by law, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the condition is reasonably discoverable, during the two-year period for correction of Work, and the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Design Professional, the Owner may correct it in accordance with Section 2.5, and charge the reasonable costs to the Contractor.

ii. The two-year period for correction of Work shall also be extended by the period of time between Substantial Completion and the actual completion of the corrective Work performed by the Contractor pursuant to this Section 12.2, but only with respect to the corrected portions of the Work.

iii. Omitted.

c. Omitted.

d. The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. These costs specifically include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office overhead, and other expenditures necessitated to rectify the non-complying conditions, protect adjacent Work, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions.

e. Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.b relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

f. The Contractor's obligations under this Section 12.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract.

Section 12.3 Acceptance of Nonconforming Work

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If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. In the event final payment has been made by the Owner subsequent to accepting such non-conforming Work, the Contractor shall pay the Owner for the reduction in the Contact Sum occasioned by such acceptance.

Article 13. MISCELLANEOUS PROVISIONS

Section 13.1 Governing Law

The Contract shall be governed by the laws of the state of Texas. Venue on any dispute arising out of this Contract shall be in Denton County, Texas, which is the place where the Project is located and where performance is primarily to occur.

Section 13.2 Successors and Assigns

a. The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.b, neither party to the Contract shall assign the Contract, or any rights under the contract, in whole or in part without the written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
b. The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.
c. Written Notice
   Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

Section 13.3 Rights and Remedies

a. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.
b. No action or failure to act by the Owner, Design Professional, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

Section 13.4 Quality Management Tests and Inspections

a. Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or

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lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Design Professional timely notice of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. As required by the provisions of Texas Government Code, Section 2269.058(a), the Owner shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the Owner. To the extent that any of the provisions of this Section 13.4 or other provisions of this Agreement conflict with any of the provisions of Section 2269.058(a) such conflict is unintentional, and the provisions of the Texas Government Code shall control.

b. If the Design Professional, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.a, the Design Professional will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Design Professional of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. Such costs, except as provided in Section 13.4.c, shall be at the Owner's expense.
c. If such procedures for testing, inspection, or approval under Sections 13.4.a and 13.4.b reveal failure of the portions of the Work to comply with requirements established by the Contract Documents ("Failed Work"), all costs made necessary by the Failed Work, including those of repeated procedures and compensation for the Design Professional's services and expenses and all costs specified in Section 12.2 shall be at the Contractor's expense. The Contractor also agrees all costs of testing, inspection, and approval services required for the correction of the Failed Work and the cost of such similar services related to remedial operations performed to the Failed Work shall be borne by the Contractor.
d. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Design Professional.
e. If the Design Professional is to observe tests, inspections, or approvals required by the Contract Documents, the Design Professional will do so promptly and, where practicable, at the normal place of testing.
f. It is the intent of the Construction Documents to require the Contractor to control the quality of the Work using the processes specified in the Contractor's Quality Management, Commissioning, and Turnover Plan contained within the most recent Construction Management Plan approved by the Owner and Design Professional. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work and shall conform to the most recently approved Contractor's Construction Schedule.

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g. The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the Contractor's, as is the obligation to provide the Work and a complete and functional project per the Contract Documents. Notwithstanding anything herein, or in subsequently approved Quality Management, Commissioning and Turnover Plans, the Owner's review and Design Professional's approval of such plan(s) does not relieve the Contractor in any way of this responsibility.

h. The Contractor shall be in charge of scheduling; re-scheduling (when required); and confirming adequate distribution of reports and other findings from all testing and inspections of the Work. This responsibility includes, but is not limited to, scheduling the testing services of a certified testing laboratory which, by statute shall be contracted to and paid for by the Owner. The certified testing laboratory shall be acceptable to the Design Professional; and shall perform the tests as called for in the Contract Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:

.1 The frequency and type of Quality Control testing shall be established by the Contractor and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Contract Documents. The type and amount of testing required by the Contract Documents shall be seen as the minimums required, and shall be increased, if in the opinion of the Contractor, more testing is needed to meet the requirements of the Contractor.

.2 The Contractor shall concurrently provide the Design Professional copies of all test results it receives within three (3) business days of receipt of same.

.3 The Owner shall provide such Quality Assurance testing as it and the Design Professional mutually agree to be adequate for their own needs. The Owner shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the Owner, or lack thereof shall in no manner affect the responsibilities of the Contractor or Design Professional under this Agreement.

i. The Contractor shall facilitate and conduct weekly (or more frequent if necessary) meetings on site for the coordination of all mechanical, electrical and special systems installation activities and possible interference(s) above ceilings, in mechanical rooms, etc. The mechanical trades shall typically have preference in the event of conflicts, and therefore the mechanical contractor's coordinator will usually lead each meeting, unless the Contractor decides another trade or the Contractor should take the lead. The Design Professional shall be informed of the meetings at least seven (7) days in advance, and the appropriate Design Professional's consultants should be invited to attend by the Contractor, as supplemented and coordinated by the Design Professional.

j. The Contractor's Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes and Contractor will review, in detail, the steps for completing testing of all building systems with the Owner and Design Professional. This plan shall be coordinated with and shall be made part of the Contractor's Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate Owner's and Design Professional's consultant(s), representatives of the Owner, and at its option, either or both the Design Professional.

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k. When heating, air conditioning, ventilating, exhaust, or other items of mechanical, electrical or other similar equipment are installed, or other systems or equipment requiring testing as may be specified in the Contractor's Quality Management, Commissioning and Turnover Plan, it shall be the responsibility of the Contractor, Subcontractor or Sub-subcontractor installing such equipment to operate it for a period of time satisfactory to the Owner prior to acceptance and before the start of Warranty. The duration of such operation shall be as the Owner, Owner's consultant(s), Design Professional's consultant(s), Owner' employees and other Owner's representatives (the Turnover Team) shall reasonably require for proper testing of the respective system and thorough instruction of the Owner's operating personnel.

l. All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the Owner's operating personnel on each system's operations and maintenance shall be provided by the Contractor, Subcontractor or Sub-subcontractor responsible for providing and installing the equipment. Such tests and instruction shall be in meetings held solely for this purpose (the Turnover Meetings), which shall be coordinated and managed by the Contractor, who shall show their dates in the Contractor's Construction Schedule at least sixty (60) days prior to occurrence. The Contractor shall schedule the Turnover Meetings at times reasonably convenient for the Owner's consultant(s), Design Professional's consultant(s), Owner's employees and other Owner's representatives that the Owner and Design Professional agree are necessary to attend for each system. The Design Professional may attend such Turnover Meetings at its discretion.

m. The Contractor shall provide a digital video record to the Owner, with copies to the Design Professional of all meetings for the purpose of Owner operational staff instruction or training; as well as commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.

n. The Contractor shall prepare a digital video record of the project for the Owner with copies to the Design Professional at such stages as shall be indicated by the Design Professional for the purpose of documenting the location of piping, conduit, equipment, or other construction to be concealed at a later date; recording key inspections and tests; providing evidence of unforeseeable conditions encountered by the Contractor on site; and other construction issues as the Design Professional may reasonably require from time to time.

o. The Contractor shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Contractor shall notify the Design Professional in writing immediately upon completion of this marking, and the Design Professional will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the Owner. The Design Professional will then give permission for removal in writing to the Contractor. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

Section 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as set forth in the provisions of Texas Government Code, Chapter 2251 or its successor statute.

Section 13.6 Time Limits on Claims

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The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work.

Section 13.8 Measurement

Before ordering any material or doing any Work, the Contractor shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Design Professional for consideration before proceeding with the Work. The Contractor shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the Owner and Design Professional of these prior to commencing any Work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

Section 13.9 Expediting Materials

The Contractor shall immediately, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work, and shall submit to the Design Professional evidence that such orders have been placed in accordance with the Contractor's Construction Schedule.

Section 13.10 Addressing the Owner's Additional Needs and Concerns

a. Notwithstanding the above, the Owner has a unique set of stakeholders and organizational structure that creates special challenges the Contractor must completely and successfully address to the satisfaction of the Owner and Design Professional in the performance of the Work under this Agreement. The actions that shall be taken to address these special challenges include, but are not limited to, the following:

    .1 The Contractor shall provide the Superintendent once per month for a scheduled meeting with the Owner for a progress update on the project if requested by the Owner. A walk-through of the site may be held as a part of this meeting, which shall be scheduled by mutual agreement during regular business hours.

    .2 The Contractor may be required to provide the Superintendent for one meeting per month with the Design Professional for the purpose of assisting the Owner in preparing City Council agenda items and assisting City staff in preparing presentations to the City Council for the benefit of the public. The actual preparation and submission of the City Council of any agenda or work session item shall be performed by the Owner.

    .3 In addition to the meetings required to complete the Project, it is anticipated the Owner may request tours from time to time of the project and the site. The Contractor shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Owner.

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Section 13.11 Additional Provisions

a. In the event that any provision herein is held to be unlawful, against public policy, or a violation of the Charter or Ordinances of the Denton City, Texas, such provision shall be modified to make it valid, or if modification is not possible, such provision shall be deleted and the remainder of this Agreement shall remain in full force and effect.
b. Each party hereto agrees to, without limitation, perform all acts; provide all services, material, equipment, labor and supervision; and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.
c. All exhibits referred to in the Contract Documents are, by reference, incorporated herein for all purposes.
d. The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of the Contract Documents.
e. Any specific requirement in this Contract that require responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Contract Documents or the applicable subcontract.
f. The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written document signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific material restated in the written document signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.
g. The Contractor shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.
h. The Contractor shall provide Owner with copies of all notices received by Contractor from Subcontractors, Sub-subcontractors, and/or suppliers to Contractor.
i. The Owner is a Texas home-rule municipality and as such is generally exempt from taxation under Texas law, which may include the purchase of items, materials, or supplies purchased on behalf of the Owner for this public works project. Contractor shall confirm that the Owner is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the Owner.
j. Owner affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by Owner to Contractor subject to the terms and conditions of the Contract Documents. In the event that Owner approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by Contractor, (other than that contemplated by

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the Contract Documents under any remedy-granting provision), Owner will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the Owner's governing body.

k. In the event the Owner is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the Contractor shall notify the Owner and Design Professional of such requirement(s) in writing not less than thirty (30) days in advance and attach a copy of the specific advertising and noticing required.

l. The Contractor shall, in addition to compliance with the requirements of Section 3.7.f and without limitation, not knowingly employ or contract with an illegal alien to perform any of the Work under this Agreement. The Contractor shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (ii) fails to certify to the Contractor that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.
    i. The Contractor shall comply with any reasonable request of the Texas Workforce Commission made in the course of an investigation pursuant to state law.
    ii. In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Contract Document the Owner may be entitled to for a breach of the Agreement, if the Owner terminates this Agreement, in whole or in part, due to Contractor's breach of the obligations set forth above in this Section 13.11.l Contractor shall be liable for actual and consequential damages to the Owner.

m. It is the express intention of the parties that this Agreement is not to be construed as a waiver of any immunities or defenses of the Owner under Texas law.

n. Notwithstanding any other provision in the Contract Documents to the contrary, public property is protected from forced sale and therefore may not be made the subject of a mechanic's lien. Nothing in the Contract Documents shall be construed to allow a mechanic's lien on public property owned by the Owner. The Owner does not waive its immunities or right to object to or contest such a lien.

Article 14. TERMINATION OR SUSPENSION OF THE CONTRACT

Section 14.1 Termination by the Contractor

a. The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:
    .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
    .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

b. The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100

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percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

c. If one of the reasons described in Section 14.1.a or 14.1.b exists, the Contractor may, upon seven (7) days' notice to the Owner and Design Professional, terminate the Contract and recover from the Owner payment for Work executed, including other costs allowed by the law.

d. If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Design Professional, terminate the Contract and recover from the Owner as provided in Section 14.1.c.

Section 14.2 Termination by the Owner for Cause

a. The Owner may terminate the Contract if the Contractor:

.1 refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or

.5 contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

b. When any of the reasons described in Section 14.2.a exist, and upon certification by the Design Professional that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

c. When the Owner terminates the Contract for one of the reasons stated in Section 14.2.a, the Contractor shall not be entitled to receive further payment.

d. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's, Design Professional's consultants', and Owner's other consultants' services and expenses made necessary thereby, and other damages incurred by

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the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

i. The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

Section 14.3 Suspension by the Owner for Convenience

a. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.
b. The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.a. Adjustment of the Contract Sum shall be as specified in Article 7. No adjustment shall be made to the extent:
   .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
   .2 that an equitable adjustment is made or denied under another provision of the Contract.

Section 14.4 Termination by the Owner for Convenience

a. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.
b. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
   .1 cease operations as directed by the Owner in the notice;
   .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
   .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
c. Upon such termination for the Owner's convenience, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Contract Documents and Owner's further instructions. **The Contractor waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, lost opportunity costs, and potential and actual unabsorbed overhead costs.** The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims that the Owner has against the Contractor under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract.

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Article 15. CLAIMS AND DISPUTES

Section 15.1 Claims

a. Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.a does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

b. Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the dispute resolution method selected in the Agreement and within the period specified by applicable law.

c. Notice of Claims

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Design Professional, if the Design Professional is not serving as the Initial Decision Maker.; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Design Professional and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

i. Claims Made After Final Payment

After Final Payment, Claims made by the Contractor that have not otherwise been waived pursuant to this Contract, must be initiated within one hundred and eighty (180) days from the date of Final Payment by written notice to the Owner as a condition precedent to the Contractor's right to sue on the Contract.

ii. Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.b, shall be initiated by notice to the other party. In such event, no recommendation by the Initial Decision Maker is required.

d. Continuing Contract Performance

i. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

ii. The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance

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with this Article 15. The Design Professional will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

e. Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.c shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Damages available to the Contractor are limited to those set forth in the Texas Local Government Code, Subchapter I, Section 271.153 or its successor statute(s).

f. Claims for Additional Time

i. If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor shall provide written notice as required by Sections 8.3.d. and 8.3.e.

ii. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in accordance with Section 8.3.e.

g. Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.g shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Section 15.2 Initial Decision

Omitted.

Section 15.3 Mediation

a. Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to precedent to filing suit in a state district court having competent jurisdiction per the Contract Documents. If a statute of limitations is at issue, then suit may be filed by either party to toll the statute, but the suit shall then be stayed pending completion of the agreed mediation. If the parties cannot agree on a mediator, then the court may appoint one upon application of either party.

b. The parties shall endeavor to resolve their Claims by mediation. A request for mediation, shall be made in writing, delivered to the other party to the Contract.

c. Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a

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demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings.

d. The parties shall share the mediator's fee equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Written agreement(s) reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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EXHIBIT C

KEY PERSONNEL RESUME FORM

Offerors may attach an organizational chart (maximum of 1 page) as supporting documentation. Please list the key team members that will be assigned to the Project. The Offeror should, at a minimum, provide personnel experience for the Project Manager, Superintendent, and the Foreman/Foremen. Past experience projects should demonstrate experience in the categories listed in 12.2.2.7 of Section 00 21 16 – Instructions to Offerors.

NAME: Garrett Glover
JOB TITLE: Project manager

LICENSES AND CERTIFICATIONS: OSHA 30, First Aid Certified
TOTAL YEARS OF EXPERINCE: 10 + years
TOTAL YEARS WITH CURRENT FIRM: 2 years
RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.
IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM:
Managing all aspects of a project that is given to him. Making sure that everything runs smoothly with the job and that it is getting done in a timely manner. Some of those jobs include:

- McCoy's Reload Phase II - $3.67 million
- Huntsville - Governors Ranch - $11.5 million
- San Marcos townhomes - $507 thousand

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: Copunt Rosenbery - 5%

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NAME: Dayton Harrell
JOB TITLE: General Superintendent

LICENSES AND CERTIFICATIONS: OSHA 10
TOTAL YEARS OF EXPERINCE: 5 years
TOTAL YEARS WITH CURRENT FIRM: 5 years
RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.
IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM: Overlooks Many of our current projects and ensures that everything runs smoothly, while dealing with daily operations involving transportation of equipment and certain crews.

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: PEC Liberty Hill WH expansion - 20%

NAME: Jason Reeves
JOB TITLE: Vice President

LICENSES AND CERTIFICATIONS: OSHA 30
TOTAL YEARS OF EXPERINCE: 5 years
TOTAL YEARS WITH CURRENT FIRM: 4 years
RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.
IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM: Dealing directly with the customer and fulfilling their needs for each project. Also, helping out the estimating team. Some projects include:
- Lampasas Business Park - $2.7 million

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- Brushy Mountain - $4.6 Million
- Blessing Ranch - $750 Thousand

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: N/A

NAME: Kenny Warr
JOB TITLE: President / Owner

LICENSES AND CERTIFICATIONS: OSHA 10
TOTAL YEARS OF EXPERINCE: 27 Years
TOTAL YEARS WITH CURRENT FIRM: 10 Years
RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.
IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM: Previously the VP of operations and Co-founder of Sprint Energy. Now is President and Owner of Gage & Cade Construction, and managing daily operations.

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: N/A

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NAME: Zach Cason
JOB TITLE: Project Manager

LICENSES AND CERTIFICATIONS: OSHA 30
TOTAL YEARS OF EXPERINCE: 10 years
TOTAL YEARS WITH CURRENT FIRM: 2 years
RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.
IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM: Managing all aspects of a project that is given to him. Making sure that everything runs smoothly with the job and that it is getting done in a timely manner. His previous employment was with Pro dirt Services where he was Vice President of construction. He managed the day to day operations of all estimating personell, site work crews, utility crews, and Comercial Site work.

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH: City of Round Rock - South Creek channel - 20%

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EXHIBIT D

Alternates

NONE

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EXHIBIT E

ALLOWANCES

None

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EXHIBIT F

SECTION 00 42 44 - UNIT PRICE PROPOSAL FORM - CSP

City of Denton - Solid Waste & Recycling

From: Arturo Garcia

901-B Texas Street

Denton, TX 76209

<Purchasing Agent>/Purchasing Dept.

PROJ.: **Public Disposal Facility Repairs**

RFP:

ENG

PMO:

OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
1	01-70-00	Mobilization/ Demobilization	LS	1	$ 55,035.00	$ 55,035.00
2	02-41-13	Demolition	LS	1	$ 65,000.00	$ 65,000.00
3	30-30-00	Temporary Shoring	LS	1	$ 30,000.00	$ 30,000.00
4	32-11-33	Cement Treated Base	CY	41	$ 300.00	$ 12,300.00
5	03-30-00	Cast-in-place Concrete	LS	1	$ 160,000.00	$ 160,000.00
6	13-00-00	Metal Chutes	LS	1	$ 220,000.00	$ 220,000.00
7	34-80-00	Metal Litter Fence Poles	LS	1	$ 10,000.00	$ 10,000.00
8						$ -
9						$ -
10						$ -
11						$ -
12						$ -
13						$ -
14						$ -
15						$ -
16						$ -
17						$ -
18						$ -
19						$ -
20						$ -
21						$ -
22						$ -
23						$ -
24						$ -
25						$ -
26						$ -
27						$ -
28						$ -
29						$ -
30						$ -
					TOTAL BASE PROPOSAL:	**$552,335.00**

Alternate Proposal

1A					$ -	$ -
2A					$ -	$ -
3A					$ -	$ -
					TOTAL ALT. Proposal:	**$0.00**

TOTAL BASE PLUS ALTERNATE PROPOSAL: $552,335.00

Public Disposal Facility Repairs **TOTAL PROPOSAL: $552,335.00**

Docusign Envelope ID: 36C11A82-F5AD-4ABD-96EA-846F34496760

EXHIBIT G

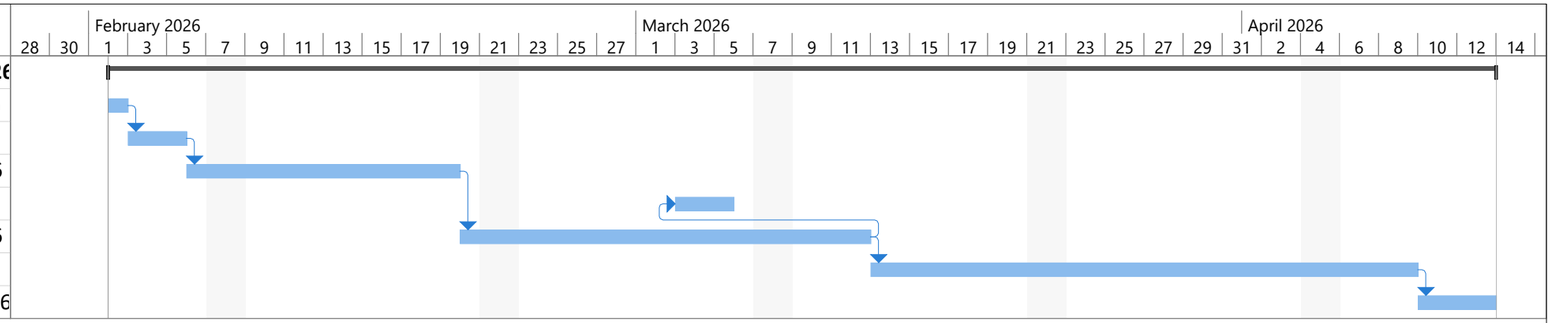
INITIAL SCHEDULE OF VALUES

NONE

Docusign Envelope ID: 36C11A82-F5AD-4ABD-96EA-846F34496760

EXHIBIT H

ID	Task Mode	Task Name	Duration	Start	Finish
1		**Public Disposal Facility Repair**	**51 days**	**Mon 2/2/26**	**Mon 4/13/26**
2		Mobilization	1 day	Mon 2/2/26	Mon 2/2/26
3		Temporary Shoring	3 days	Tue 2/3/26	Thu 2/5/26
4		Demolition	10 days	Fri 2/6/26	Thu 2/19/26
5		Cement Treated Base	3 days	Tue 3/3/26	Thu 3/5/26
6		Cast in Place Concrete	15 days	Fri 2/20/26	Thu 3/12/26
7		Metal Chutes	20 days	Fri 3/13/26	Thu 4/9/26
8		Metal Litter Fence Poles	2 days	Fri 4/10/26	Mon 4/13/26



Project: schedule
Date: Tue 12/2/25

Task	Project Summary	Manual Task	Start-only	Deadline
Split	Inactive Task	Duration-only	Finish-only	Progress
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress
Summary	Inactive Summary	Manual Summary	External Milestone	

Docusign Envelope ID: 36C11A82-F5AD-4ABD-96EA-846F34496760

EXHIBIT I

ESCROW AGREEMENT

NONE

Docusign Envelope ID: 36C11A82-F5AD-4ABD-96EA-846F34496760

EXHIBIT J

1 **SECTION 00 35 14**

2 CONFLICT OF INTEREST AFFIDAVIT - CSP

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 **Name of vendor who has a business relationship with local governmental entity.**

Gage and Cade 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

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 _____ 12/3/2025
Signature of vendor doing business with the governmental entity — Date

3 **END OF SECTION**

Docusign Envelope ID: 36C11A82-F5AD-4ABD-96EA-846F34496760

EXHIBIT K

SECTION 00 41 01
PROPOSAL FORM - CSP

TO: City of Denton
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: CSP 8915 – Public Disposal Facility Repairs

1 Enter into Agreement

The undersigned Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with City in the form included in the Proposal Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Unit Price Proposal and within the Contract Time indicated in this Proposal and in accordance with the other terms and conditions of the Contract Documents.

2 OFFEROR Acknowledgements and Certification

2.1 In submitting this Proposal, Offeror accepts all of the terms and conditions of the INVITATION TO OFFORERS and INSTRUCTIONS TO OFFORERS, including without limitation those dealing with the disposition of Offeror's Bond.

2.2 Offeror is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.

2.3 Offeror certifies that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.

2.4 Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal.

2.5 Offeror has not solicited or induced any individual or entity to refrain from proposing.

2.6 Offeror has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Agreement. For the purposes of this Paragraph:

a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process.

b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process to the detriment of City (b) to establish proposal prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.

c. "collusive practice" means a scheme or arrangement between two or more Offerors, with or without the knowledge of City, a purpose of which is to establish proposal prices at artificial, non-competitive levels.

d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

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2.7 The Offeror acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

3 Time of Completion

3.1 The Work will be Substantially Complete as defined in the General Conditions within 90 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.2 The Work will be complete for Final Acceptance within 120 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 8 of the General Conditions.

3.3 Offeror accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable), Substantial Completion, and Final Acceptance within the times specified in the Agreement.

4 Attached to this Proposal

4.1 The following documents are attached to and made a part of this Proposal:

a. Section 00 35 14 – Conflict of Interest Affidavit – CSP
b. Section 00 41 01 – This Proposal Form – CSP
c. Section 00 42 44 – Unit Price Proposal Form – CSP – Excel Electronic Copy (either included in the hard copy Proposal, or submitted via Ionwave)
d. Section 00 43 14 – Required Offeror's Bond – CSP, issued by a surety meeting the requirements of Paragraph 11.4 of the General Conditions.
e. Section 00 43 38 – Proposed Subcontractors Form – CSP
f. Section 00 43 39 – Vendor Compliance to State Law Non-Resident Offeror – CSP
g. Section 00 45 14 – Safety Record Questionnaire – CSP
h. Section 00 45 27 – Contractor Compliance with Workers Compensation Law – CSP
i. Section 00 45 44 – Corporate Resolution of Authorized Signatories – CSP
j. Any additional documents required by Paragraph 12 of Section 00 21 16 – Instructions to Offerors

5 Total Proposal Amount

5.1 Offeror will complete the Work in accordance with the Contract Documents for the following proposal amount. In the space provided below, please enter the total proposed amount for this project. This figure will be read publicly by the City at the proposal opening.

5.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Total Proposal Amount: $ 552,335.00

Docusign Envelope ID: 36C11A82-F5AD-4ABD-96EA-846F34496760

6 Proposal Submittal

6.1 It is understood by Offeror that submission of the total proposal amount is only one of the factors for the City's evaluation process, and that any award of contract will be based on the complete evaluation of the Proposal and Offeror by City under the terms provided in the Instructions to Offerors or any validly issued amendments or addenda.

6.2 This Proposal is submitted on January 7th, 2026 by the entity named below.

Respectfully submitted,

By: _____
(Signature)

Preston Reeves
(Printed Name)

Title: Estimator

Company: Gage and Cade Construction

Address: 407 CR 264
Bertram, TX 78605

State of Incorporation: TX

Email: preston@gageandcadeconstruction.com

Phone: 512-734-5864

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	PR
Addenda No. 2:	PR
Addenda No. 3:	
Addenda No. 4:	
Addenda No. 5:	

END OF SECTION

EXHIBIT L

"General Decision Number: TX20250243 03/14/2025

Superseded General Decision Number: TX20240243

State: Texas

Construction Type: Building

County: Denton County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at http://www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2025
1	03/14/2025

ASBE0021-011 06/01/2023

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)	$ 31.32	7.52

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* BOIL0074-003 01/01/2025

	Rates	Fringes
BOILERMAKER	$ 33.17	24.92

CARP1421-002 10/01/2023

	Rates	Fringes
MILLWRIGHT	$ 32.02	11.27

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* ELEV0021-006 01/01/2025

	Rates	Fringes
ELEVATOR MECHANIC	$ 51.93	38.435+a+b

FOOTNOTES:

A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

B. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane	$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above	$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under	$ 32.35	13.10

IRON0263-005 06/01/2024

	Rates	Fringes
IRONWORKER (ORNAMENTAL AND STRUCTURAL)	$ 28.64	7.93

PLUM0100-008 11/01/2024

	Rates	Fringes
HVAC MECHANIC (HVAC Unit Installation Only)	$ 39.76	14.04

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* SUTX2014-019 07/21/2014

	Rates	Fringes
BRICKLAYER	$ 19.89	0.00
CARPENTER, Excludes Drywall Hanging, Form Work, and Metal Stud Installation	$ 19.25	0.00
CAULKER	$ 16.63 **	0.00
CEMENT MASON/CONCRETE FINISHER	$ 12.93 **	0.00
DRYWALL HANGER AND METAL STUD INSTALLER	$ 15.42 **	0.00
ELECTRICIAN (Alarm Installation Only)	$ 18.83	3.32
ELECTRICIAN (Communication Technician Only)	$ 19.98	3.64
ELECTRICIAN (Low Voltage Wiring Only)	$ 15.80 **	2.18
ELECTRICIAN, Excludes Low Voltage Wiring and Installation of Alarms/Sound and Communication Systems	$ 18.82	0.83
FORM WORKER	$ 12.13 **	0.00
GLAZIER	$ 16.55 **	3.13
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine)	$ 10.04 **	2.31
INSTALLER - SIDING (METAL/ALUMINUM/VINYL)	$ 14.74 **	0.00
INSTALLER - SIGN	$ 15.61 **	0.00
INSULATOR - BATT	$ 13.00 **	0.00
IRONWORKER, REINFORCING	$ 14.02 **	0.00
LABORER: Common or General	$ 11.76 **	0.00
LABORER: Mason Tender - Brick	$ 10.54 **	0.00
LABORER: Mason Tender - Cement/Concrete	$ 10.75 **	0.00
LABORER: Pipelayer	$ 13.00 **	0.35
LABORER: Plaster Tender	$ 12.22 **	0.00
LABORER: Roof Tearoff	$ 11.28 **	0.00
LABORER: Landscape and Irrigation	$ 12.50 **	0.48
LATHER	$ 16.00 **	0.00
OPERATOR:		

Backhoe/Excavator/Trackhoe	$ 12.83 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.93 **	0.00
OPERATOR: Bulldozer	$ 18.29	1.31
OPERATOR: Drill	$ 15.69 **	0.50
OPERATOR: Forklift	$ 13.21 **	0.81
OPERATOR: Grader/Blade	$ 12.48 **	0.00
OPERATOR: Loader	$ 13.46 **	0.85
OPERATOR: Mechanic	$ 17.52 **	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 18.44	0.00
OPERATOR: Roller	$ 15.04 **	0.00
PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping	$ 13.21 **	2.33
PAINTER: Drywall Finishing/Taping Only	$ 13.76 **	2.84
PIPEFITTER, Excludes HVAC Pipe Installation	$ 22.98	6.35
PLASTERER	$ 15.75 **	0.00
PLUMBER (HVAC Pipe Installation Only)	$ 22.16	5.46
PLUMBER, Excludes HVAC Pipe Installation	$ 20.84	4.74
ROOFER	$ 17.19 **	0.00
SHEET METAL WORKER (HVAC Duct Installation Only)	$ 20.88	5.19
SHEET METAL WORKER, Excludes HVAC Duct Installation	$ 24.88	5.97
SPRINKLER FITTER (Fire Sprinklers)	$ 22.94	0.00
TILE FINISHER	$ 11.22 **	0.00
TILE SETTER	$ 14.25 **	0.00
TRUCK DRIVER: 1/Single Axle Truck	$ 16.40 **	0.81
TRUCK DRIVER: Dump Truck	$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck	$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck	$ 12.50 **	0.00

TRUCK DRIVER: Water Truck.....$ 12.00 ** 4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.75) or 13658 ($13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the

example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

Docusign Envelope ID: 36C11A82-F5AD-4ABD-96EA-846F34496760

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.**

GAGE & CADE 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 relations hip 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:
Jason Reeves
A619B99E2C2448D...
Signature of vendor doing business with the governmental entity

1/12/2026
Date

Docusign Envelope ID: 36C11A82-F5AD-4ABD-96EA-846F34496760

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. 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: 36C11A82-F5AD-4ABD-96EA-846F34496760
Status: Sent
Subject: Please DocuSign: City Council Contract 8915 Public Disposal Facility Repairs
Source Envelope:
Document Pages: 127
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Crystal Westbrook
901B Texas Street
Denton, TX 76209
crystal.westbrook@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
1/8/2026 8:12:50 AM
Holder: Crystal Westbrook
crystal.westbrook@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 1/8/2026 8:30:53 AM Viewed: 1/8/2026 8:31:02 AM Signed: 1/8/2026 8:34:44 AM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial  Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/8/2026 8:34:47 AM Viewed: 1/8/2026 9:57:24 AM Signed: 1/8/2026 9:59:39 AM
Leah Bush leah.bush@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/9/2026 5:02:14 PM ID: e5b807d2-e5fa-4042-a056-b43997ed051e	Signed by:  2A936B08B5D7485... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/8/2026 10:21:18 AM Viewed: 1/9/2026 5:02:14 PM Signed: 1/12/2026 9:40:58 AM
Jason Reeves jason@gageandcadeconstruction.com Senior Vice President Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/12/2026 9:42:50 AM ID: 3d1c833c-f923-48f8-a5f3-842bee4d0d2a	DocuSigned by:  A619B99E2C2448D... Signature Adoption: Pre-selected Style Using IP Address: 162.251.9.31	Sent: 1/12/2026 9:41:01 AM Viewed: 1/12/2026 9:42:50 AM Signed: 1/12/2026 9:43:49 AM

Signer Events	Signature	Timestamp
Brenda Haney brenda.haney@cityofdenton.com Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/12/2026 10:06:50 AM ID: 0331e5ad-d84f-4da9-9cac-f98261e97b1e	Signed by: Brenda Haney C3C63BE563154A1... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 1/12/2026 9:43:52 AM Viewed: 1/12/2026 10:06:50 AM Signed: 1/12/2026 10:07:31 AM
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: 1/12/2026 10:07:34 AM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingred Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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: 1/8/2026 8:34:47 AM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 1/8/2026 10:21:21 AM

Carbon Copy Events	Status	Timestamp
Electronic Record and Signature Disclosure: Not Offered via Docusign		
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: 1/12/2026 10:07:34 AM Viewed: 1/12/2026 3:43:08 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Arturo Garcia Arturo.Garcia@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 8/6/2025 10:00:39 AM ID: df46fb8c-c5d0-4710-a20b-1eba9b4b97ce		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/8/2026 8:30:53 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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 request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with AMS Group LLC, for power transformer disposal (scrap) services for Denton Municipal Electric; providing for the sale of obsolete assets; and providing an effective date (IFB 8971 – awarded to AMS Group LLC, in the revenue amount of $401,777.00). The Public Utilities Board recommends approval (6 - 0).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Promote Sustainability and the Environment.

INFORMATION/BACKGROUND

Denton Municipal Electric (DME) maintains and operates generation, transmission, and distribution facilities in and around the greater Denton area. The system provides electric service to approximately 63,000 customers. Over the last 12 years, DME has upgraded or replaced the old 69kV transmission system components (substations and transmission lines) with 138kV facilities. The system upgrades also included the reconstruction of older 138kV substations.

A key component of a distribution substation is the power transformers. Power transformers step down high voltage (138kV or 69kV) to distribution voltage (13.2kV). The useful life of the units is around 30 years. Therefore, it was decided to retire the older units and utilize new transformers in the new stations. The transmission voltage upgrade made the 69kV units obsolete. In total, DME has nine (9) power transformers that have no system use.

Before the transmission system upgrades, DME utilized a dual-voltage system. This configuration required the use of Auto Transformers. Auto transformers were used on the DME system to convert 138kV to 69kV. Again, the system upgrade made the two auto transformers obsolete.

As stated above, the power and auto transformers are so massive that they were retired in place. The units contain thousands of gallons of mineral oil and weigh in excess of 50 tons for power transformers and 100 tons for autos. Therefore, DME issued an IFB for the disposal (sale) of the units. The scope of work requires the vendor to provide all equipment and labor to completely remove the units from sites in a manner that complies with all city and regulatory requirements.

Invitation for Bids was sent to 58 prospective suppliers of this item. In addition, specifications were placed on the Procurement website for prospective suppliers to download, and advertised in the local newspaper. Seven (7) bids meeting specifications were received. The highest bid was received by AMS Group LLC.

NIGP Code Used for Solicitation:	285, 912, 913, 926, and 941
Notifications sent for Solicitation sent in IonWave:	1,910
Number of Suppliers that viewed Solicitation in IonWave:	25
HUB-Historically Underutilized Business Invitations sent out:	224
SBE-Small Business Enterprise Invitations sent out:	642
Responses from Solicitation:	7

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On February 9, 2026, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award a contract with AMS Group LLC, for power transformer disposal (scrap) services for Denton Municipal Electric, in a not-to-exceed amount of $401,777.

PRINCIPAL PLACE OF BUSINESS

AMS Group LLC
Houston, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval, with a completion date by June 2026.

FISCAL INFORMATION

The proceeds from the contract will be returned to the Electric Fund.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Bid Tabulation
Exhibit 3: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Chris Lutrick, 940-349-7152.

Legal point of contact: Leah Bush at 940-349-8333.

Exhibit 2
IFB 8971 -Bid Tabulation for Power Transformer Disposal (Revenue)

				AMS Group LLC	Sunbelt Solomon Services, LLC	A-Line TDS Inc.	Williams Electric & HVAC	Texas Electric Cooperatives	TCI of Alabama, LLC	Transfluid Services Inc
			Respondent's Business Name:							
			Principal Place of Business (City and State):	**Houston, TX**	Temple, TX	Tonkawa, OK	Springtown, TX	Georgetown, TX	Pell City, AL	Houston, TX
Line #	**Transformer Description**	**QTY**	**UOM**	**Unit**	**Unit**	**Unit**	**Unit**	**Unit**	**Unit**	**Unit**
1	Arco #1 138kV Magnetek Power Transformer	1	EA	**$60,000.00**	$75,000.00	$30,260.00	$29,952.00	$24,000.00	$15,965.00	$1.00
2	Arco #2 138kV Waukesha Power Transformer	1	EA	**$60,000.00**	$75,000.00	$37,625.00	$32,746.00	$34,000.00	$17,464.00	$1.00
3	Hickory #1 69kV Alis-Chalmers Power Transformer	1	EA	**$18,880.00**	$12,500.00	$17,125.00	$20,304.00	$5,000.00	$10,832.00	$1.00
4	Hickory #2 67kV Alis-Chalmers Power Transformer	1	EA	**$18,880.00**	$12,500.00	$17,125.00	$20,160.00	$5,000.00	$10,750.00	$1.00
5	Kings Row #2 SW Electric/Alis-Chalmers Power Transformer	1	EA	**$18,880.00**	$13,000.00	$17,120.00	$32,746.00	$5,000.00	$10,750.00	$1.00
6	Locust #3 Waukesha 138kV Power Transformer	1	EA	**$60,000.00**	$75,000.00	$37,625.00	$55,613.00	$32,000.00	$17,464.00	$1.00
7	North Lakes Trafo-Union 69kV/138kV Autotransformer	1	EA	**$75,417.00**	$40,000.00	$61,340.00	$20,160.00	$60,000.00	$29,655.00	$1.00
8	RD Wells Siemens 69kV/138kV Autotransformer	1	EA	**$89,720.00**	$72,000.00	$81,865.00	$76,320.00	$95,000.00	$40,704.00	$1.00
			Total:	**$401,777.00**	$375,000.00	$300,085.00	$288,001.00	$260,000.00	$153,584.00	$8.00

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH AMS GROUP LLC, FOR POWER TRANSFORMER DISPOSAL (SCRAP) SERVICES FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE SALE OF OBSOLETE ASSETS; AND PROVIDING AN EFFECTIVE DATE (IFB 8971 – AWARDED TO AMS GROUP LLC, IN THE REVENUE AMOUNT OF $401,777.00).

WHEREAS, the City has solicited, received, and tabulated competitive bids for the purchase of necessary materials, equipment, supplies, or services in accordance with the procedures of state law and city ordinances; and

WHEREAS, the City Manager, or a designated employee, has reviewed and recommended that the herein described bids are the lowest responsible bids for the materials, equipment, supplies, or services as shown in the "Bid Proposals" submitted therefore; 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 following competitive bids for the materials, equipment, supplies, or services as described in the "Bid Invitations", "Bid Proposals", or plans and specifications on file in the Office of the City's Purchasing Agent filed according to the bid number assigned hereto, are hereby accepted and approved as being the lowest responsible bids:

BID NUMBER	VENDOR
8971	AMS Group LLC

SECTION 2. That by the acceptance and approval of the above competitive bids the City accepts the offer of the persons submitting the bids 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 Bid Invitations, Bid Proposals, and related documents.

SECTION 3. Should the City and the winning bidder(s) wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the bids, the City Manager, or their designated representative, is hereby authorized to execute a 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 Bid Proposal and related documents, and to extend that contract as determined to be advantageous to the City of Denton.

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 _____. The 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

Docusign Envelope ID: 06F9EFBF-32A5-412A-A18E-9B25163ADC96

Docusign City Council Transmittal Coversheet

IFB	8971
File Name	Power Transformer Disposal
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: 06F9EFBF-32A5-412A-A18E-9B25163ADC96

CONTRACT BY AND BETWEEN CITY OF DENTON, TEXAS AND AMS GROUP LLC (CONTRACT 8971)

THIS CONTRACT is made and entered into this date _____, by and between AMS GROUP LLC a Texas corporation, whose address is 2337 Naomi St., Houston, Texas 77054 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

SCOPE OF SERVICES

Contractor shall provide products and/or services in accordance with the City's document IFB 8971 POWER TRANSFORMER DISPOSAL, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's IFB 8971 **(Exhibit "B" on File at the Office of the Purchasing Agent);**
(c) City of Denton Standard Terms and Conditions **(Exhibit "C");**
(d) Certificate of Interested Parties Electronic Filing **(Exhibit "D");**
(e) Insurance Requirements **(Exhibit "E");**
(f) Contractor's Proposal **(Exhibit "F")**;
(g) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "G");**

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

Prohibition on Contracts with Companies Boycotting Israel
Contractor 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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies
Contractor 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

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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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor 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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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.

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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, 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.

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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

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CONTRACTOR

BY: DocuSigned by: _____
A6AD9D9D47AA490...
AUTHORIZED SIGNATURE

Printed Name: David E. Hess

Title: President

Office: 713-426-4777
PHONE NUMBER

david@amsgroupinc.com
EMAIL ADDRESS

___2026 - 1408177
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Signed by: Leah Bush _____
2A936B08B5D7485...

THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED as to financial and operational obligations and business terms.

Signed by: Antonio Puente, Jr. Antonio Puente, Jr.
E3760944C2F54B5...
SIGNATURE PRINTED NAME

DME General Manager
TITLE

Electric
DEPARTMENT

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Exhibit A
Special Terms and Conditions

1. The Quantities

The quantities indicated on Exhibit F are estimates based upon the best available information. Supplier agrees to take possession of all items in Exhibit F, with the understanding that all may be sold or scrapped at the discretion of the Supplier with the exception of the RD Wells Siemens 69kV/138kV Autotransformer, which must be scrapped.

The City reserves the right to increase or decrease the quantities to meet its actual needs without djustments in the bid price. In the unlikely event any awarded transformer is held back by the City of Denton, AMS would receive a respective credit for it, based on AMS unit bid price.

2. Contract Terms

The contract will be effective from date of award or notice to proceed with a purchase order as determined by the City of Denton Purchasing Department. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. Price Escalation and De-escalation

On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued.

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Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

4. Performance Liquidated Damages

The Contractor shall incur contractual payment losses, as initiated by the City for performance that falls short of specified performance standards as outlined below:

- Delivery beyond contracted lead times
- Performance below contracted levels (services only)

The Contractor shall be assessed a one (1%) percent fee each month when any one of the performance standards outlined above are not met in full. The Contractor shall be assessed a two (2%) percent profit fee each month when any two (2) or more performance standards outlined above are not met in full. At the end of each month, the City will review the monthly reports and determine the percentage of penalty to be assessed to the Contractor's monthly profit margin.

5. Total Contract Amount

The contract revenue shall be $401,777.00. Pricing shall be per Exhibit F attached.

6. Removal Lead Time

Products or services will be removed no later than 120 days from Council award. Vendor will be responsible for leaving site as they found it.

AMS requests permission to mobilize our crews within 7 days of this Council award date, or at a date of our choosing. AMS requests an update / notice as to the targeted date for the City Council award date for planning purposes.

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Exhibit C
Standard Purchase Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

10. **WORKFORCE**

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

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

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

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

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed

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any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

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

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

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

12. **INVOICES**:

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:

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

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

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

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

i. delivery of defective or non-conforming deliverables by the Contractor;

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

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

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

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

14. **TRAVEL EXPENSES**: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

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

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

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

17. **RIGHT TO AUDIT**:
A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.
B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

18. **SUBCONTRACTORS**:
A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day

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of each month.

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

Contract, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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

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

19. **WARRANTY-PRICE**:

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

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

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

20. **WARRANTY – TITLE**: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES**: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall

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be new or recycled merchandise, and not used or reconditioned.
A. Recycled deliverables shall be clearly identified as such.
B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. **WARRANTY – SERVICES**: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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

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

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

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

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

30. **DELAYS**:

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

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

31. **INDEMNITY**:

A. Definitions:

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

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

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

A. General Requirements:

i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

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

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

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

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

x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage,

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limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

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

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

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

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

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

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

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

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

36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of

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the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's' ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services

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to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

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

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

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

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

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

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the

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development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

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

45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

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

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

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Contract.

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

49. **DISPUTE RESOLUTION**:
A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

51. **INVALIDITY**: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the

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Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

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

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veterans Day
Thanksgiving
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

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

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

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

55. **EQUAL OPPORTUNITY**
A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.
B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**
The following federally funded requirements are applicable. A. Definitions. As used in this Contract # 8971

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paragraph –
i. "Component" means an article, material, or supply incorporated directly into an end product.
ii. "Cost of components" means -
(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
iii. "Domestic end product" means-
(1) An unmanufactured end product mined or produced in the United States; or
(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
v. "Foreign end product" means an end product other than a domestic end product.
vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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

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

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

60. **COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code,

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which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

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

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

63. **RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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

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

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

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

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

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Exhibit D
Certificate of Interested Parties Electronic Filing

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

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

The contractor shall:

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

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

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EXHIBIT E

INSURANCE REQUIREMENTS

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

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

As soon as practicable after notification of contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- or better**.

- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- Liability policies shall be endorsed to provide the following:

    - Name as Additional Insured the City of Denton, its Officials, Agents,

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Employees and volunteers.

- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

A. <u>COMMERCIAL GENERAL LIABILITY INSURANCE</u>

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of

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$1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. <u>WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE</u>

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: $500,000.00 Each Accident
Bodily Injury by Disease: $500,000.00 Each Employee
Bodily Injury by Disease: $500,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. <u>BUSINESS AUTOMOBILE LIABILITY INSURANCE</u>

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of $1,000,000.00 per occurrence.

NOTE:

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

D. <u>ENVIRONMENTAL IMPAIRMENT/POLLUTION INSURANCE</u>

Environmental Impairment/Pollution Insurance to include coverage for the handling, receiving, dispensing, removal, storage, testing, transportation, disposal, discharge, dispersal release or escape of any hazardous material into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including ground water, with a minimum combined bodily injury (including death) and property damage limit of $1,000,000 per occurrence.

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SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

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Exhibit F

Bid Lines

1	Transformer *(Line excluded from response total)* Item Notes: **The City is looking for a SERVICE PROVIDER that will not charge any fee to the City of Denton. This is the NET value to the City.** See Scope of work for unit specifications and oil status			
2	Arco #1 138kV Magnetek Power Transformer Supplier Notes: Buying for inventory "as is". Will pump out oil, remove accessories and ship off site complete.	Scrap Value: $60,000.00	Total:	$60,000.00
3	Arco #2 138kV Waukesha Power Transformer Supplier Notes: Buying for inventory "as is". Will pump out oil, remove accessories and ship off site complete.	Scrap Value: $60,000.00	Total:	$60,000.00
4	Hickory #1 69kV Alis-Chalmers Power Transformer	Scrap Value: $18,880.00	Total:	$18,880.00
5	Hickory #2 67kV Alis-Chalmers Power Transformer	Scrap Value: $18,880.00	Total:	$18,880.00
6	Kings Row #2 SW Electric/Alis-Chalmers Power Transformer	Scrap Value: $18,880.00	Total:	$18,880.00
7	Locust #3 Waukesha 138kV Power Transformer Supplier Notes: Buying for inventory "as is". Will pump out oil, remove accessories and ship off site complete.	Scrap Value: $60,000.00	Total:	$60,000.00
8	North Lakes Trafo-Union 69kV/138kV Autotransformer Supplier Notes: Must have copper windings	Scrap Value: $75,417.00	Total:	$75,417.00
9	RD Wells Siemens 69kV/138kV Autotransformer	Scrap Value: $89,720.00	Total:	$89,720.00

Response Total: $401,777.00

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EXHIBIT G - FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 **Name of vendor who has a business relationship with local governmental entity.** AMS GROUP 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.**

N/A

Name of Officer

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

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☒ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐ Yes ☒ No

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

N/A

4 ☑ **I have no Conflict of Interest to disclose.**

5 Signature of vendor doing business with the governmental entity — Date: 12/10/2025

Certificate Of Completion

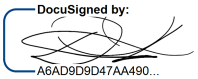
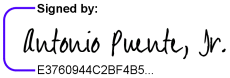
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Source Envelope:
Document Pages: 32
Signatures: 3
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Christa Christian
901B Texas Street
Denton, TX 76209
Christa.Christian@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
1/13/2026 1:49:17 PM
Holder: Christa Christian
Christa.Christian@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
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Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial  Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/13/2026 1:56:46 PM Viewed: 1/13/2026 3:26:12 PM Signed: 1/13/2026 3:26:49 PM
Christa Christian Christa.Christian@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 1/13/2026 3:31:29 PM Viewed: 1/13/2026 3:50:35 PM Signed: 1/13/2026 3:50:43 PM
Leah Bush leah.bush@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/13/2026 4:56:15 PM ID: 75682a74-05d0-4960-aa63-89a58b1edc6a	Signed by:  2A936B08B5D7485... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 1/13/2026 3:51:24 PM Viewed: 1/13/2026 4:56:15 PM Signed: 1/13/2026 5:02:04 PM

Signer Events	Signature	Timestamp
David Hess david@amsgroupinc.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/20/2026 3:12:21 PM ID: 10d18cfc-2635-411c-acc4-edff1374e60d	DocuSigned by:  A6AD9D9D47AA490... Signature Adoption: Drawn on Device Using IP Address: 2a02:26f7:b040:4000:d000::3 Signed using mobile	Sent: 1/13/2026 5:02:07 PM Resent: 1/20/2026 2:58:34 PM Viewed: 1/20/2026 3:12:21 PM Signed: 1/20/2026 3:15:40 PM
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Denton Municipal Electric Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/20/2026 3:21:40 PM ID: cdac8eb4-dcb5-47d2-b8ca-daebbe1d4869	Signed by:  E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/20/2026 3:15:44 PM Viewed: 1/20/2026 3:21:40 PM Signed: 1/20/2026 3:21:58 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: 1/20/2026 3:22:02 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

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: 1/13/2026 1:56:46 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 1/13/2026 3:51:26 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: 1/20/2026 3:22:01 PM Viewed: 1/22/2026 10:36:39 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Chris Lutrick chris.lutrick@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/15/2026 9:54:31 AM ID: fff02b75-7bfe-4ab8-9061-d5f99153338b		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Construction Manager at Risk Preconstruction Agreement between the City of Denton and Archer Western Construction, LLC, amending the contract approved by City Council on September 30, 2025, in the not-to-exceed amount of $1,500,000.00; said first amendment to acquire and assemble the equipment for the required pilot study for the Ray Roberts Water Treatment Plant Expansion Project; providing for the expenditure of funds therefor; and providing an effective date (RFP 8590 – providing for an additional first amendment expenditure amount not-to-exceed $1,315,293.00, with the total contract amount not-to-exceed $2,815,293.00). The Public Utilities Board recommends approval (6 - 0).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The Ray Roberts Water Treatment Plant (RRWTP), constructed in 2002, currently treats approximately 20 million gallons per day (MGD) using conventional treatment processes. As Denton's residential, commercial, and industrial growth continues, demand for treated water is increasing beyond the plant's existing capacity. To address this need, RRWTP is undergoing major expansion.

On September 30, 2025, City Council approved a contract with Archer Western Construction to provide Construction Manager at Risk (CMAR) services for the expansion project. The project is financed through a low-interest loan from the Texas Water Development Board (TWDB) under the State Water Implementation Fund for Texas (SWIFT) program.

The expansion will add an advanced treatment facility that incorporates a parallel ultra-filtration membrane system and inclined plate settlers. While both technologies are well-established in the water treatment industry, the Texas Commission on Environmental Quality (TCEQ) requires a pilot study to verify their performance using the RRWTP's actual raw water source.

The pilot study was originally planned to be included within the CMAR Construction Phase Services. TWDB determined that the pilot study is a planning-related activity necessary to inform design, rather than a construction activity. Based on this guidance, staff is proposing an amendment to the Pre-Construction

Services contract to authorize the CMAR to procure, receive, assemble, disassemble, and return the pilot systems. Completing the pilot study on schedule is essential to maintaining the overall project timeline.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On September 30, 2025, City Council approved a contract with Archer Western Construction, LLC, in the not-to-exceed amount of $1,500,000 (Ordinance 25-1704).

On February 9, 2026, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award amendment No. 1 with Archer Western Construction, LLC, to acquire and assemble the equipment for the required pilot study for the Ray Roberts Water Treatment Plant Expansion Project, in a not-to-exceed amount of $1,315,293, for a total amended contract amount of $2,815,293.

PRINCIPAL PLACE OF BUSINESS

Archer Western Construction, LLC
Irving, TX

SUSTAINABILITY MEASURES

The Ray Roberts Water Treatment Plant expansion provides the capacity increases needed to match current and projected future demand. The expansion includes new processes that maintain and exceed the Texas Commission of Environmental Quality requirements. Using membrane technology and other upgrades ensures public health and safety and enhances drinking water quality.

ESTIMATED SCHEDULE OF PROJECT

The RRWTP Expansion project is currently in the pre-construction design phase and has a projected construction completion date of Q2 2030.

FISCAL INFORMATION

These services will be funded from Water Utilities account 630574508.1365.20100. Purchase Order #212427 will be revised to include the first amendment amount of $1,315,293. The total amended amount of this contract is $2,815,293.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Original Ordinance and Contract
Exhibit 3: Ordinance and Amendment No. 1

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Katherine Koch, 940-349-8419.

Legal point of contact: Leah Bush at 940-349-8333.

ORDINANCE NO. 25-1704

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.

RFP NUMBER	CONTRACTOR	AMOUNT
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 Brian Beck and seconded by Suzi Rumohr. This ordinance was passed and approved by the following vote [7 - 0]:

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

PASSED AND APPROVED this the 30th day of September, 2025.

GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, INTERIM CITY SECRETARY

BY: Ingrid Rex

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush
Marcella Lunn

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Docusign City Council Transmittal Coversheet

RFP	8590
File Name	CMAR RRWTP Expansion Project
Purchasing Contact	Erica Garcia
City Council Target Date	SEPTEMBER 30, 2025
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	25-1704

Initial kp Initial DG DS LH

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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

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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

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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 amounted 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

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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.

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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

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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.

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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;

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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.

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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

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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 compete 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

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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 ofimportance.

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.

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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

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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

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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.

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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

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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,

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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

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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***

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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. T**he 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

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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 09/30/2025.

CITY OF DENTON, TEXAS

DocuSigned by:
BY: Sara Hensley
5236DB296270423...

Sara Hensley
Printed Name

City Manager
Title

CM@Risk

DocuSigned by:
BY: Daniel Walsh Jr.
FDEB784E59884BC...

Daniel Walsh Jr.
Printed Name

President
Title

ATTEST:
INGRID REX, INTERIM CITY SECRETARY

Signed by:
BY: Ingrid Rex
F116805422D0464...

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations and business terms.

Signed by:
Stephen D Gay
FEB48BB9Z26E4A9...
SIGNATURE Stephen D Gay
PRINTED NAME

General Manager
TITLE

Water Utilities and Street Operations
DEPARTMENT

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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.

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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:

Classification	Direct Labor Rate	Total Labor Rate
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

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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**

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(**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.

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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 SUPERSESSION

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.

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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 Contactor 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.

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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

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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

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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.

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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.

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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.

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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 [X] **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 relations hip 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 [X] 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 [X] 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 [X] 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.
FDEB784E69884BC...

Signature of vendor doing business with the governmental entity

8/20/2025
Date

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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. 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.

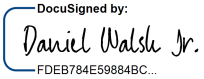
Certificate Of Completion

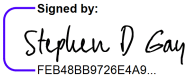
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Status: Completed
Subject: Please DocuSign: City Council Contract 8590 RRWTP CMAR Expansion Project
Source Envelope:
Document Pages: 39
Signatures: 6
Certificate Pages: 6
Initials: 3
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Erica Garcia
901B Texas Street
Denton, TX 76209
erica.garcia@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
8/18/2025 2:30:04 PM
Holder: Erica Garcia
erica.garcia@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Erica Garcia erica.garcia@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 8/18/2025 3:17:33 PM Viewed: 8/18/2025 3:17:43 PM Signed: 8/18/2025 3:20:38 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 8/18/2025 3:20:42 PM Viewed: 8/18/2025 4:11:11 PM Signed: 8/18/2025 4:11:49 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 8/18/2025 4:11:52 PM Viewed: 8/18/2025 4:54:25 PM Signed: 8/18/2025 4:57:23 PM
Daniel Walsh Jr. dpwalsh@walshgroup.com President The Walsh Group Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 8/9/2019 11:22:32 AM ID: 420f2f0f-ff56-4257-8bd7-544fb0ce7859	 Signature Adoption: Pre-selected Style Using IP Address: 4.2.190.34	Sent: 8/18/2025 4:57:27 PM Viewed: 8/20/2025 9:56:14 AM Signed: 8/20/2025 9:57:39 AM

Signer Events	Signature	Timestamp
Denis Qualls Denis.Qualls@cityofdenton.com Security Level: Email, Account Authentication (None)	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
Electronic Record and Signature Disclosure: Accepted: 8/28/2025 4:53:36 PM ID: 88b1b2d8-64f1-48d7-9934-608a3b376409		
Kyle Pedigo kyle.pedigo@cityofdenton.com Security Level: Email, Account Authentication (None)	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
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Stephen D Gay stephen.gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None)	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
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Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	**Completed** Using IP Address: 198.49.140.10	Sent: 9/5/2025 3:07:45 PM Viewed: 10/1/2025 9:24:53 AM Signed: 10/1/2025 9:25:06 AM
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Sara Hensley sara.hensley@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by:  5236DB296270423... Signature Adoption: Pre-selected Style Using IP Address: 47.37.67.34 Signed using mobile	Sent: 10/1/2025 9:25:12 AM Viewed: 10/1/2025 9:26:05 AM Signed: 10/1/2025 9:26:22 AM
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Ingrid Rex Ingrid.Rex@cityofdenton.com Deputy City Secretary Security Level: Email, Account Authentication (None)	Signed by:  F116805422D0464... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/1/2025 9:26:27 AM Viewed: 10/1/2025 9:47:54 AM Signed: 10/1/2025 9:48:49 AM
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Editor Delivery Events	Status	Timestamp

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	COPIED	Sent: 10/1/2025 9:48:54 AM
Kathrine Koch katherine.koch@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 9/15/2025 7:13:13 AM ID: d96c96aa-d61d-48d3-aeeb-2e339adc644e	COPIED	Sent: 10/1/2025 9:48:56 AM Viewed: 10/1/2025 10:23:33 AM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	10/1/2025 9:48:49 AM
Completed	Security Checked	10/1/2025 9:48:56 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIRST AMENDMENT TO A CONSTRUCTION MANAGER AT RISK PRECONSTRUCTION AGREEMENT BETWEEN THE CITY OF DENTON AND ARCHER WESTERN CONSTRUCTION, LLC, AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON SEPTEMBER 30, 2025, IN THE NOT-TO-EXCEED AMOUNT OF $1,500,000.00; SAID FIRST AMENDMENT TO ACQUIRE AND ASSEMBLE THE EQUIPMENT FOR THE REQUIRED PILOT STUDY FOR THE RAY ROBERTS WATER TREATMENT PLANT EXPANSION PROJECT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8590 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED $1,315,293.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED $2,815,293.00).

WHEREAS, on September 30, 2025, City Council awarded a contract to Archer Western Construction, LLC in the amount of $1,500,000.00, for pre-construction services of the Ray Roberts Water Treatment Plant Expansion Project for the Water Utilities Department; and

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

WHEREAS, the additional fees under the proposed First Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The First Amendment, increasing the amount of the contract between the City and Archer Western Construction, LLC, which is on file in the office of the Purchasing Agent, in the amount of One Million Three Hundred Fifteen Thousand Two Hundred Ninety Three and 0/100 ($1,315,293.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be effective upon the execution of the amendment attached hereto. The total contract amount increases to $2,815,293.00.

SECTION 2. 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

Docusign Envelope ID: 3AA2053B-0327-43C7-AD9D-576E2D69171D

Docusign City Council Transmittal Coversheet

FILE	8590
File Name	CMAR Preconstruction RRWTP Expansion - Amendment #1
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: 3AA2053B-0327-43C7-AD9D-576E2D69171D

FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND ARCHER WESTERN CONSTRUCTION, LLC
FILE 8590

THE STATE OF TEXAS §

COUNTY OF DENTON §

THIS FIRST AMENDMENT TO CONTRACT 8590 ("Amendment") by and between the City of Denton, Texas ("City") and **ARCHER WESTERN CONSTRUCTION, LLC** ("CM@Risk"); to that certain contract executed on September 30, 2025, in the original not-to-exceed amount of $1,500,000 (the "Agreement"); for services related to **Lake Ray Roberts Water Treatment Plant Expansion Project.**

WHEREAS, the City deems it necessary to further expand the professional services provided by CM@Risk to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount $1,315,293 with this Amendment for an aggregate not-to-exceed amount of $2,815,293; and

NOW THEREFORE, the City and CM@Risk (hereafter collectively referred to as the "Parties"), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. The additional services described in Exhibit "A" of this Amendment, attached hereto and incorporated herein for all purposes, for the Construction Manager at Risk preconstruction design services for the Lake Ray Roberts Water Treatment Plant Expansion Project, are hereby authorized to be performed by CM@Risk. For and in consideration of the additional professional services to be performed by CM@Risk, the City agrees to pay, based on the cost estimate detail attached as Exhibit "A.

2. This Amendment modifies the Agreement amount to provide an additional $1,315,293 for additional services and materials to be provided in accordance with the terms of the Agreement with a revised aggregate not-to-exceed total of $2,815,293.

3. This Amendment is subject to the supplemental conditions set forth in Exhibit B. Exhibit B is from the Texas Water Development Board (TWDB) document TWDB-0552 revised in November 2018. The TWDB forms and guidance documents noted in Exhibit B may be accessed through the TWDB's Financial Assistance website at http://www.twdb.texas.gov/financial/instructions/index.asp.

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The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the CM@Risk, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date _____.

"CITY"
CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

ATTEST:
INGRID REX, CITY SECRETARY

By: _____

"CM@Risk"
ARCHER WESTERN CONSTRUCTION, LLC

By: DocuSigned by: Jeffry Polak 0ABBCCADCC33416... Business Group Leader, VP
AUTHORIZED SIGNATURE, TITLE

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

Signed by: Stephen Gay FEB48BB9726E4A9...
SIGNATURE

Stephen Gay
PRINTED NAME

General Manager
TITLE

Water Utilities and Street Operations.
DEPARTMENT

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Exhibit "A"

Scope of Services

Preconstruction Phase Services Contract
Ray Roberts Water Treatment Plant Expansion

Amendment No.1

Introduction

This Exhibit "A" serves as an amendment to the preconstruction services contract previously executed between Archer Western Construction (AWC) and the City of Denton for the Ray Roberts Water Treatment Plant Expansion Project. Under this amendment, AWC will provide additional services related to the pilot study of the proposed treatment process, which includes plate settlers and membrane filtration. The pilot study is required to finalize the project design and meet applicable regulatory requirements.

As part of this amendment, AWC will be responsible for procuring, receiving, assembling, disassembling, and returning the pilot system(s), as outlined below. All pilot-related materials, equipment, and accessories are temporary or rented and will be removed upon completion of the study.

Scope of Work

Archer Western Construction shall perform the following tasks in support of the pilot study:

- Unload the pilot equipment, unpack or remove shipping crates at the test site, and install the equipment with the assistance of the equipment representatives.
- Provide shelter and freeze protection for the pilot equipment.
- Furnish and install piping to supply raw water to the inclined plate settler pilot.
- Furnish and install piping between the inclined plate settler pilot and the MSS-supplied feed tank.
- Furnish and install piping for the pilot skids and overflow connections to the MSS-supplied feed and filtrate tanks.
- Furnish and install electrical and communication connections to the pilot systems.
- Participate in weekly conference calls with Freese and Nichols, Inc. (FNI) and the equipment manufacturers. Additional calls may be scheduled upon agreement between the City, AWC, FNI, and equipment manufacturers. Emergency calls may be required in the event of any equipment malfunction that stops testing.
- Upon completion of the pilot, disconnect, pack, and load pilot system equipment onto truck(s) furnished by the equipment manufacturers.
- Remove, pack, ship, and furnish services for the autopsy of one pilot-tested membrane module for each MSS. AWC will pay for the services of an engineer-selected third-party vendor to perform the autopsy of the membrane module(s) provided.

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Compensation Fee

One Million Three Hundred Fifteen Thousand Two Hundred Ninety-Three and 00/100 U.S. Dollars ($1,315,293.00)

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Exhibit B

Texas Water Development Board

Supplemental Contract Conditions and Instructions

For Construction Services for

Projects Funded through State Programs

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Forms and Guidance:

The Texas Water Development Board (TWDB) forms and guidance documents noted in this instruction document may be accessed through the TWDB's Financial Assistance web site at: http://www.twdb.texas.gov/financial/instructions/index.asp

Search by either the document number or name.

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I. INSTRUCTIONS TO APPLICANT

1. Applicability

These Supplemental Conditions contain provisions that are worded to comply with certain statutes and regulations which specifically relate to projects receiving state funds only. Except as noted, these supplemental conditions apply to projects funded by the following financial assistance programs:

- ✓ Agricultural Water Conservation Fund (AWCF)
- ✓ Economically Distressed Areas Program (EDAP)
- ✓ Rural Water Assistance Fund (RWAF)
- ✓ State Participation (SP)
- ✓ State Water Implementation Fund for Texas (SWIFT)
- ✓ Texas Water Development Fund II (WDF)

Provisions that are applicable to the project's funding source or dollar value of the contract are so noted within these provisions.

NOTES:

- Per Section 17.183(c)(4), Texas Water Code (TWC), U.S. Iron and Steel requirements do not apply to SWIFT projects funded prior to May 1, 2019.

- Effective September 1, 2017, TWC §17.183 eliminated the requirement for *Manufactured Goods*. Thus, projects approved for funding after September 1, 2013 and which are not currently under construction, will only need to meet the requirements of TWC §17.183 as amended by S.B. 1289, 85th Legislative Session, and as outlined in these Contract Conditions.

- Texas Water Code § 17.183 does not apply to the Agricultural Water Conservation Fund; however, the US I&S provisions in Texas Government Code, Chapter 2252, Subchapter F may apply to certain conservation projects funded through the Agricultural Water Conservation Fund. See Attachment 1 for supplemental guidance regarding Agricultural Water Conservation Fund projects.

2. Use of Conditions

The language and conditions listed under ***Section II: Instructions to Bidders*** are to be included in the instructions to bidders for construction services. The provisions listed under ***Section III: Supplemental Contract Conditions*** shall be included in their entirety with the other general and special conditions that are typically included in the construction contract documents by the design engineer.

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3. Modifications to Provisions

These provisions shall be included as a stand-alone section in the contract documents. The Applicant and the consulting engineer (Engineer) should carefully study these provisions before incorporating them into the construction contract documents. In particular, Water Districts and other types of districts should be aware of statutes relating to their creation and operation which may affect the application of these conditions. **The TWDB Project Engineer/Reviewer should be consulted if the Applicant thinks there is a need to modify parts of these provisions.**

Supplemental Condition #13 (Archeological Discoveries and Cultural Resources) and #14 (Endangered Species) may be superseded or modified by project specific conditions established during the environmental review process.

These documents may confer certain duties and responsibilities on the Engineer that are beyond, or short of, what the Applicant intends to delegate. The Applicant should ensure that the contractual agreement with the Engineer provides for the appropriate services. Otherwise the Applicant should revise the wording in these special conditions to agree with actually delegated functions.

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4. Good Business Practices

There are other contract provisions that the Applicant (Owner) and Engineer should include as a matter of good business practices. It is recommended that provisions addressing the following matters be included in the construction contract.

(a) Specifying the time frame for accomplishing the construction of the project, and the consequences of not completing on time, including liquidation damages.
(b) Specifying the type, dollar value, and documentation of insurance the contractor is to carry. At a minimum the contractor should carry worker's compensation, liability and builder's risk insurance.
(c) Identifying the responsibility of the contractor – Responsibility and Warranty of Work.
(d) Price reduction for defective pricing of negotiated costs.
(e) Differing site conditions - notice and claims regarding site conditions differing from indicated conditions.
(f) Covenants against contingent fees - prohibit contingent fees for securing business.
(g) Gratuities - prohibitions against offering and accepting gratuities.
(h) Audit and access to records.
(i) Suspension of work - conditions under which the Owner may suspend work.
(j) Termination - conditions under which the Owner may terminate the contract.
(k) Remedies - procedures for resolving disputes.

5. Other Requirements

There may be other local government requirements and applicable Federal and State statutes and regulations that are not accommodated by these conditions. It is the Applicant's responsibility to ensure that the project and all contract provisions are consistent with the relevant statutes and regulations.

6. Advertisements for Bids

State procurement statutes require advertising a contract for bids for at least two (2) consecutive weeks. By not following this requirement, the project may need to be re-advertised. The official advertisement for bids that is published in newspapers shall include certain information such as, but not limited to, the following:

(a) A clear description of what is being procured.
(b) How to obtain plans and specifications (P&S) and necessary forms and information.
(c) The date and time by which bids are to be submitted (deadline).
(d) The address where bids are to be provided.
(e) This contract is contingent upon release of funds from the Texas Water Development Board (TWDB).
(f) Any contract(s) awarded under this Invitation for Bids is/are subject to the United States Iron and Steel (US I&S) requirements of Texas Water Code §17.183 and/or Texas Government Code, Chapter 2252, Subchapter F, as amended by SB 1289, 85th Legislative Session, as applicable. (NOTE: does not apply to SWIFT projects funded prior to May 1, 2019).
(g) Acknowledgement of any special requirements such as mandatory pre-bid conference.
(h) Right to reject any and all bids.
(i) General bond requirements.

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The Bid Proposal form should account for the following:

(a) If lump sum bid, include a list of the materials used and associated costs.
(b) Distinguish eligible and ineligible items.
(c) Accommodate trench safety requirements with separate per unit pay item for trench excavation safety protection, Health and Safety Code Chapter 756, Subchapter C.
(d) Include space for the Contractor to acknowledge receipt of each Addendum issued during the bidding process.

7. Bidding Process

The Plans and Specifications (P&S) should include an explanation of how the bids will be processed. The explanation should include the following components:

(a) Whether a pre-bid conference will be held, whether it is optional or mandatory, where and when it will be held.
(b) Specify the criteria and process for determining responsiveness and responsibility of the bidder.
(c) Specify the method of determining the successful bidder and award (e.g., award to the lowest responsive, responsible bidder, accounting for any multiple parts to bids) and accounting for non-resident bidder reciprocity requirements.
(d) Allow for withdrawal of a bid due to a material mistake.
(e) Identify the time frame that the bids may be held by the Applicant before awarding a contract (e.g., typically for 60 or 90 days).
(f) Acknowledge right of the Applicant to reject any and all bids.

8. Release of Funds

(a) Submittal of Bid Documents to TWDB Project Engineer/Reviewer to allow contingent award of contract:

    (1) Advertisement and affidavit of advertisement.
    (2) Bid tabulation.
    (3) All addenda submitted and approved for the contract.
    (4) Bid proposal of apparent low bidder (or chosen bidder, with explanation) with bid bond.
    (5) Site certificate (ED-101).
    (6) Consulting engineer's recommendation to award letter.
    (7) A description of any bidding irregularities.
    (8) Construction inspection proposal.
    (9) Vendor Compliance with Reciprocity of Non-Resident Bidders Form (TWDB-0459).

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(b) Following contingent award of the contract, TWDB Project Engineer/Reviewer should receive a bound copy of the executed contract documents (including specifications). This document should include:

(1) Executed agreement.
(2) Contractor's act of assurance (ED-103).
(3) Contractor's act of assurance resolution (ED-104).
(4) Payment and Performance bond (must be executed on or after the date of execution of the contract).
(5) Contractor's Certificate of Insurance.
(6) Sufficiency of funds letter (if the project is not 100% funded with TWDB funds).

After reviewing and approving the executed bid documents, the TWDB will issue an authorization for the Applicant to issue a notice to proceed. At this time, TWDB staff can begin releasing construction funds, in accordance with program specific requirements.

For any questions or proposed modifications to these conditions, please contact your TWDB Project Engineer/Reviewer.

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II. INSTRUCTIONS TO BIDDERS

The language and conditions listed in this section shall be included in the "Instructions to Bidders" section of the construction contract document.

1. Contingent Award of Contract

This contract is contingent upon release of funds from the Texas Water Development Board. Any contract or contracts awarded under this Invitation for Bids is/are expected to be funded 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 are or will be a party to this Invitation for Bids or any resulting contract.

2. U.S. Iron and Steel (Does not apply to SWIFT Projects funded prior to May 1, 2019)

Any contract(s) awarded under this Invitation for Bids is/are subject to the United States Iron and Steel requirements of Texas Water Code §17.183 and/or Texas Government Code, Chapter 2252, Subchapter F, as amended by SB 1289, 85th Legislative Session. The contractor must complete the statement of understanding regarding this requirement, found in the Supplemental Contract Conditions, Item No. 9. Refer to TWDB-1105 – United States Iron and Steel (US I&S) Guidance.

3. Bid Guarantee

Each bidder shall furnish a bid guarantee equivalent to five percent of the bid price (Water Code §17.183). If a bid bond is provided, the Contractor shall utilize a surety company which is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

4. Award of Contract to Nonresident Bidder

A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. A non-resident bidder is a Contractor whose corporate offices or principal place of business is outside of the state of Texas (Source: Texas Government Code, Chapter 2252, Subchapter A, Nonresident Bidders, §2252.002).

The bidder will complete form TWDB-0459, Vendor Compliance with Reciprocity on Non-Resident Bidders, **which must be submitted with the bid.**

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III. SUPPLEMENTAL CONTRACT CONDITIONS

1. Supersession

The Owner and the 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.

2. Privity of Contract

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.

3. Definitions

(a) The term "Owner" means the local entity contracting for the construction services.
(b) 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.
(c) The term "Engineer" means the Owner's authorized consulting engineer for the project.

4. Laws to be Observed

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 any such law, ordinance or regulation by the Contractor, their Subcontractor or their employees.

5. Review by Owner and TWDB

(a) 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.

(b) Any such inspection or review by the TWDB shall not subject the state of Texas, or its representatives, to any action for damages.

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6. Performance and Payment Bonds

Each Contractor awarded a construction contract must furnish performance and payment bonds:

(a) 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;

(b) 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 of the political subdivision; and

(c) 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.

7. Payments Schedule and Cost Breakdown

(a) 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.

(b) The following paragraph applies only to contracts 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. Workers' Compensation Insurance Coverage (as applicable, consistent with Texas Labor Code § 406.096)

(a) The Contractor shall certify in writing that they provide workers' compensation insurance coverage for each employee of the Contractor employed on the public project.
(b) 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.
(c) A Contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.
(d) 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.

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(e) In this section:

(1) "Building or construction" includes:

i. erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

ii. remodeling, extending, repairing, or demolishing a structure; or

iii. otherwise improving real property or an appurtenance to real property through similar activities.

(2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

9. U.S. Iron and Steel (Does not apply to SWIFT Projects funded prior to May 1, 2019)

The following statement must be completed by the Contractor and made a part of the agreement between the Owner and the Contractor.

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 Water Development Fund, Rural Water Assistance Fund, Economically Distressed Areas, State Participation Fund and/or Agricultural Water Conservation Fund. 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 Contactor 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.

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.

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Additional information on the United States Iron and Steel (US I&S) and its applicability to this contract can be found in the TWDB-11005 guidance.

It is recommended the Owner receive and maintain files documenting the Contractor's use of US I&S. Compliance with US I&S will be verified by the Owner through the submittal of the TWDB form TWDB-1105-A.

10. Prevailing Wage Rates

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:

§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.

§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.

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§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.

§2258. 025. Payment Greater Than Prevailing Rate Not Prohibited

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.

11. Employment of Local Labor (only applicable to projects funded by EDAP)

The Contractor shall, to the maximum feasible extent, employ local labor for construction of the project. The Contractor and every Subcontractor undertaking to do work on the project which is, or reasonably may be done as on-site work, shall employ qualified persons who regularly reside within the political subdivision boundary of the Owner and the economically distressed area where the project is located (Texas Water Code, Section 17.183).

12. Payments

(a) Progress Payments:
   (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 7b 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.

   (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.

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(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)).

(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.

(b) 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.

(c) 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.

(d) Final Payment.

(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.

(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.

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(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.

(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.

13. Archaeological Discoveries and Cultural Resources

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.

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.

14. Endangered Species

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.

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.

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15. Hazardous Materials

Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

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.

16. Changes

*Provisions identified with an asterisk below are consistent with Local Government Code 271.060. Counties and Municipalities may modify the identified provisions, when applicable, to conform to Local Government Code 262.031 (Counties) or 252.048 (Municipalities).

(a) 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:
  (1) In the specifications (including drawings and designs);
  (2) In the time, method or manner of performance of the work;
  (3) To decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished;

(b) *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.

(c) *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.

(d) *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.

(e) 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).

(f) 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

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Reviewer for coordination and approval as soon as possible to avoid any delay.

17. Operation and Maintenance Manuals and Training

(a) 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.

(b) 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.

(c) Acceptance of manuals by Engineer does not relieve Contractor of any requirements of terms of Contract.

(d) 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.

(e) 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.

(f) 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:
   (1) A listing of the manufacturer's identification, including order number, model, serial number, and location of parts and service centers.
   (2) A list of recommended stock of parts, including part number and quantity.
   (3) Complete replacement parts list.
   (4) Performance data and rating tables.
   (5) Specific instructions for installation, operation, adjustment, and maintenance.
   (6) Exploded view drawings for major equipment items.
   (7) Lubrication requirements.
   (8) Complete equipment wiring diagrams and control schematics with terminal identification.

18. As-built Dimensions and Drawings

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

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(b) 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:

(1) Horizontal and vertical locations of work.
(2) Changes in equipment and dimensions due to substitutions.
(3) "Nameplate" data on all installed equipment.
(4) Deletions, additions, and changes to scope of work.
(5) Any other changes made.

19. Close-Out Procedures

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

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

(b) The following submittals must be received, reviewed, and accepted by TWDB:

(1) 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;
(2) The final pay request from the Contractor;
(3) An affidavit by the Contractor that all bills have been paid;
(4) 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;
(5) Acceptance of the project by the Owner in the form of a written resolution or other formal action;
(6) Notification of the beginning date of the warranty period for the contract; and
(7) Confirmation that the Owner has received as-built drawings from the Contractor.
(8) Certificate of Compliance with U.S. Iron and Steel Requirements (TWDB-1105A)

(c) TWDB will issue a Certificate of Approval allowing the release of retainage.

IV. FORMS AND GUIDANCE LIST

The following documents, mentioned throughout this guidance are available on the TWDB website at: http://www.twdb.texas.gov/financial/instructions/index.asp

Forms:

The following forms must be included in the bid documents:

- Contractor' s Act of Assurance (ED-103)
- Contractor' s Act of Assurance Resolution (ED-104)
- Certificate of Compliance with U.S. Iron and Steel Requirements (TWDB-1105A)
- Site Certificate (ED-101)
- Vendor Compliance with Reciprocity of Non-Resident Bidders (TWDB-0459).

Guidance Document:

- United States Iron and Steel Guidance (TWDB-1105)

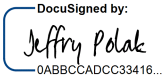
Certificate Of Completion

Envelope Id: 3AA2053B-0327-43C7-AD9D-576E2D69171D
Status: Sent
Subject: Please Docusign: City Council Contract 8590 CMAR Preconstruction RRWTP Amendment #1
Source Envelope:
Document Pages: 25
Signatures: 3
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Cori Power
901B Texas Street
Denton, TX 76209
cori.power@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
1/22/2026 2:06:36 PM
Holder: Cori Power
cori.power@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.104	Sent: 1/22/2026 2:15:33 PM Viewed: 1/22/2026 2:15:45 PM Signed: 1/22/2026 2:15:55 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial  Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/22/2026 2:15:58 PM Viewed: 1/22/2026 2:46:21 PM Signed: 1/22/2026 2:47:14 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by:  4B070831B4AA438... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/22/2026 2:47:17 PM Viewed: 1/22/2026 2:52:34 PM Signed: 1/22/2026 2:54:25 PM
Jeffry Polak jpolak@walshgroup.com Business Group Leader, VP The Walsh Group Security Level: Email, Account Authentication (None), Login with SSO **Electronic Record and Signature Disclosure:** Accepted: 5/10/2024 5:38:50 AM ID: 30d24216-75eb-43ae-9d5e-a743d618ed99	DocuSigned by:  0ABBCCADCC33416... Signature Adoption: Pre-selected Style Using IP Address: 99.113.115.161	Sent: 1/23/2026 2:07:22 PM Viewed: 1/23/2026 2:32:38 PM Signed: 1/23/2026 2:33:22 PM

Signer Events	Signature	Timestamp
Stephen Gay Stephen.Gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/26/2026 1:10:24 PM ID: e76a7356-8f8d-423a-a6b2-ec3615ae4bf5	Signed by:  FEB48BB9726E4A9... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/23/2026 2:33:25 PM Resent: 1/26/2026 1:08:48 PM Viewed: 1/26/2026 1:10:24 PM Signed: 1/26/2026 1:11:30 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: 1/26/2026 1:11:34 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		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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: 1/22/2026 2:15:58 PM
Grady Hill ghill@walshgroup.com PM Security Level: Email, Account Authentication (None), Login with SSO **Electronic Record and Signature Disclosure:**	COPIED	Sent: 1/23/2026 2:07:25 PM

Carbon Copy Events	Status	Timestamp
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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: 1/26/2026 1:11:33 PM Viewed: 1/26/2026 2:50:39 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Katie Koch katherine.koch@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/13/2026 1:41:26 PM ID: e4cdadb1-67ce-452c-b7b4-d7dd746b4197		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Northstar Construction, LLC, for the Bowling Green Park Construction for the Parks and Recreation Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8635 – awarded to Northstar Construction, LLC, in the not-to-exceed amount of $1,847,984.25).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Strengthen Community and Quality of Life.

INFORMATION/BACKGROUND

The City accepted a donation for a 5.92-acre park site in 1992, currently known as Bowling Green Park, located at the corner of Bowling Green Street and Haggard Lane. In 2020, the City hired Pacheco Koch Consulting Engineers, Inc. to develop a master plan for the park. The master plan process included extensive public engagement, which shaped the final concept plan adopted in 2023. Following its adoption, staff applied for a Texas Parks and Wildlife Department Grant (Local Parks) and were awarded a matching amount of $598,532. Key elements of the park include ADA ramps, a pavilion, a pedestrian bridge, native landscaping, hardscape, a garden with ADA beds, signage, utilities, site amenities (benches with pads and trash receptacles), and a storage structure.

This park's development supports two goals outlined in the 2022 Parks, Recreation, and Trail System Master Plan:

1) To provide access to public parks and trails within a 10-minute walk of residences
2) To incorporate quality and cost-effective park system amenities that are responsive to community needs and desires.

Project Description	Price
Total Amount	$1,759,985.00
Contingency 5%	$87,999.25
Total	**$1,847,984.25**

The construction of Bowling Green Park has a total estimated cost of $1,847,984.25. This estimate includes a $1,759,985 total base bid amount and a contingency of $87,999.25. A contingency allowance, if any, is for the

sole use of the City and will be subject to written authorization by the City's Project Manager and Program Manager.

Competitive Sealed Proposals were sent to 1,353 prospective suppliers, including 85 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Sixteen (16) proposals were received, references were checked, and proposals were evaluated based upon published criteria, including personnel, quality and reputation, schedule, safety record, and price. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, Northstar Construction, LLC was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	911, 912, 913, and 914
Notifications sent for Solicitation sent in IonWave:	1,353
Number of Suppliers that viewed Solicitation in IonWave:	55
HUB-Historically Underutilized Business Invitations sent out:	164
SBE-Small Business Enterprise Invitations sent out:	425
Responses from Solicitation:	16

RECOMMENDATION

Award a contract with Northstar Construction, LLC, for the Bowling Green Park Construction for the Parks and Recreation Department, in a not-to-exceed amount of $1,847,984.25.

PRINCIPAL PLACE OF BUSINESS

Northstar Construction, LLC
Haltom City, TX

SUSTAINABILITY MEASURES

This purchase supports the 2020 Simply Sustainable Framework as follows:

Land Use and Open/Natural Space
Preserve open space, natural areas, and tree canopy, as well as create and improve park and open space opportunities within 10 minutes' walking distance of residents' homes. This will also support the tree planting goal to increase the tree canopy to 40 percent by 2040.

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval, with a completion date by December 26, 2026.

FISCAL INFORMATION

These services will be funded from a combination of the accounts listed below.

Bowling Green Park – TPWD Grant	400290348	$598,532.00
Bowling Green Park – 2023 Bond Election	400290475	$355,331.99
Bowling Green Park – Park Dedication Fees	400290915	$423,553.83
Bowling Green Park – Park Development Fees	400290916	$382,567.18

Requisition #173895 has been entered into the Purchasing software system in the amount of $1,759,985. The budgeted amount for this item is $1,847,984.25

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Pricing Evaluation
Exhibit 3: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Logan Mayfield, 940-349-8126.

Legal point of contact: Leah Bush at 940-349-8333.

Exhibit 2
CSP 8635 - Pricing Evaluation for Bowling Green Park Construction

Respondent's Business Name:	**Northstar Construction, LLC**	A&C Construction, Inc.	Tegrity Contractors Inc.	Infra Construction, LLC	C. Green Scaping, LP	Millis Development and Construction	JC Commercial, Inc.	Harper Smith & Associates	Cole Construction Inc.	Vision Builders
Principal Place of Business (City and State):	**Haltom City, TX**	Irving, TX	Allen, TX	Dallas, TX	Fort Worth, TX	McKinney, TX	Lewisville, TX	Rowlett, TX	Fort Worth, TX	Fort Worth, TX
Description	**Bid Amount**	**Bid Amount**	**Bid Amount**	**Bid Amount**	**Bid Amount**	**Bid Amount**	**Bid Amount**	**Bid Amount**	**Bid Amount**	**Bid Amount**
Total Base Amount	**$1,759,985.00**	$1,735,000.00	$1,762,777.00	$1,895,216.20	$2,005,385.45	$1,974,797.32	$1,815,777.00	$1,916,101.59	$1,822,739.35	$1,995,447.87

Contingency 5%:	**$87,999.25**
Contract Total	**$1,847,984.25**

Evaluation

CSP Criteria	**Northstar Construction, LLC**	A&C Construction, Inc.	Tegrity Contractors Inc.	Infra Construction, LLC	C. Green Scaping, LP	Millis Development and Construction	JC Commercial, Inc.	Harper Smith & Associates	Cole Construction Inc.	Vision Builders
Offerors Key Personnel - 10%	**8.67**	6.67	7.33	6.00	7.33	5.33	6.00	6.00	6.67	6.00
Quality, Reputation and Ability to Complete Similar Projects on Schedule within Budget - 10%	**8.67**	9.33	6.00	7.33	6.67	5.33	6.67	4.67	6.67	3.33
Detailed Schedule and Written Plan - 25%	**21.67**	21.67	18.33	20.00	21.67	21.67	15.00	18.33	11.67	18.33
Offerors Safety Record - 5%	**4.00**	2.67	3.67	3.00	2.67	4.33	4.33	2.00	2.33	1.00
Price - 50%	**49.29**	50.00	49.20	45.80	43.30	43.90	47.80	45.30	47.60	45.50
Total Score:	**92.30**	90.34	84.53	82.13	81.64	80.56	79.80	76.30	74.94	74.16

Exhibit 2
CSP 8635 - Pricing Evaluation for Bowling Green Park Construction

Respondent's Business Name:	Construction Solutions USA LLC	CGC General Contractors, Inc.	The Fain Group	North Rock Construction & Associates	2L Construction LLC	Ratliff Hardscape, Ltd
Principal Place of Business (City and State):	Carrollton, TX	Haltom City, TX	Fort Worth, TX	Denton, TX	Rhome, TX	Carrollton, TX
Description	**Bid Amount**	**Bid Amount**	**Bid Amount**	**Bid Amount**	**Bid Amount**	**Bid Amount**
Total Base Amount	$1,868,466.40	$2,241,856.34	$2,091,579.00	$2,120,233.73	$2,003,003.00	$2,147,849.25

Evaluation

CSP Criteria	Construction Solutions USA LLC	CGC General Contractors, Inc.	The Fain Group	North Rock Construction & Associates	2L Construction LLC	Ratliff Hardscape, Ltd
Offerors Key Personnel - 10%	5.33	5.33	6.00	7.33	6.67	5.33
Quality, Reputation and Ability to Complete Similar Projects on Schedule within Budget - 10%	4.00	5.33	8.00	6.67	6.00	5.33
Detailed Schedule and Written Plan - 25%	15.00	18.33	13.33	11.67	10.00	15.00
Offerors Safety Record - 5%	2.67	4.33	1.67	2.00	2.33	2.00
Price - 50%	46.40	38.70	41.50	40.90	43.30	40.40
Total Score:	73.40	72.02	70.50	68.57	68.30	68.06

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH NORTHSTAR CONSTRUCTION, LLC, FOR THE BOWLING GREEN PARK CONSTRUCTION FOR THE PARKS AND RECREATION DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8635 – AWARDED TO NORTHSTAR CONSTRUCTION, LLC, IN THE NOT-TO-EXCEED AMOUNT OF $1,847,984.25).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the Bowling Green Park Construction for the Parks and Recreation 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 competitive sealed proposals; and

WHEREAS, this procurement was undertaken as part of the City's governmental function [Parks and zoos]; 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 competitive sealed proposal for materials, equipment, supplies, or services shown in the "Competitive Sealed 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 competitive sealed proposal.

CSP NUMBER	CONTRACTOR	AMOUNT
8635	Northstar Construction, LLC	$1,847,984.25

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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

RFP	8635
File Name	Bowling Green Park Improvements
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

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STIPULATED SUM VERTICAL CONSTRUCTION CONTRACT

BY AND BETWEEN

CITY OF DENTON

AND

NORTHSTAR CONSTRUCTION, LLC

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8 MISCELLANEOUS PROVISIONS
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EXHIBIT A GENERAL CONDITIONS
EXHIBIT B DRAWINGS AND SPECIFICATIONS; ON FILE WITH THE PURCHASING AGENT
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EXHIBIT D ALTERNATES – *None*
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EXHIBIT F UNIT PRICE PROPOSAL FORM
EXHIBIT G INITIAL SCHEDULE OF VALUES - *none*
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STIPULATED SUM VERTICAL CONSTRUCTION CONTRACT

This Stipulated Sum Vertical Construction Contract (this "Agreement") made as of the ____ day of _____ in the year 20____ (the "Effective Date") between City of Denton, a Texas home rule municipal corporation located at 215 East McKinney Street Denton, Texas 76201 (the "Owner" or "City") and Northstar Construction, LLC, at 2112 Solana Street, Haltom City, TX 76117 (the "Contractor") for the following Project:

8365 Bowling Green Park Improvements

The Owner and Contractor agree as follows:

Article 1. THE CONTRACT DOCUMENTS

Section 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in the above table of contents, documents issued as part of the solicitation for the Project, this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. In the event any provision contained in this Agreement conflicts with any provision contained in the Contract Documents, the more stringent provision for the Contractor, as interpreted by the Owner, shall govern.

Section 1.2 If, and to the extent of, any inconsistency, ambiguity, discrepancy or error in the Contract Documents (referred to collectively in this Section 1.2 as discrepancy), the Contractor shall immediately seek clarification from *Westwood Professional Services, Inc.* (the "Design Professional" or "Architect" or "Engineer" as reference may be made in the Contract Documents) and notify the Owner and Contractor that clarification has been requested. In the event that the Design Professional fails to clarify such discrepancy, within a reasonable time under the circumstances, the Contractor shall proceed with the Work without the clarification based on written permission from the Owner, and give precedence to the Contract Documents in the following descending order of priority:

a. Modifications issued after execution of the Owner-Contractor Agreement, including all exhibits not specifically referenced in this Section 1.2;
b. the Owner-Contractor Agreement;

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c. Addenda issued prior to the execution of the Owner-Contractor Agreement, with the Addenda bearing the latest date taking precedence;
d. the General Conditions of the Contract for Construction;
e. Exhibit “B” - Drawings and Specifications;

Article 2. THE WORK OF THIS CONTRACT

Section 2.1 The Contractor shall in a good workmanlike manner, fully execute the Work described in, and reasonably inferable by the Contractor as necessary to provide the results intended by fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others: and the Contractor at its sole cost, risk, and expense shall construct, equip, provide purchase, pay for, and furnish all of the Work in accordance with such Contract Documents. and governmental codes and regulations as they apply to performance of the Work.

Section 2.2 An Index of Drawings and Specifications which have been furnished to the Contractor as of the date of this Agreement is set forth in Exhibit “B” – Drawings and Specifications.

Section 2.3 The Contractor shall not be entitled to any adjustments in the Contract Sum or the Contract Time as a result of any action, or failure to act, in connection with any work or other services performed by the Contractor, or any entity affiliated with the Contractor, for portions of the Project other than the Work, such as, without limitation, other projects for this Owner or nearby the Project site, whether such work or other services are performed under contract with the Owner or an independent third party.

Section 2.4 The Contractor shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements unless such modifications are accepted by the Owner in a Change Order or Construction Change Directive. The Contractor shall not be entitled to receive any additional fees as a result of any modification requests or recommendations submitted by the Contractor.

Section 2.5 The Contractor shall furnish only skilled and properly trained staff for the performance of the Work. The key members of the Contractor's staff shall be persons agreed upon with the Owner and Contractor and identified in Exhibit "C" – Key Personnel, which is attached hereto and incorporated herein for all purposes.

a. Such key members of the Contractor's staff shall not be changed without the written consent of the Owner and Contractor, unless such person becomes unable to perform any required duties due to death, disability or termination of employment with the

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Contractor. If a key member is no longer capable of performing in the capacity described in Exhibit "C" – Key Personnel, the Owner, Design Professional, and the Contractor shall agree on a mutually acceptable substitute.

b. During the performance of the Work, the Contractor shall keep a competent superintendent at the Project site, who is fully authorized to act on behalf of the Contractor. Notice from the Owner, Contractor or the Design Professional to such superintendent, in connection with defective Work, instructions for performance of the Work or any and all other issues shall be considered notice of such issues to the Contractor.

Article 3. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Section 3.1 The construction of the Work to be performed under this Contract shall be commenced within three (3) calendar days after receipt of a building permit and Owner's Notice to Proceed.

Issuance of a Notice to Proceed for construction of the Work is subject to Owner's acceptance of the Contractor's proposed Construction Management Plan, and receipt of a building permit.

The Contractor shall notify the Owner in writing, with confirmation of receipt, not less than three (3) business days before commencing the Work on the Project site to permit timely filing of mortgages, mechanics' liens, and other security interests.

Section 3.2 The Contract Time shall be measured from the date of Notice to Proceed.

Section 3.3 Substantial Completion

a. Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute the Work and shall achieve Substantial Completion of the entire Work by *240* days.
b. If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, shall be as specified in Section 8.6 of Exhibit A - General Conditions for the Contract for Construction.

Section 3.4 Final Completion

a. Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute the Work and shall achieve final completion of the entire Work by *300* days.

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b. If the Contractor fails to achieve final completion as provided in this Section 3.3, liquidated damages, shall be as specified in Section 8.6 of Exhibit A - General Conditions for the Contract for Construction.

Article 4. CONTRACT SUM

Section 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Seven Hundred Fifty-nine Thousand Nine Hundred Eighty-five Dollars and Zero Cents ($1,759,985.00), subject to additions and deductions as provided in the Contract Documents. At the sole option of the City, *five* (*5*) percent contingency in the amount of Eighty-seven Thousand Nine Hundred Ninety-nine Dollars and Twenty-five Cents ($87,999.25) may be used for a total not-to-exceed amount of One Million Eight Hundred Forty-seven Thousand Nine Hundred Eighty-four Dollars and Twenty-five Cents ($1,847,984.25).

Section 4.2 Alternates

a. Alternates, if any, included in the Contract Sum:

   See Exhibit "D" – Alternates

b. Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Provided, however, that the Contractor shall furnish the Owner with no less than fourteen (14) days prior written notice of the date upon which any of the alternatives set forth in Exhibit "D" – Alternates, must be accepted by the Owner in order for the Contractor to perform the Work covered by such alternates for the price(s) set forth therein; and without any adjustment to a Contractual Milestone date, the Contractor's Construction Schedule or the Contract Time. Upon acceptance, the Owner shall issue a Modification to this Agreement.

   See Exhibit "D" – Alternates

Section 4.3 Allowances, if any, included in the Contract Sum:

See Exhibit "E" – Allowances

Section 4.4 Unit prices, if any are set forth in Exhibit "F" – Unit Costs, and such unit prices are considered complete and include all materials, equipment, labor, delivery, installation, overhead, and profit; and any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

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See Exhibit “F” – Unit Costs

Section 4.5 Liquidated damages, if any:
See Exhibit A - General Conditions for the Contract for Construction

Section 4.6 Other:
None

Section 4.7 By executing this Agreement and furnishing the Owner with both Exhibit “E” – Allowances and Exhibit “G” – Initial Schedule of Values, the Contractor represents and warrants that the Contract Documents, materials, and information furnished by the Contractor as of the date of this Agreement, and the ongoing discussions and meetings between the Contractor and the Owner and Design Professional have described the scope, construction requirements and design intent for the Work in detail sufficient to enable the Contractor to firmly establish the Contract Sum and the Contract Time. The Contractor shall not be permitted to claim any adjustment in either the Contract Sum or Contract Time prior to Notice to Proceed in connections with the completion of the Work except as described in the Contract Documents.

Article 5. PAYMENTS

Section 5.1 Progress Payments

a. Based upon Applications for Payment including all supporting documentation required by the Owner and submitted to the Design Professional and Owner by the Contractor; its review by the Design Professional and Owner; and Certificates for Payment issued by the Design Professional and Certificates for Payment issued by the Design Professional, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.
b. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
c. Provided that a certifiable Application for Payment is approved by the Design Professional not later than the «twenty-fifth (25th) » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « thirtieth (30th) » day of the « following » month. If a certifiable Application for Payment is received by the Design Professional after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « thirty » (« 30 ») calendar days after the Design Professional approves the Application for Payment.
d. Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor and approved in advance by the Owner and Design

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Professional in accordance with the Contract Documents and the Construction Management Plan. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner and Design Professional may require. This schedule of values, unless objected to by the Owner or Design Professional, shall be used as a basis for reviewing the Contractor's Applications for Payment.

e. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

f. In accordance with Exhibit A - General Conditions for the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

   i. The amount of each progress payment shall first include:

      .1 That portion of the Contract Sum properly allocable to completed Work;

      .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

      .3 That portion of Construction Change Directives that the Design Professional determines, in the Design Professional's professional judgment, to be reasonably justified.

   ii. The amount of each progress payment shall then be reduced by:

      .1 The aggregate of any amounts previously paid by the Owner;

      .2 The amount, if any, for Work that remains uncorrected and for which the Contractor or Design Professional has previously withheld or nullified a Certificate for Payment as provided in Article 9 of Exhibit A - General Conditions for the Contract for Construction;

      .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

      .4 For Work performed or defects discovered since the last payment application, any amount for which the Design Professional may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of Exhibit A - General Conditions for the Contract for Construction; and

      .5 Retainage withheld pursuant to Section 5.1.g.

      .6

g. Retainage

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i. For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

« Five Percent (5.0%) »

h. Omitted.

i. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

j. Each Application for Payment shall, without limitation, conform with the requirements of Exhibit A - General Conditions for the Contract for Construction, as amended.

k. In taking action on the Contractor's Applications for Payment, the Owner and Design Professional shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Owner or Design Professional have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with this Section 5.1.k or other supporting data; that the Owner or Design Professional have made exhaustive or continuous on-site inspections; or that the Owner or Design Professional have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

l. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site, and even with such approval the Contractor shall follow the procedures in the Contract Documents for such payments.

m. In addition to other required items, the final Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Texas all in a form acceptable to the Owner:

.1 A current sworn statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contract has entered into subcontracts; the amount of each such subcontract; the amount requested for any Subcontractor or material supplier in the Application for Payment; and the amount to be paid to the Contractor from such final payment;

.2 A current, duly executed waiver of mechanics' and material suppliers' liens from the Contractor conditional upon establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment;

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.3 A current Subcontractor's lien waiver for the current period, conditional only on payment from the Contractor, and duly executed, acknowledged sworn statement showing all Sub-subcontractors and material suppliers with whom the Subcontractor has entered into sub-subcontracts, the amount of each such sub-subcontract, the amount requested for any Sub-subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Sub-subcontractor from such final payment to the Subcontractor;

.4 A current, duly executed unconditional final waiver of mechanics' and material suppliers' liens from the Contractor and all Subcontractors and, when deemed appropriate by the Owner and Design Professional, from material suppliers and Sub-subcontractors establishing payment or satisfaction of payments of all amounts requested by the Contractor on behalf of such entities or persons in any previous Applications for Payment;

.5 A final certificate of occupancy issued by the appropriate governmental body in which the project is located;

.6 All maintenance and operating manuals;

.7 Digitally marked, fully accessible electronic files (not "plot files" or "PDFs") of both field record drawings and specifications reflecting "as-built" conditions;

.8 Digitally marked, accurately dimensioned, and fully accessible electronic files (not "plot files" or "PDFs") of drawings reflecting the location of any concealed utilities, mechanical or electrical systems, and components;

.9 any special guarantees or warranties required by the Contract Documents;

.10 assignments of all guarantees and warranties from subcontractors, vendors, suppliers, or manufacturers;

.11 a list of the primary contact names, email addresses, physical addresses, and telephone numbers of all Subcontractors and any other persons providing guarantees and warranties;

.12 all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner, or the Design Professional; and

.13 If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

Section 5.2 Final Payment

a. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of Exhibit A

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- General Conditions for the Contract for Construction, and to satisfy other requirements, if any, which necessarily survive beyond final payment; and

.2 a final Certificate for Payment has been issued by the Design Professional; and.

.3 the Contractor has provided, and the Owner has accepted as correct, all the information and documents required under Section 5.1.m above; and

.4 a complete release of all claims arising out of, related to or connected with Contractor's performance of the respective Phase under this Agreement, and any claims of Subcontractors, subject to any claims reserved in accordance with the terms of the General Conditions and an affidavit that so far as Contractor has knowledge or information, the release includes and covers all materials and services over which Contractor has control for which a claim could be filed, subject to any claims reserved in accordance with the terms of the General Conditions.

b. The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Design Professional's final Certificate for Payment and the Contractor has provided Owner with all required documentation.

Section 5.3 Interest

Payments are due and payable within thirty (30) days of the date the Owner receives the Construction Manager's approvable invoice, unless a different date for payment is provided under this Agreement. Amounts unpaid shall bear interest at the legal rate allowed by Texas Government Code Ch. 2251.

Article 6. DISPUTE RESOLUTION

Section 6.1 Initial Decision Maker

The Owner will serve as the Initial Decision Maker pursuant to Article 15 of Exhibit A - General Conditions for the Contract for Construction.

Section 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation or other alternative dispute resolution method as mutually agreed by the parties ("ADR") pursuant to Article 15 of Exhibit A - General Conditions for the Contract for Construction, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

Article 7. TERMINATION OR SUSPENSION

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Section 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of Exhibit A - General Conditions for the Contract for Construction, as amended.

If the Contract is terminated for the Owner's convenience in accordance with Article 14 of Exhibit A - General Conditions for the Contract for Construction, then the Owner shall pay the Contractor a compensation calculated in the manner as specified in Section 14.4.c of Exhibit A - General Conditions for the Contract for Construction, as amended.

Section 7.2 The Work may be suspended by the Owner as provided in Article 14 of Exhibit A - General Conditions for the Contract for Construction, as amended.

Section 7.3 In the event of such termination by the Owner, the amount to be paid to the Contractor shall not exceed the amount the Contractor would have been entitled to receive under Article 5 above.

Section 7.4 In no event shall the Contractor be entitled to receive "Lost Opportunity Costs", defined as unabsorbed overhead costs or unrealized profit on this Work, future work for this Owner, other owner(s), other work, foregone opportunities for the Contractor, or other costs not directly and verifiably associated with services actually performed or Work successfully completed under this Agreement.

Article 8. MISCELLANEOUS PROVISIONS

Section 8.1 All references in this Agreement to Exhibit A, shall mean the Exhibit A - General Conditions for the Contract for Construction, as modified and amended by the parties hereto. Where reference is made in this Agreement to a provision of another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

Section 8.2 The Owner's representative:

City of Denton
Monica Martin
Project Manager
901 B Texas St.
Denton, Texas 76201
(940) 349-8804
Monica.martin@cityofdenton.com

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Section 8.3 The Contractor's representative:
Michael Heimlich
Northstar Construction, LLC
President
2112 Solona Street
Fort Worth, TX 76117
mike@northstar93.com

Section 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

Section 8.5 Insurance and Bonds

a. The Owner and the Contractor shall purchase and maintain insurance as set forth in Exhibit A - General Conditions for the Contract for Construction, Insurance and Bonds, and elsewhere in the Contract Documents.

Section 8.6 « Not Used. »

Section 8.7 Other Conditions and Services:

a. The Contractor represents and warrants the following to the Owner (in addition to any other representation and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and final completion of the Work:

.1 The Contractor is financially solvent, capable of obtaining adequate insurance, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;

.2 The Contractor is able to furnish the physical infrastructure, tools, materials, supplies, equipment and supervision, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 The Contractor is authorized to do business in the City of Denton, and the State of Texas and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the Project;

.4 The Contractor's execution of this Agreement and performance thereof is within the Contractor's duly-authorized powers;

.5 The Contractor's duly-authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be

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performed and has correlated its observations with the requirements of the Contract Documents;

.6 The Contractor possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of this size, complexity and nature of this particular Project and will perform the Work with the care, skill and diligence of such a contractor;

.7 The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contactor by law with respect to the Contractor's duties, obligations, and performance hereunder; and

.8 The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the proper, timely and diligent prosecution of the Work.

b. In the event any provision contained in this Agreement conflicts with any provision contained in the Contract Documents, the more stringent provision for the Contractor, as interpreted by the Owner, shall govern.
c. Some or all of the Owner's duties, approvals and actions required under this Agreement may be provided by third parties by mutual agreement of the Owner and such third parties. When notified in writing of the specific duties and responsibilities of such third party, the Contractor will recognize the actions and approvals of the third party as sufficient to fulfill the Owner's responsibilities under this Agreement.
d. The Contractor shall provide sufficient supporting documentation in form and with a level of detail wholly acceptable to the Owner and Contractor to substantiate any Application for Payment, request for Change to the Contract Sum or Contract Time, and all contract Allowances provided within the Contractor's Contract Sum for this scope of work. Failure to timely provide all supporting documentation, in and of itself, may result in rejection of the Application for Payment or requested change to the Contract Sum or Contract Time, or payment for work charged to the Allowance(s).
e. Proof of purchase and warehouse insurance naming the Owner, Contractor and Design Professional as additional insureds, together with inspection rights for the Owner, Contractor and Design Professional is to be provided for any billed materials by the Contractor for the work not physically stored at the Project site.
f. Time limits set out in or under this Agreement are solely for the protection and benefit of the Owner and create no third-party beneficiary rights in any other party.
g. Notices. All legal notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

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If to Owner:

Monica Martin
Project Manager
City of Denton
901 B Texas Street
Denton, Texas 76201
Monica.Martin@cityofdenton.com

City of Denton
ATTN: Contract *8635*; Purchasing Manager
901B Texas Street
Denton, Texas 76209
purchasing@cityofdenton.com

And with a copy to City Attorney's point of contact:

City Attorney
City of Denton
215 East McKinney St.
Denton, TX 76201
legal@cityofdenton.com

If to Contractor:

Michael Heimlich
Northstar Construction, LLC
President
2112 Solona Street
Fort Worth, TX 76117
mike@northstar93.com

If to Design Professional:

Westwood Professional Services, Inc. (the "Design Professional")
Tricia Woliver
11000 Frisco St. Suite 400
Frisco, TX 75033

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h. All Exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.
i. The numbering and captions of the sections are set forth only for convenience and reference and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
j. The parties agree that they will execute any further instrument or instruments, and that they will perform any act or acts, which are or may become necessary to effectuate any of the terms or provisions of this Agreement.
k. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Owner or Contractor.
l. This Agreement has been created jointly and ambiguity cannot be construed against either party.
m. This Agreement is and shall be subject to those provisions required of political subdivisions by the laws of the State of Texas. The Contractor understands that the Owner is a Texas home rule municipality and that the project is subject to applicable provisions of Texas law including bid requirements, bonding, and final settlement provisions.
n. Contractor understands that certain information, including this Agreement, are public records available for public inspection and copying under the Texas Open Records Act., Texas Government Code Ch. 552, as amended, and other applicable laws.
o. The Owner represents that there are sufficient funds available to undertake this Project.
p. No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the governmental or sovereign immunities, rights, benefits, or protections of the Owner.
q. Contractor warrants that the products, processes, techniques and methodologies provided by Contractor shall not infringe upon the copyright, patent or other proprietary rights of others.
r. Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement. Contractor warrants that to the best of Contractor's knowledge, there exists no actual or potential conflict of interest, and no financial or substantial interest as may be prohibited by Texas law, the Charter, or Code of Ethics of the City of Denton between Contractor and Owner.
s. Contractor shall comply with the disclosure and reporting requirements in Local Government Code Chapters 171 and 176, and Texas Government Code Sec. 2252.908. Under Sec. 2252.908, if City Council approval is required to award this Agreement or if this Agreement has a value of at least $1,000,000, the City may not enter into the Agreement unless the Contractor submits a disclosure of interested parties to the City at the time the executed Agreement is presented to the City. The disclosure must be made on the form prescribed by the Texas Ethics Commission and the City is required to

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submit a copy of the disclosure statement to the Texas Ethics Commission not later than the 30th day after the disclosure is received by the City.

t. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

u. Contractor understands and agrees that TIME IS OF THE ESSENCE.

v. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto. Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

w. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

x. COMPLIANCE WITH CERTAIN STATE LAW

.1 Prohibition on Contracts with Companies Boycotting Israel. Contractor 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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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.

.2 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Contractor 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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or

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maintain the requirements under this provision will be considered a material breach.

.3 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations. Contractor 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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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.

.4 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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, 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.

.5 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.

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.6 Pursuant to Chapter 2258, Texas Government Code, all contractors and any Subcontractor involved in the construction of a public work project shall pay not less than the prevailing rates as per diem wages in the locality at the time of construction to all laborers, workmen and mechanics employed by them in the execution of this contract. Contractor shall assure that these requirements are met for the Project and shall insure that every contract or subcontract relating to the Work requires, on behalf of Owner, that the prevailing wage rates be paid.

.7 The Contractor shall be provided an applicable Department of Labor Wage Rate Determination for use on the Project required by Chapter 2258.022, Texas Government Code. In the event the Owner does not provide this Labor Wage Rate Determination, the Contractor shall request it in writing in a timely manner, so as not to delay the Construction Manager's initial subcontractor procurement process during preconstruction. The Construction Manager shall, if requested by the Owner, assist the Owner in conducting a survey of the wages paid, by labor class, on projects of a similar type in a similar location.

Article 9. ENUMERATION OF CONTRACT DOCUMENTS

Section 9.1 This Agreement is comprised of the following documents:

.1 Stipulated Sum Vertical Construction Contract

.2 Exhibit "A" – General Conditions of the Contract for Construction

.3 Exhibit "B" – Drawings and Specifications (On File with Purchasing Manager)

.4 Addenda, if any:

See Exhibit "B" – Drawings and Specifications (On File with Purchasing Manager)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.5 Other Exhibits:

Exhibit "C" – Key Personnel
Exhibit "D" – Alternates – *None*
Exhibit "E" – Allowances – *None*
Exhibit "F" – Unit Costs
Exhibit "G" – Initial Schedule of Values - *None*
Exhibit "H" – Contractor's Construction Schedule
Exhibit "I" – Escrow Agreement - *None*
Exhibit "J" – Conflict of Interest Questionnaire

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Exhibit "K" – Proposal Form
Exhibit "L" – Prevailing Wage Rates
Exhibit "Y" – Contractor's Insurance Certificate(s) and Bonds (To be Completed after Contract Award)

This Agreement entered into as of the day and year first written above.

CONTRACTOR:
NORTHSTAR CONSTRUCTION, LLC

DocuSigned by:
BY: Michael Heimlich
557B81DDBF3C419...
MICHAEL HEIMLICH
PRESIDENT

2026-1404430
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY:
CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY
CITY MANAGER

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations and business terms.

Signed by:
Allison Wing
75387A6F0F1B4F3...
SIGNATURE

Allison Wing
PRINTED NAME

Interim Director
TITLE

Parks and Recreation
DEPARTMENT

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

Signed by:
BY: Leah Bush
2A936B08B5D7485...

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Exhibit A

Section 00 72 00
Exhibit A – General Conditions
for the following PROJECT:
BOWLING GREEN PARK IMPROVEMENTS, CSP#8635

THE OWNER:

City of Denton
215 East McKinney Street
Denton, Texas 76201

THE DESIGN PROFESSIONAL:

WESTWOOD PROFESSIONAL SERVICES, INC.
C/O TRICIA WOLIVER
11000 FRISCO ST. SUITE 400
FRISCO, TX 75033

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Article 1. GENERAL PROVISIONS

Section 1.1 Basic Definitions

a. The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Proposal Documents, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Design Professional. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

b. The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Design Professional or the Design Professional's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Design Professional or the Design Professional's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Design Professional shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Professional's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party. The terms "Agreement" and "Contract" shall be used interchangeably to have the same meaning as defined in this Section 1.1.b.

c. The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, supplies, skill, supervision, transportation, support services, facilities and other resources necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the Work identified by the Contract Documents. The Work may constitute the whole or a part of the Project.

d. The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

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e. The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

f. The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

g. 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 the Design Professional's consultants under their respective professional services agreements. Design Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, the Project Manual and other similar materials.

h. Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions.

i. The Indemnitees

The Owner, which includes the Mayor, members of the City Council, employees, agents, assigns, and other city officers, the Owner's consultants, the Design Professional, Design Professional's consultants, and the agents and employees of any of them shall hereafter be known as the "Indemnitees".

j. Construction Management Plan

The Construction Management Plan is prepared by the Contractor for its use in managing the Work and is not a Contract Document. The Construction Management Plan must include, at a minimum and without limitation, the following separate deliverables, which are subject to review and approval by the Design Professional and Owner:

i. Safety and Logistics Plan;
ii. Contractor's Construction Schedule;
iii. Cost Management Plan, Control Estimate and Schedule of Values;
iv. Quality Management, Commissioning and Turnover Plan; and
v. Information Management System.

k. As-Built Documents

The As-Built Documents are the Drawings, Specifications, and addenda thereto that may be updated by the Contractor to accurately reflect the actual Work in place, including without limitation, the incorporation of Change Orders, responses to the Contractor's requests for information, Design Professional's supplemental instructions, field modifications, and other similar changes made to the Work during construction. The As-Built documents shall conform to the format and compatibility requirements of Section 3.10.1.i.

l. Work Breakdown Structure

The project's Work Breakdown Structure ("WBS") is a deliverable-oriented, hierarchical organization of the Project components to be executed by the Owner, and its accompanying numbering system. The WBS will be mutually agreed upon by the Owner and Design Professional and used by the Contractor.

m. Equal to (or Approved Equal)

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Products by manufacturers and information about those products other than those products specified in the Contract Documents which the Contractor may submit for substitution as equal to those products specified in the Contract Documents; which may be incorporated in the Work after using the process specified in the Contract Documents for review and acceptance by the Design Professional and acceptance of same by the Owner.

n. Underground Facilities
All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

o. Force Majeure
An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

p. Knowledge
The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the Work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the Work and in accordance with the highest standards in the construction profession.

q. Proposal
The offer or proposal of an Offeror submitted on the prescribed form setting forth the prices for the Work to be performed.

r. Offeror
The individual or entity that submits a Proposal directly to City.

s. Proposal Documents
The Proposal Requirements and the proposed Contract Documents including all addenda.

t. Proposal Requirements
The Advertisement or Request for Proposal, Invitation to Offerors, Instructions to Offerors, Offeror's Bond or other Proposal security, the Proposal Form, and the Proposal with any attachments.

u. Notice of Award
A written notice given by City to the Successful Offeror stating that upon timely compliance by the Successful Offeror with the conditions precedent listed in such notice, City will sign and deliver the Agreement.

v. Calendar Day

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A day consisting of 24 hours measures from midnight to the next midnight. A "day" or "Day" unless otherwise defined shall mean a Calendar Day.

w. Business Day

A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.

x. Notice to Proceed

A written instrument from the Owner to the Contractor requiring the Contractor to proceed with performance of activities, including, but not limited to development of submittals, ordering of materials, and any other services (the "Preconstruction Services") required to prepare for and expedite the construction of the Work as required by the Contract Documents; and complete the Work (the "Construction Services").

Section 1.2 Correlation and Intent of the Contract Documents

a. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Where a conflict occurs between or within standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence and coordination of the Contract Documents are as follows:

.1 Any addenda and modifications to the Drawings and Specifications take precedence over any earlier Contract Documents.

.2 Should there be a conflict within the Specifications, or within the Drawings, or between the Drawings and Specification, the Design Professional shall decide which stipulation will provide the best installation and its decision shall be final.

.3 The Drawing and Specifications are intended to coordinate with each other. Anything shown on the Drawings but not mentioned in the Specification or vice-versa, or anything not expressly set forth in either, but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both without any extra charge.

.4 The Drawings, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the Contractor, Subcontractors, and Sub-subcontractors are required to familiarize themselves with all the Work required by the Contract Documents. Each Contractor, Subcontractor, and Sub-subcontractor shall properly coordinate its work with that of the Owner and all Separate Contractors. It is not within the scope of the Drawings to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of each Contractor to plan, coordinate, and install its work in such a manner so as to conform to the structure. Any conflict within the Drawings shall be referred to the Design Professional for disposition prior to the installation of any affected work.

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.5 Figured dimensions contained in the Contract Documents shall be accurately followed, even though they differ from scaled measurements. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Design Professional as to the dimensions to be used. Larger scale Drawings shall have preference over smaller scale drawings, but discrepancies shall be referred to the Design Professional for interpretation.

.6 Underground Facilities

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions:

City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

reviewing and checking all information and data;

verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and

the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

Not Shown or Indicated: If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith, identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.

If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 7.

Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

.7 Reliance by Contractor on Technical Data:

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Contractor is provided certain technical data with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or

any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

i. The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

b. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

c. Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

Section 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents that are a part of this Contract.

Section 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

Section 1.5 Ownership and Use of Design Documents

a. Submittal or distribution of the Design Documents or any portion thereof to meet official laws, statutes, ordinances and regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

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b. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Design Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Design Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Design Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

Section 1.6 Notice

a. Except as otherwise provided in Section 1.6.b, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement. In the event notice is provided by mail, it shall be sent certified return receipt requested.
b. Notice of Claims as provided in Section 15.1.c shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

Section 1.7 Digital Data Use and Transmission

a. The parties shall agree upon protocols governing the transmission and use of Design Documents or any other information or documentation in digital form. The parties will establish the protocols for the development, use, transmission, and exchange of digital data in writing, as mutually agreed.
b. The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner, without limitation, all electronic and hard copies of any Project-related materials, records, notices, memoranda, recordings, drawings, specifications, mock-ups and any other documents furnished by the Owner or the Design Professional to the Contractor.

Section 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without written agreement to protocols governing the use of, and reliance on, the information contained in the model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

Section 1.9 The representations and warranties contained in the Contract Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

Article 2. OWNER

Section 2.1 General

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a. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.a, the Design Professional does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

b. The Owner shall furnish the following information to a person, including the Design Professional or Contractor, who makes a request for information under Texas Government Code Chapter 2253, related to a payment or performance bond: (1) a certified copy of a payment bond and any attachment to the bond; (2) the public work contract for which the bond was given; and (3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.

c. The Owner may obtain independent review(s) of the Design Professional's Design Documents, or of any document or other materials submitted by the Contractor, by a separate architect, engineer, contractor, cost estimator or any other consultant they deem necessary and put under contract to or cause to be employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Design Professional and Contractor shall cooperate with such Owner's other consultants fully and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the Owner to obtain an independent review or imply that the Owner is in any way assuming responsibility for the work of the Design Professional and Contractor.

Section 2.2 Evidence of the Owner's Financial Arrangements

a. Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

b. Following commencement of the Work and within ten (10) business days of written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.b, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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c. After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.
d. Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information. Notwithstanding the above, all Agreements with the Owner shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.

Section 2.3 Information and Services Required of the Owner

a. Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.a, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
b. The Owner shall retain a Design Professional lawfully licensed to practice architecture or engineering as applicable, or an entity lawfully practicing architecture or engineering, as applicable, in the jurisdiction where the Project is located. That person or entity is identified as the Design Professional in the Agreement and is referred to throughout the Contract Documents as if singular in number.
c. If the employment of the Design Professional terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Design Professional.
d. The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
e. The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.
f. Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.b.
g. The foregoing are, without limitation and in addition to, the other duties and responsibilities of the Owner specified in Article 6; Article 9; and Article 11.

Section 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the

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Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.c nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

Section 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within forty-eight (48) hours from receipt of written notice from the Owner or Design Professional to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Design Professional may, at the direction of the Owner, pursuant to Section 9.5.a, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Design Professional, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

Section 2.6 Extent of Owner Rights

a. The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents; at law; or in equity.
b. In no event shall the Owner or Design Professional have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Notwithstanding anything else herein, and without limitation, any review(s), independent or otherwise, or approval(s) by the Owner or Design Professional of the Design Documents, the Contract Documents, the Contractor's Construction Management Plan(s), the Contractor's Construction Schedule, shop drawings, submittals, meeting minutes or other Contractor's services, deliverables or activities; nor the exercising of any of the rights and authority granted the Owner or Design Professional in the Contract Documents shall in any way reduce, diminish, or otherwise affect the Contractor's responsibilities, duties and accountability to the Owner for, without limitation, the construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Contract Documents.
c. The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project for cause but without cost to the Owner. Such requests from the Owner will be made in writing and may be done directly or indirectly through the Design Professional/Engineer or on-site representative. "Cause" may include, but is not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the project, the facility or others, poor management, cause delay or delays, will not strictly adhere to facility procedures and project requirements either willfully

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or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

Article 3. CONTRACTOR

Section 3.1 General

a. The Contractor is the person or entity identified as such in the Contract or Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located, Denton County, Texas. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.
b. The Contractor shall perform the Work in accordance with the Contract Documents.
c. The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

Section 3.2 Review of Contract Documents and Field Conditions by Contractor

a. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner and Design Professional assume no responsibility or liability for the physical condition or safety of the Project site, or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner and Design Professional shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.a.
b. Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.d, shall take field measurements of and verify any existing conditions related to that portion of the Work, and shall observe and verify the impact of any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Design Professional any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for

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information in such form as the Design Professional may require. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Design Professional, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction per Section 12.2. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

c. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Design Professional any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Design Professional may require.
d. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Design Professional issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.b or 3.2.c, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.b or 3.2.c, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.g, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Design Professional for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents in its capacity as a contractor and not as a design professional.

Section 3.3 Supervision and Construction Procedures

a. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work in accordance with the Contract Documents.
b. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.
c. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
d. The Contractor shall carefully check its own work and that of Subcontractors as the Work is being performed.
e. During the finishing stages of the project, the Contractor shall make frequent inspections of the Work, with the applicable Subcontractor(s) involved, if any, with seven (7) days advance notice to the Design Professional, and the Contractor shall identify incorrect and faulty Work.
f. The Contractor shall ensure that incorrect or faulty Work is corrected immediately.
g. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in their

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administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

Section 3.4 Labor and Materials

a. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

b. The Contractor is encouraged to consider products and systems that improve the project and retain the character of the products specified, but do not alter the intent of the project. However, except in the case of minor changes in the Work authorized by the Design Professional in accordance with Sections 3.12.h or 7.4, the Contractor may make substitutions only by a formal request for substitution of products in place of those specified with the consent of the Owner, after evaluation by the Design Professional in accordance with the conditions set forth below and elsewhere in the Contract Documents, and a Change Order or Construction Change Directive. The Contractor must submit to the Design Professional and the Owner, for each proposed substitution:

.1 A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog “cut sheets”, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;

.2 A written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable;

.3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable;

.4 The adjustment, if any, in the time of completion of the Contract and the Contractor’s Construction Schedule in the event the substitution is acceptable;

.5 An affidavit stating that (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Design Professional;

.6 Proposals for substitutions shall be submitted electronically to the Design Professional and the Owner’s other consultants, if any, in sufficient time to allow no less than ten (10) business days for their respective reviews;

.7 No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein; and

.8 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (1) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (2) specified products are unavailable through no fault of the Contractor; (3) subsequent information discloses the

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inability of specified products to perform properly or to fit in the designated space; (4) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (5) when, in the judgment of the Owner or the Design Professional, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations; and

.9 Whether or not any proposed substitution is accepted by the Owner, the Owner's other consultants, if any (if any), or the Design Professional, the Contractor shall reimburse the Owner for any fees charged by the Design Professional, and the Owner's other consultants for evaluating each proposed substitute.

c. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.
d. All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.
e. The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Design Professional or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade; and

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

Section 3.5 Warranty

a. The Contractor warrants to the Owner and Design Professional that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal

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wear and tear and normal usage. If required by the Design Professional, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **THE CONTRACTOR SHALL DEFEND AND HOLD THE OWNER HARMLESS AGAINST ANY CLAIM, DEMAND, LOSS, OR DAMAGE BY ANY BREACH OF THIS WARRANTY, AND CONTRACTOR ACKNOWLEDGES IT SHALL NOT LIMIT SUCH WARRANTY BY THE PROVISIONS OF SECTION 12.2.**

b. All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner and shall commence in accordance with Section 9.8.d.

c. When written warranties are specified, the document shall include the following information:
Name and address of Project and Owner;
Article, materials, or systems covered;
Name and address of Installer;
Name and address of Contractor; and
Signature of individual authorized to sign contracts for the company issuing the warranty.

d. The following minimum warranty terms shall be incorporated:

.1 Duration shall be one year or as otherwise specified, dated from the Date of Substantial Completion;

.2 The article, material or system is free from defective materials and workmanship;

.3 Costs of repair or replacement shall not accrue to the Owner, including, without limitation, repair or replacement of other work disturbed by, or because of, repair or replacement; and

.4 The warranty period of two years, or as otherwise specified, shall recommence upon the identification and completion by Contractor and acceptance by Owner of any warranty claim during the initial two-year (2) warranty period.

e. Warranties which are provided by a manufacturer for its product shall be received by the Contractor, filled out and filed with the manufacturer or other appropriate entity in coordination with the Owner. Certificates or registration stubs shall be included with the record documents submitted for the Owner upon completion of the Work. The Owner shall administrate manufacturer's warranties/guarantees after expiration of the Contractor's warranty.

f. Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Contract Documents before final completion and written acceptance by the Design Professional and Owner shall not be construed as evidence of the Design Professional's or the Owner's acceptance of same, or the commencement of any warranty periods.

g. The Owner has the privilege of such temporary or trial usage, for such reasonable time as the Owner, or the Design Professional deem proper. The Contractor shall make no claims for damage or injury to, or breaking of, any parts of such work which may be caused by weakness or insufficiency of structural parts, or by defective materials or workmanship.

h. The Contractor may, without cost to the Owner, make such trial usage. However, trials shall only be conducted with the Design Professional's prior approval and under its observation as may be required by either of them. Equipment and/or materials shall be replaced or returned to "as new" condition prior to acceptance by the Owner.

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i. The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

j. If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one (1) year period following the date of Substantial Completion described in Section 12.2.b.

Section 3.6 Taxes

The Contractor shall, to the extent not exempted under Section 13.11.i herein, pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. In no event shall the Owner pay the Contractor for taxes that were not properly due or for which the Owner is exempt from paying under Texas law.

Section 3.7 Permits, Fees, Notices and Compliance with Laws

a. Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit. The Owner shall also pay for any applicable gas, water, sewer and electrical service application fees; assessments against the property, including property tax, developmental excise and similar taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

b. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

c. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with Contract Documents, and without notice to the Design Professional that the Contract Documents are at variance with applicable laws, ordinances, rules, or regulations, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the Drawings, Specifications, or other Contract Documents, except where the Contract Documents call for Work or materials of higher standards than those required by codes or ordinances, in which case, the Contract Documents shall govern. Nothing contained in the Contract Documents shall be construed as authority for the Contractor to violate any applicable codes or ordinances in effect at the site.

d. Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Design Professional before conditions are disturbed and in no event later than

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seven (7) days after first observance of the conditions. The Design Professional will promptly investigate such conditions and, if, in the Design Professional's opinion, they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If, in the Design Professional's opinion, the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Design Professional's recommendation, that party may submit a Claim as provided in Article 15.

i. In no event shall any adjustment in the Contract Sum or Contract Time be made for conditions which should have been known to the Contractor or would have been noticed by a Contractor of similar size and experience pursuant to its on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the site which have been made available to the Contractor or have been performed by the Contractor or its Subcontractors; are part of the Contract Documents; or are part of the materials provided by the Contractor to be used in constructing the improvements.

e. If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Design Professional. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

f. The Contractor shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including, but not limited to, all immigration, environmental and safety laws, statutes, rules, codes, orders and regulations.

.1 The Contractor shall also maintain at all times during the term of the this Agreement (and for the time otherwise required by law) all records required by the United States Citizenship and Immigration Services ("USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees and shall respond at all times during the term of this Agreement in a timely fashion to any inspection request related to such I-9 forms by the Contractor, Owner or governmental agency or authority;

.2 Furthermore, during the term of this Agreement, and for the time otherwise required by law, Contractor shall cause its officers, directors, managers, agents, and employees to cooperate fully in all respects with any audit, inquiry, inspection, or investigation that may be conducted by the USCIS of the Contractor or any of its employees or subcontractors;

.3 The Contractor shall immediately, and in any event within two (2) hours of Contractor's first notice of an event described in this Section 3.7.f notify the Owner in writing and by in-person voice communications (not voicemail) of any unscheduled inspections, raids, investigations, inquiries, visits, or audits

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conducted by the USCIS, OSHA, or any other governmental agency or authority related to environmental, immigration, or employee safety issues of the Contractor, its agents, employees, its Design Professional, Subcontractors, or Sub-subcontractors;

.4 The Contractor shall, on a monthly basis during the term of this Agreement, conduct an audit of the I-9 forms for its employees and shall promptly correct any defects or deficiencies that are identified as a result of such audit;

.5 The Owner may, at its sole discretion, terminate this Agreement immediately if, at any time during the term of this Agreement, the Contractor violates or is in breach of any provision of this Section 3.7.f or the USCIS determines that Contractor has not complied with any of the immigration laws, statutes, rules, codes, or regulations of the United States or any applicable state laws or regulations, or any applicable local ordinances, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and any successor statutes thereto;

.6 If an employee of the Contractor or if the Contractor is later determined to not have valid I-9 information then that employee shall be removed and barred from the Project site at the Contractor's expense; and

.7 The Contractor shall require the Subcontractors, Sub-subcontractors and material suppliers to make the representations and warranties set forth in this Section 3.7.f and to be bound by the same requirements set forth herein.

Section 3.8 Allowances

a. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

b. Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.b.1 and (2) changes in Contractor's costs under Section 3.8.b.2.

c. Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

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Section 3.9 Superintendent

a. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work including, but not limited to, weekends, evenings and nights, or as otherwise reasonably and mutually agreed in writing with the Owner, until all punch list items have been completed to the satisfaction of the Design Professional. No subcontractor shall perform work on the site without the presence of the Superintendent or Assistant Superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.
b. The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Design Professional of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or the Design Professional may notify the Contractor, stating whether the Owner or the Design Professional (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Design Professional to provide notice within the 14-day period shall constitute notice of no reasonable objection.
c. All of the Contractor's proposed on-site personnel must be approved by the Design Professional and Owner. The Contractor shall not employ a proposed superintendent to whom the Owner or Design Professional has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the Contractor's on-site personnel must be preceded by written notification of the Design Professional and Owner no less than seven (7) business days before the anticipated event. Such proposed changes must be approved by the Design Professional and Owner. The Contractor shall designate a second person in charge in writing in the event the Superintendent is temporarily absent due to illness, vacation, or any other cause(s).

Section 3.10 Contractor's Construction and Submittal Schedules

i. Where the Contract is based on a Stipulated Sum, the Contractor, immediately after being awarded the Work, and before execution of the Agreement, shall meet at a Preconstruction Conference with the Owner for the purpose of reviewing the Contractor's proposed Construction Management Plan; assisting the Owner with further developing the Master Project Schedule; and integrating the Work of the Contractor into that of the Owner and all Separate Contractors, if any.
ii. The Contractor's Project Schedule must include all the following:
    .1 Use precedence format, critical path method scheduling without the use of artificial activity constraints or "negative float";
    .2 Use software, techniques and methods satisfactory to the Owner;
    .3 Provide an electronic and graphic representation of all activities and events that will occur during performance of the Work;
    .4 Identify each subproject, to include, without limitation preconstruction, construction, commissioning, turnover of the Work, and Owner's occupancy;
    .5 Set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Contractual Milestone Dates");

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.6 Upon review by the Design Professional and written review and acceptance by the Owner of the Contractual Milestone Dates, the Contractor's Project Schedule shall be deemed part of the Contract Documents and provided to the Owner as a submittal;

.7 If not accepted, the Contractor's Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and resubmitted for acceptance;

.8 Submission of an updated Contractor's Project Schedule with each Application for Payment shall be a mandatory condition precedent to the payment by the Owner to the Contractor pursuant to an Application for Payment, and the Owner shall not be obligated to make payment if the Contractor fails to include an updated Contractor's Project Schedule reflecting the then-current conditions on the Project and the anticipated progress of Work based on those conditions; and

.9 All requests for change orders, modifications or additional compensation from the Contractor affecting the Contract Time or Contract Sum shall include a detailed schedule with both data and graphics showing the specific effect of the changed, modified or differing condition(s) on the critical path of the Contractor's Project Schedule.

iii. The Contractor, prior to preparing the Construction Management Plan and attending the Preconstruction Conference, will have reviewed the sequences, durations, sequencing and dependencies of activities, material deliveries, and sequenced man-hour staffing to complete the Work. Work activities which have an installed value of twenty thousand dollars ($20,000) or more will be broken down into major products or operations except where mutually agreed otherwise by Contractor and Owner, and these values cost-loaded into the Contractor's Project Schedule as deemed necessary by the Owner. Upon request by the Owner, the Contractor shall support values given for each work activity with data that will substantiate its correctness. The Owner may require the Contractor to show separate work activities and Contractual Milestones for, as examples only and without limitation: Substructure Completion; Superstructure Completion; Building Exterior Skin Completion; Interior Finishes Completion; Owner's Beneficial Occupancy, and other similar dates the Owner, at its sole discretion deems important to the Project.

iv. In the event the Contractor does not timely provide the Contractor's Construction Management Plan with an acceptable Contractor's Project Schedule containing such elements, information, and processes in a form and with a level of detail acceptable to the Design Professional and the Owner, the Owner may, at the Owner's discretion, unilaterally generate the target Contractor's Project Schedule at the Contractor's expense, and impose such schedule, sequences, logic, and/or durations on the Contractor as it deems necessary to complete the Work, or the Owner may declare the Contractor in breach of contract. Whether or not the Owner decides to implement this option, all other contractual provisions relating to breach of contract will continue to be in full force and apply without modification. The Owner may deduct from the Contractor's Application(s) for Payment the amount paid by the Owner for generating the Contractor's Project Schedule.

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v. Upon completion of the Master Project Schedule, and acceptance by the Owner and all Separate Contractors, the Master Project Schedule shall supersede previously submitted schedules. Each updated Master Project Schedule shall supersede previous updates.

b. The Contractor shall, at the Preconstruction Conference, and as a sub-system of its Contractor's Project Schedule, prepare an easily isolated, sorted and separately viewed submittal schedule, and thereafter update it as necessary to maintain a current submittal schedule, and shall submit such schedule(s) for the Design Professional's approval. The Design Professional's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's Construction Schedule, and (2) allow the Design Professional reasonable time to review submittals. If the Contractor fails to submit an approvable submittal schedule thirty (30) days prior to the date established for commencement of the Work, the Contractor shall not mobilize on site, or be entitled to any increase in Contract Sum or extension of Contract Time based on the delay of the Work or time required for review of submittals during the prosecution of the Work.

c. The Contractor shall perform the Work in general accordance with the most recent Contractor's Project Schedules submitted to the Owner and Design Professional and incorporated into the approved Master Project Schedule.

d. The Owner together with the Contractor, will monitor the Master Project Schedule, and incorporate the Contractor's updates to its portions of this overall schedule. As all Separate Contractors are also obligated to follow the Master Project Schedule and their respective schedules therein, they will be required to actively cooperate and participate in the preparation and updating of their portion of this schedule, as well as updating the overall Master Project Schedule by the Owner. The Contractor will be kept updated on all significant Master Project Schedule changes materially affecting the Contractor's Project Schedule.

e. The Contractor will produce a Short Interval Schedule containing activities for not less than one (1) previous week and the next three (3) weeks, and which focuses on the major weekly work activities of each subsystem. At each weekly meeting this Short Interval Schedule will be reviewed by the Contractor with all affected Subcontractors and the Owner.

f. In the event of substantial delay, if excusable under the Contract, for which extension of the Contract Time has or will be granted, the Owner will review and may require revision by the appropriate contractor(s) of affected component of the Master Project Schedule as required by the specific applicable situation(s), and with the cooperation of the Separate Contractors on the Project.

g. The Contractor shall, at mutually agreed intervals, submit to the Owner and Design Professional a progress report stating, without limitation, labor forces mobilized and working on site; areas worked in or on; percent complete of current work activities; any potential schedule or coordination problems; material deliveries received; site visitors; and other information as required by the Owner.

h. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Contractor's Project Schedule and shall promptly advise the Owner of any delays or potential delays. The accepted Contractor's Project Schedule shall be updated to reflect actual conditions as frequently as mutually agreed by the Contractor and Owner; but in no event less frequently than with each Application for Payment; and at other times as may be reasonably requested by the Owner or Design Professional. In the event any progress report or schedule update indicates any

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actual or potential delays, the Contractor shall, using both the most currently approved Contractor's Project Schedule as a baseline for comparison, and a written narrative, propose an affirmative plan to correct the delay (hereinafter referred to as the "Proposed Recovery Schedule") which must include the following:

.1 The Proposed Recovery Schedule will show the results of working additional shift or days, adding additional labor, and any of the other actions specified in Section 8.4, if necessary, all as described in the accompanying narrative;

.2 The Proposed Recovery Schedule will be reviewed by the Owner, and the Contractor will promptly and diligently make all adjustments to the Proposed Recovery Schedule reasonably requested as a result of such review.

.3 The Proposed Recovery Schedule shall become the most current, approved Contractor's Project Schedule upon its approval by the Owner, issuance of a Change Order for the purpose by the Design Professional; and signing of such Change Order by the Contractor, Design Professional, and Owner, in that order; and

.4 In no event shall any progress report, schedule update or Proposed Recovery Schedule constitute an adjustment in the Contract Time, any Contractual Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

i. In the event either the Owner or Design Professional determine that the performance of the Work, as of a Contractual Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation those further specified in Section 8.4.

j. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10 and Section 8.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Contractual Milestone Date or completion date set forth in the Contract Documents.

k. The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of any part of the Owner's organization or any stakeholders or invitees thereof. The Contractor shall, upon the Owner's or Design Professional's request, reschedule such portion of the Work during hours when the interference to the Owner's organization, or any stakeholders or invitees thereof, will be minimized or eliminated. Any postponement, rescheduling, or performance of the Work under this Section 3.10.k may be grounds for an extension of the Contract Time, if permitted under Section 8.3.a; and an equitable adjustment in the Contract Sum if the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents; and to the extent such rescheduling or postponement is required for the convenience of the Owner.

l. Documents and Samples at the Site

The Contractor shall make available, to the Owner, Design Professional or their designees, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and

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selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy and delivered to the Design Professional for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall make available to the Owner or Design Professional for inspection and copying the record copy of the drawings, specifications, addenda, Change Orders and other Modifications, including all such documents maintained by the Contractor in electronic format, upon reasonable request of the Owner or Design Professional and, in any event, within twenty-four (24) hours of receipt by Contractor of a request from Owner or Design Professional for such review and/or copying. The Owner or Design Professional may request the record copy of the As-Built Documents, specifications, addenda, Change Orders and other modifications of the Work to be updated before Substantial Completion to reflect the most current condition of the Project, as additional Cost of the Work paid as a Change Order at the Owner's expense. The Owner or Design Professional may require the Contractor to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the Owner's expense.

i. The Contractor shall provide final electronic files and one "hard" copy of the Drawings and Specifications to the Owner updated to reflect the final condition of the Project with the final Application for Payment as a condition precedent to final payment.

Section 3.12 Shop Drawings, Product Data and Samples

a. Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
b. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
c. Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.
d. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Design Professional is subject to the limitations of Section 4.2.g. Informational submittals upon which the Design Professional is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Design Professional without action.
e. The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Design Professional, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, after Contractor has verified the information contained within said submittals is in accordance with representations required by Section 3.12.f and in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

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f. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Design Professional that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents and (4) verified the information contained within said submittals is in accordance with all applicable Federal, state and local codes or ordinances in effect at the site.

g. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Design Professional. Should the Contractor, Subcontractors, or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

h. The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Design Professional of such deviation at the time of submittal and (1) the Design Professional has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Design Professional's approval thereof.

i. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Design Professional on previous submittals. In the absence of such notice, the Design Professional's approval of a resubmission shall not apply to such revisions.

    i. Copies of all approved Shop Drawings, Product Data, Samples and similar submittals shall be preserved in an orderly manner and delivered by the Contractor to the Owner upon Final Completion.

j. The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

    i. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor, the Owner and the Design Professional will specify all performance and design criteria that such services must satisfy in the Contract Documents. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional who shall comply with reasonable

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requirements of the Owner regarding qualifications and insurance. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Professional. The Owner and the Design Professional shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Design Professional have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.j, the Design Professional will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

ii. If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Owner and the Design Professional at the time and in the form specified by the Design Professional.

Section 3.13 Use of Site, Delivery and Storage

a. The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
b. The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner before using any portion of the site.
c. The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto, which includes, but is not limited to, the all the following duties and acknowledgments:

.1 The Contractor acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract;

.2 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions;

.3 The Contractor shall be responsible for the mitigation and/or abatement of all noise, dust, fumes, traffic or other by-product of construction activity that, in the opinion of the Owner or the Design Professional, have an adverse affect on the quality of life or productivity for Project stakeholders, the Owner's current operations, or the Owner's employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the Owner and Design Professional;

.4 The Contractor shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the Owner and Design Professional. Repeat

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offenses will cause the Owner or Design Professional to require, through the Contractor, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site;

.5 The Contractor shall, at a minimum, secure the site by erecting and maintaining a 6'-0" chain link fence around the perimeter of the construction site. This fence shall remain intact until such time the site becomes secure in the opinion of the Contractor, as a result of construction progress (by way of example, and without limitation, completion of site grading and backfill, installation of doors and windows, etc.);

.6 The Contractor shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use; and

.7 The Contractor is advised that the project site area is subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.

d. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas, which includes, but is not limited to, all of the following duties:

.1 The access to the site shall be maintained in compliance with all local, state, and Federal code and life safety requirements for ingress by first responders and other similar emergency requirements;

.2 The Contractor shall inform the Owner, Design Professional and any officials referenced in Section 3.13.f in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to Owner's and Design Professional's approval, such approval not to be unreasonably withheld;

.3 The Owner shall be responsible for snow removal to the limits of the construction site only so far that the Contractor will have access to the entrance to the construction area; and

.4 Snow removal within the limits of work and/or for the purpose of performing and protecting work by individual contractors is the duty of the Contractor.

e. During the performance of the Work, the Contractor, its Subcontractors, Sub-subcontractors, suppliers and their employees agree they shall:

.1 Use such entrances to the construction site that may be designated by the Owner;

.2 Perform the Work at such times of the day and days of the week as may be designated by the Owner; and

.3 Accept that these entrances and times may be reviewed and changed from time to time by the Owner.

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f. The Contractor shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Owner to proceed has been given to the Contractor. If the utility service must be interrupted, the Contractor shall, at Contractor's sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the city manager, the mayor, the city or county clerk, etc. as applicable) and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give the most effective notice to such utility users.

g. The Contractor shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed on the job and shall properly store and protect same at the Contractor's expense.

h. Notwithstanding any other provision herein, the Contractor shall take all necessary measures to store materials on site for which payment has been requested by the Contractor or been made by the Owner so that they shall not deteriorate, be damaged or be stolen, which includes, but is not limited to, all the following:

.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor;

.2 Protection of construction materials and equipment stored at the Project site from fire, weather, burglary, pilferage, vandalism and mischief, damage, and all other adversity; and the care and protection of materials and Work installed in the building is solely the responsibility of the Contractor;

.3 The Contractor shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the Owner; and

.4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.

i. The Contractor shall not deliver any materials to the site which are not to be installed by same Contractor without fifteen (15) day's advance notice in writing to the Owner of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the Contractor and a representative of the Owner, who shall agree, and the Contractor shall document such agreement in writing:

.1 The materials delivered are undamaged, or if damaged, such damage is documented by digital photo(s);

.2 They are in the quantities shown on the purchase order, invoice or bill of lading accompanying the shipment or delivery or otherwise provided;

.3 The storage conditions are adequate for the purposes; and

.4 The Contractor has accepted responsibility for insurance and ongoing protection per Section 10.2 for such material until it is released to a third party authorized in writing by the Owner to receive it.

Section 3.14 Cutting and Patching

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a. The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.
b. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

Section 3.15 Cleaning Up

a. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.
b. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

Section 3.16 Access to Work

The Contractor shall provide the Owner and Design Professional and their representatives with access to the Work in preparation and progress at all times wherever located, and shall provide proper and safe facilities for such access.

Section 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall defend and hold the Owner and Design Professional harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Design Professional. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Design Professional.

Section 3.18 Indemnification

a. CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES

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WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF CONTRACTOR OR ANY SUBCONTRACTORS, INVITEES, AND ANY OTHER THIRD PARTIES OR PERSONS FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE, IN ANY WAY ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT OWNER FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES FOR INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE, AGENT OR REPRESENATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER THE CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF INDEMNITEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS AN INDEMNITY BY CONTRACTOR FOR THE BENEFIT OF THE OWNER FROM THE CONSEQUENCES OF OWNER'S NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR EMPLOYEE OF ANY OF ITS SUBCONTRACTORS.

IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF THE CONTRACTOR, ANY SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY SUB-CONTRACTOR UNDER WORKMEN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

INDEMNIFIED ITEMS SHALL INCLUDE, BUT NOT BE LIMITED TO, ATTORNEYS' FEES AND COSTS, COURT COSTS AND SETTLEMENT COSTS, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

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THE CONTRACTOR IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE DESIGN PROFESSIONAL, ANY LICENSED ENGINEER, OR AN AGENT, SERVANT, OR EMPLOYEE OF THE DESIGN PROFESSIONAL OR LICENSED ENGINEER FROM LIABILITY THAT MAY ARISE FROM DEFECTS IN THE PLANS, DESIGNS OR SPECIFICATIONS OR NEGLIGENCE ON THE PART OF THE DESIGN PROFESSIONAL OR LICENSED ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES ARISING FROM THE CONTRACT AND THE PLANS DESIGNS OR SPECIFICATIONS THAT ARE PART OF THE CONSTRUCTION CONTRACT AS SET FORTH IN CHAPTER 130 OF THE TEXAS CIVIL PRACTICE AND REMEDIES CODE.

b. THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS SECTION 3.18 SHALL ALSO SPECIFICALLY INCLUDE, WITHOUT LIMITATION, ALL FINES, PENALTIES, DAMAGES, LIABILITY, SAFETY VIOLATIONS, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES), AND PUNITIVE DAMAGES, IF ANY, ARISING OUT OF, OR IN CONNECTION WITH ANY:

.1 VIOLATION OF OR FAILURE COMPLY WITH ANY LAW, STATUTE, ORDINANCE, RULE, REGULATION, CODE OR REQUIREMENT OF A PUBLIC AUTHORITY THAT BEARS UPON THE PERFORMANCE OF THE WORK BY THE CONTRACTOR, A SUBCONTRACTOR OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE;

.2 MEANS, PROCEDURES, TECHNIQUES, SAFETY PRECAUTIONS, OR SEQUENCES OF EXECUTION OR PERFORMANCE OF THE WORK; AND

.3 FAILURE TO SECURE AND PAY FOR PERMITS, FEES, APPROVALS, LICENSES, AND INSPECTION AS REQUIRED UNDER THE CONTRACT DOCUMENTS, OR ANY VIOLATION OF ANY PERMIT OR OTHER APPROVAL OF A PUBLIC AUTHORITY APPLICABLE TO THE WORK, BY THE CONTRACTOR, A SUBCONTRACTOR, OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE.

c. THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS ALL OF THE INDEMNITEES SET OUT IN SECTION 3.18.a FROM AND AGAINST ANY COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY ANY OF THE INDEMNITEES IN ENFORCING ANY OF THE CONTRACTOR'S DEFENSE, INDEMNITY, AND HOLD-HARMLESS OBLIGATIONS UNDER THIS CONTRACT.

Article 4. DESIGN PROFESSIONAL

Section 4.1 General

a. The Design Professional is the person or entity retained by the Owner pursuant to Section 2.3.b and identified as such in the Agreement.

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b. Duties, responsibilities, and limitations of authority of the Design Professional as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Design Professional. Consent shall not be unreasonably withheld.

Section 4.2 Administration of the Contract

a. The Design Professional will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Design Professional issues the final Certificate for Payment. The Design Professional will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

b. The Design Professional will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, as the Work progresses and when fully completed, will be in accordance with the Contract Documents. However, the Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Professional will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.a.

c. On the basis of the site visits, the Design Professional will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Design Professional will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

i. **NEITHER THE OWNER NOR THE DESIGN PROFESSIONAL NOR THE OWNER'S OTHER CONSULTANTS SHALL BE RESPONSIBLE OR LIABLE FOR THE SAFETY PROGRAM(S) DEVELOPED BY THE CONTRACTOR OR ITS SUBCONTRACTORS FOR THE SAFETY OF PERSONS AND PROPERTY, OR FOR COMPLIANCE WITH STATUTES, RULES, REGULATIONS, AND ORDERS APPLICABLE TO CONDUCT THE WORK. SHOULD ANY CONTRACTOR OR THEIR SUBCONTRACTOR(S), OR THE SUB-SUBCONTRACTOR(S) MAKE A CLAIM AGAINST THE INDEMNITEES, OR SHOULD THEY OR ANY GOVERNMENTAL ENTITY BRING ANY ACTION OR LEVY ORAND FINE OR PENALTY AGAINST THE INDEMNITEES ON ACCOUNT OF ANY SAFETY-RELATED DAMAGE OR VIOLATION OF LAW ALLEGED TO HAVE BEEN SUSTAINED, THE CONTRACTOR AGREES THAT IT WILL HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH VIOLATION, FINE, CLAIM OR SUIT, AND THAT IT WILL REIMBURSE THE INDEMNITEES THE COST OF DEFENDING SUCH SUIT,**

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AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THEREFROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.

d. Communications

The Owner and Contractor shall include the Design Professional in all communications about the Design Professional's services or professional responsibilities. The Owner shall promptly notify the Design Professional of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Design Professional's consultants shall be through the Design Professional. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

i. Failure of Contractor to give the Owner or Design Professional written notice of Contractor's objections, within three (3) business days, to directives, instructions, interpretations, or minutes from the Owner or Design Professional, shall constitute final and conclusive consent on the part of the Contractor to such directives, instructions, interpretations, or minutes of the Owner or Design Professional.

ii. Any written notice from the Owner or Design Professional to the Contractor shall be sufficiently given when delivered to the last known business address of the Contractor, or to its registered or authorized agent, representative, or officer. Any written notice from the Contractor to the Owner shall be sufficiently given when personally delivered to the Owner's Office, Attn: Project Manager, or at such other address and to the attention of such person as the Owner may from time to time designate in writing.

e. Based on the Design Professional's evaluations of the Contractor's Applications for Payment, the Design Professional will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

f. The Design Professional has authority to reject Work that does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable, the Design Professional will have the authority to require inspection or testing of the Work in accordance with Sections 13.4.b and 13.4.c, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

g. The Design Professional will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Professional's action will be taken in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor

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as required by the Contract Documents. The Design Professional's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 1.2, 3.2.a, 3.3, 3.5, 3.12, and 13.9. The Design Professional's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

h. The Design Professional will prepare Change Orders and Construction Change Directives and may order minor changes in the Work as provided in Section 7.4. The Design Professional will investigate and make recommendations regarding concealed and unknown conditions as provided in Section 3.7.d.

i. The Design Professional will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

j. If the Owner and Design Professional agree, the Design Professional will provide one or more Project representatives to assist in carrying out the Design Professional's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

k. The Design Professional will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

l. Interpretations of the Design Professional will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations, the Design Professional will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

m. The Design Professional's opinions on matters relating to aesthetic effect will be considered by the Owner when making the Owner's determination on these issues and the Owner's decision will be final if consistent with the intent expressed in the Contract Documents. Such Owner's determination shall be communicated through the Design Professional.

n. The Design Professional will review and respond to requests for information about the Contract Documents. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Design Professional will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

Article 5. SUBCONTRACTORS

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Section 5.1 Definitions

a. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.
b. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

Section 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

a. Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Design Professional of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Design Professional may notify the Contractor whether the Owner or the Design Professional (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Design Professional to provide notice within the 14-day period shall constitute notice of no reasonable objection.
b. The Contractor shall not contract with a proposed person or entity to whom the Owner or Design Professional has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
c. If the Owner or Design Professional has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Professional has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.
d. The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Design Professional makes reasonable objection to such substitution.
e. Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.
f. The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

Section 5.3 Subcontractual Relations

a. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner , the Owner's other consultants and Design

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Professional. Each subcontract agreement shall preserve and protect the rights of the Owner , the Owner's other consultants, and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available for review for each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Notwithstanding the above, all Agreements with the Owner shall have all references to compensation redacted before disclosing to Subcontractors, sub-Subcontractors, or any other tier of vendor.

b. All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement and made a part thereof as an Exhibit, and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. The Contractor's subcontractors, however, are not intended third-party beneficiaries of this Agreement by pass through, assignment, or otherwise, except as provided in the Contract Documents, and the Owner shall not be bound to Contractor's subcontract agreements.
c. Whenever the Contractor receives payment pursuant to the Contract Documents, the Contractor shall make payments to each of its Subcontractors of any amounts actually received which were included in the Contractor's Application for Payment to the Owner for such subcontracts unless otherwise allowed to withhold payment by the terms and conditions of the subcontract or as allowed by law. The Contractor shall make such payments within ten (10) days of receipt of payment from the Owner in the same manner as the Owner is required to pay the Contractor under the Contract Documents if the Subcontractor is satisfactorily performing under its contract with the Contractor. Such payments from Owner to Contractor shall be imposed with an express trust to assure that payment is made to all Project Subcontractors, Sub-subcontractors, and suppliers. In addition to the express trust imposed upon such funds and the fiduciary duties incumbent upon the Contractor, Texas Property Code Chapter 162 shall apply.
d. The Contractor shall monitor the Subcontractors, who shall pay all suppliers, Sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the Subcontractor any amounts actually received which were included in the Subcontractor's request for payment to the Contractor for such persons, within ten (10) days of receipt of payment from the Contractor. The construction payments made by the Contractor to the Subcontractor shall be trust funds as set forth in Chapter 162 of the Texas Property Code. If the Subcontractor fails to make such payments in the required manner, the Subcontractor shall pay said suppliers, Sub-subcontractors, and laborers interest as set forth in Chapter 162 of the Texas Property Code.
e. At the time the Subcontractor submits a request for payment to the Contractor, the Subcontractor shall also submit to the Contractor a list of the Subcontractor's suppliers, Sub-subcontractors, and laborers. The Contractor shall be relieved of the requirements of this Section regarding payment in ten (10) days and interest payments until the Subcontractor submits such list. If the Contractor fails to make timely payments to the Subcontractor as required by this Section, the Contractor shall pay the Subcontractor interest as calculated under the provisions of Chapter 2251 of the

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Texas Government Code. Nothing in this Section 5.3 shall be construed to affect the retention provisions of any contract.

f. The provisions of this Section 5.3 shall be made a part of each contract between the Contractor and each Subcontractor, either expressly or by incorporation by reference to this Section of the Contract Documents.

Section 5.4 Contingent Assignment of Subcontracts

a. Each subcontract agreement for a portion of the Work may be assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

b. If the Work in connection with a subcontract has been suspended for more than thirty (30) days, after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct verifiable costs incurred by such Subcontractor as a result of the suspension.

c. Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity, including the performance bond Surety's takeover or completion contractor, which shall relieve the Owner of any legal responsibility under the subcontract.

d. Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the assignment of the Subcontractor to the Owner after suspension and termination of the Contract, as provided in this Section 5.4. This Section 5.4 shall be construed to prohibit a pass through or assignment of rights, unless authorized by the Owner in writing

Section 5.5 Owner Payments to Subcontractors

a. In the event of any default hereunder by the Contractor, or in the event the Owner or Design Professional fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the Contractor.

b. Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

Article 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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Section 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

a. The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.
b. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
c. The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.
d. Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.
e. The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are listed in and identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

Section 6.2 Mutual Responsibility

a. The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
b. If part of the Contractor's Work depends on proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Design Professional of any apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Design Professional of these apparent discrepancies or defects prior to

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proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.

c. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

d. The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.e.

e. The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

f. Should the Contractor wrongfully delay or cause damage to the work or property of any Separate Contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such Separate Contractor sues or initiates a judicial proceeding against the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense. The Owner may fund the defense of such proceedings contemplated by this Section but, in any event, if any judgment or award against the Owner arises therefrom, the Contractor shall pay to satisfy it to the extent of Contractor's responsibility.

g. **SHOULD ANY SUCH SEPARATE CONTRACTOR WRONGFULLY DELAYED OR DAMAGED BY THE CONTRACTOR OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE PER SECTION 6.2.f MAKE A CLAIM AGAINST THE INDEMNITEES, OR BRING ANY ACTION AGAINST THE INDEMNITEES, ON ACCOUNT OF THE DAMAGE ALLEGED TO HAVE BEEN SO SUSTAINED, THE CONTRACTOR SHALL HOLD THE INDEMNITEES HARMLESS AND DEFEND THEM AGAINST ANY SUCH CLAIM OR SUIT, AND SHALL REIMBURSE TO THE INDEMNITEES THE COST INCLUDING, WITHOUT LIMITATION, REASONABLE, ADDITIONAL ATTORNEY'S FEES INCURRED DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THERE FROM, THE CONTRACTOR SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.**

h. Should the Contractor be caused damage by any Owner's Separate Contractor(s)'s work, by reason of such Owner's Separate Contractor's failure to perform properly under its contract with the Owner, no action will lie against the Owner, and the Owner shall have no liability therefor, but the Contractor may assert its claims for damages directly against such Owner's Separate Contractor and the Owner shall reasonably assist the Contractor. by assign such rights to Contractor, unless otherwise prohibited under Texas law.

i. Inasmuch as the completion of the building within the prescribed time is dependent very largely upon the close and active cooperation of all those engaged therein, it is, therefore expressly understood and agreed that each contractor shall lay out and install its work at such time(s) and in such manner as to not delay or interfere with the carrying forward of the work of the other contractors.

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j. Where the work of one contractor directly affects the conditions of the work of another contractor including, as examples only, and not limited to, providing shoring for backfilling, providing protective covering for painting, providing adequate bracing of door jambs, etc., the contractor performing the work which will adversely affect another contractor's work shall be responsible for providing adequate protection based upon methods used to perform its work.

Section 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, or the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Design Professional will allocate the cost among those responsible, which allocation shall be final.

Article 7. CHANGES IN THE WORK

Section 7.1 General

a. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
b. A Change Order shall be based upon agreement among the Owner, Contractor, and Design Professional. A Construction Change Directive requires agreement by the Owner and Design Professional and may or may not be agreed to by the Contractor. An order for a minor change in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and reasonably inferable from the intent of the Contract Documents may be issued by the Design Professional alone.
c. Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 or as otherwise provided herein, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

Section 7.2 Change Orders

a. A Change Order is a written instrument prepared by the Design Professional and signed by the Owner, Contractor, and Design Professional stating their agreement upon all of the following:
    .1 The change in the Work;
    .2 The amount of the adjustment, if any, in the Contract Sum; and
    .3 The extent of the adjustment, if any, in the Contract Time.

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b. Methods used in determining adjustments to the Contract Sum may include those listed in Sections 7.3.c, 7.3.g and 7.3.j.
c. Agreement on any Change Order constitutes a final settlement of all past and future claims, at law or in equity, concerning all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, delays, all direct and indirect costs, any claim for damages associated with such change, and any and all adjustments to the Contract Sum and the construction schedule.
d. Change Orders Requiring City Council Approval
The Contract Sum may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Denton City Council is required if a Change Order involves a decrease or an increase of $50,000.01 or more. The original Contract Sum also may not be increased under this Section 7.2 by more than twenty-five percent (25.0%) over the entire duration of the Project. The original Contract Sum may not be increased by more than twenty-five percent (25%) over the entire duration of the Project for any reason; nor may it be decreased by more than twenty-five percent (25%) without the consent of the Contractor, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the Contractor under this Section 7.2, the additional time required to obtain City Council approval shall not be factored into any past or future claim for delays or calculated as a part of the Change Order request.

Section 7.3 Construction Change Directives

a. A Construction Change Directive is a written order prepared by the Design Professional and signed by the Owner and Design Professional, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
b. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
c. If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
    .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
    .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
    .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed fee; or
    .4 As provided in Section 7.3.d.
d. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Design Professional shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit calculated using the sum of the actual costs allowed in Sections 7.3.d.1 through 7.3.d.5, and using the percentages as

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set forth in Section 7.3.l below. In such case, and also under Section 7.3.c, the Contractor shall keep and present, in such form as the Design Professional may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.d shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Design Professional;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Additional, verifiable payroll and subsistence costs incurred by the Contractor, Subcontractor, and Sub-subcontractor of field personnel directly attributable to the change.

e. If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

f. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Professional of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

g. A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

h. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Design Professional. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

i. Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Design Professional will make an interim recommendation for purposes of monthly certification for payment for those costs and certify for payment the amount that the Design Professional recommends, in the Design Professional's professional judgment, to be reasonably justified. The Design Professional's interim recommendation of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

j. When the Owner and Contractor agree with a recommendation made by the Design Professional concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Design Professional will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

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k. If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Design Professional for determination. The Design Professional may consult with the Owner in connection with such determination either at the direction of the Owner or at the Design Professional's discretion. If the Contractor does not ultimately agree with the Design Professional's determination, the Contractor may assert a Claim in accordance with Article 15.

l. In Subparagraph 7.3.d, the allowance for the combined total of onsite and offsite overhead and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, fee percentage of the Cost of Work stated in Section 5.1.a of the Stipulated Sum Agreement plus actual direct jobsite costs associated with the additional work, if any;

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, fee percentage of the Cost of Work stated in the Stipulated Sum Agreement, if any, plus actual direct jobsite costs associated with the additional work, if any;

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.d;

.6 Under no circumstance shall costs of the Contractor's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work under 7.3.d Conversely, the Contractor shall be compensated for their labor within the overhead and profit percentage specified in this Section 7.3.l;

.7 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also;

.8 When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any; and

.9 Overtime, when specifically authorized by the Owner and not as a requirement for the Contractor to fulfill its obligations under this Agreement, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

Section 7.4 Minor Changes in the Work

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The Design Professional may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Design Professional's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Design Professional and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Design Professional's order for a minor change without prior notice to the Design Professional that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

Section 7.5 Supporting Information

Notwithstanding the above, requests for an adjustment in the Contract Sum or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner and Design Professional. The Contractor shall also comply with all provisions of Articles 8 and 15 with respect to claims. The required information shall be provided by the Contractor in less than twenty-one (21) days from the Contractor's request for an adjustment in the Contract Sum or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the Owner or Design Professional.

Article 8. TIME

Section 8.1 Definitions

a. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
b. The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.
c. The date of Substantial Completion is the date certified by the Design Professional in accordance with Section 9.8.
d. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

Section 8.2 Progress and Completion

a. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
b. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a Notice to Proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of any additional necessary documents.
c. Attention is directed to the fact that the Work is urgently needed by the Owner; for this reason it shall be agreed that the Contractor will substantially complete all Work under the Contract within the time established in the Contract Documents and the most recently approved Contractor's

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Project Schedule. The Contractor shall begin the Work on the date of commencement as defined in the Contract Documents; carry the Work forward with adequate resources; furnish, without limitation such labor, supervision, materials, facilities, and equipment; and work such hours, including night shifts, overtime operations, and Sundays and/or holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the most recently approved Contractor's Project Schedule.

d. The Contractor shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in the Contract Documents, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the Owner in writing.
e. The Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the Contractor as well as the respective Separate Contractors.
f. The Contractor shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.
g. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

Section 8.3 Delays and Extensions of Time

a. If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Design Professional, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, implementation of Federal law or policies, unusual delay in transportation, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.f.ii, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation; or (5) by other causes that the Design Professional recommends may, justify delay, then the Contract Time may be extended for such reasonable time as the Owner may determine.
b. Claims relating to time shall be made in accordance with applicable provisions of Article 15.
c. This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.
d. Any claims for extension of time shall be made in writing to the Owner and Design Professional not more than ten (10) days after commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the Contractor should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.
e. Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at http://gis.ncdc.noaa.gov/ website/ims-cdo/sod/viewer.htm or other data as mutually agreed by the Owner and Contractor for the Project area.

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f. In allowing delays for weather, the Owner will be entitled to consider weather conditions prevailing throughout the entire Contract period. The Owner and Contractor will together reconcile actual working days lost and gained over the entire Contract period every ninety (90) days. The Contractor shall then adjust the schedule activities accordingly for both the Contractor's weather float reserves and Owner's float reserves where those activities are carried in the Contractor's Project Schedule (if any).Extensions of time due to weather or other allowable reasons will be granted on the basis of one-and-four-tenths (1.4) calendar days credit for every working day lost, with each separate extension figured to the nearest whole calendar day.

g. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

Section 8.4 Contractor's Obligations After Delay

a. If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or Contractor's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the Owner after consultation with the Design Professional that the Work will not be completed within the Contract Time or in accordance with the Contractor's Construction Schedule, due to delays caused by the Contractor or its subcontractors, the Contractor agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the Owner or Design Professional, as required to substantially eliminate, in the judgment of the Owner, the backlog of Contractor's Work on the Project:

    .1 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;

    .2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;

    .3 Reschedule activities to achieve maximum practical concurrence of accomplishment; and

    .4 Do whatever else is reasonably required by the Owner or Design Professional.

b. These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Contractor's Construction Schedule.

c. In the event of a delay, the Owner Design Professional may also require the Contractor to immediately submit a Proposed Recovery Schedule as specified in Section 3.10.h above. If the Proposed Recovery Schedule is not satisfactory, the Design Professional may unilaterally establish a new Proposed Recovery Schedule acceptable to the Owner; issue it as a Construction Change Directive; and the Contractor shall comply therewith. The Owner may also require the Contractor to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the Owner, or Design Professional.

d. Failure of the Contractor to substantially comply with the requirements of this Section 8.4 shall be considered grounds for a determination by the Owner, after consultation with the Design

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Professional, that the Contactor is in breach of this Agreement by failing to prosecute the Work and that of the Project so as to ensure its completion within both the Contract Time and the updated Contractor's Construction Schedule.

e. Likewise, in the event the progress of the Project falls behind the predictions of the Master Project Schedule through no fault of the Contractor, the Owner or Design Professional may request, and the Contractor may agree to take one or more of the Extraordinary Measures, with the Owner bearing the cost for such measures by Change Order.

f. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 8.4, except as specifically noted otherwise in Section 8.4.e.

Section 8.5 Owner's Rights After Delay

a. In the event that any Contractor fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved Contractor's Project Schedule, the Owner or the Design Professional shall have the right to impose any or all of the following options:

.1 Require the Contractor to substantiate the capability to get back on schedule within ten (10) business days;

.2 Require the Contractor to take some or all of the Extraordinary Measures, and do whatever else is required by the Owner or Design Professional until Contractor confirms, to the satisfaction of the Owner and Design Professional, the progress of the Work is in compliance and congruence with the most recently approved Contractor's Construction Schedule, such measures being at no extra cost to Owner and Design Professional;

.3 Withhold progress payment, or portions thereof, until such time as the Contractor is in compliance with the most recently approved Contractor's Project Schedule; and

.4 Contact or visit the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at Contractor's expense.

Section 8.6 Liquidated Damages

a. Should the Contractor fail to substantially complete the Work on, or before, the original date set forth in the Contract, or on or before the revised date as granted by extensions to Contract Time, the Owner may at its sole discretion permit the Contractor to proceed, and in such case, there shall be deducted from any monies due or which may become due the Contractor, a sum as specified herein, for each and every calendar day that the Work shall remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the Owner. Liquidated damages are intended to compensate the Owner for the Contractor's failure to meet the deadlines set forth herein, and shall not excuse the Contractor from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The Contractor agrees that the sums in Section 8.6.b are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an

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adequate remedy. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no termination has occurred.

b. Contractor shall pay as liquidated damages to the Owner: the sums shown in the table below for each calendar day that expires after the date set forth in the Contract for Final Completion of the Work.

1. Substantial Completion: If the Contractor neglects, refuses, or fails to achieve Substantial Completion, as defined in the Supplementary Conditions, within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 3.3, Contractor shall pay City Five Hundred Dollars ($500.00) for each day that expires after such time, until Substantial Completion is achieved.

2. Final Acceptance: If Contractor neglects, refuse, or fails to complete the Work within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 3.4, for completion and readiness for Final Payment, Contractor shall pay City Five Hundred Dollars ($500.00) for each day that expires after such time, until the date determined by City as stated in the City-issued Letter of Final Acceptance.

c. The parties acknowledge, covenant, and agree that the daily basis and the amount set forth above for liquidated damages are reasonable because of the unique nature of the Project as a benefit to the public; the fact that inconvenience to the public will be one of the significant impacts of any failure by the Contractor to timely complete the Work; and that it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to the Owner and the public.

d. Permitting the Contractor to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract. The Contractor acknowledges the Owner receives no benefits from early completion of the Project or the Work, therefore all rights, if any, to an early completion bonus or other increases in the Contract Sum for such early completion are hereby waived by the Contractor.

Article 9. PAYMENTS AND COMPLETION

Section 9.1 Contract Sum

a. The Contract Sum is stated in the Agreement and, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

b. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

Section 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum or the Cost of the Work, the Contractor shall meet with the Design Professional, at the Preconstruction Conference with a proposed Schedule of Values as specified in Section 3.10. The Contractor's Schedule of Values will be reviewed by the Owner and Design Professional in the context of the Contractor's proposed Construction Management Plan, including, but not limited to, the Contractor's Construction Schedule therein. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the Contractor's Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to

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the Contractor's and Subcontractor's contract amount(s). The Schedule of Values shall allocate the entire Contract Sum to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the Owner and Design Professional may require. This Schedule, of Values, unless objected to by the Owner or Design Professional, shall be used as a basis for reviewing the Contractor's Applications for Payment.

Section 9.3 Applications for Payment

a. At least ten days before the date established for each progress payment, the Contractor shall submit to the Design Professional an itemized Application for Payment prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Design Professional require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers and shall reflect retainage if provided for in the Contract Documents. The Application for Payment shall be notarized and include other documentation as reasonably required by the Owner; submitted electronically.
    i. As provided in Section 7.3.i, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim recommendations of the Design Professional, but not yet included in Change Orders.
    ii. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.
    iii. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and Design Professional and in compliance with all applicable statutes:
        .1 A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;
        .2 Duly executed statutory conditional waivers of mechanics' and material suppliers' lien for progress payments with teach payment application; and appropriate statutory unconditional waivers of mechanics' and material suppliers' liens for progress payments; and appropriate statutory unconditional waivers for final payments from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment;
        .3 An updated Contractor's Construction Schedule per Section 3.10 clearly showing the actual progress of the Work for each activity against the Work

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previously scheduled to be completed during the period, and against targeted activities' previously approved completion dates; and

.4 With every Payment Request for the Work, contractor will submit an affidavit stating that the contractor has complied with the requirements of Chapter 2258, Texas Government Code. The parties hereto agree that any electronic copy of such affidavit shall be treated as an original for all intents and purposes;

.4 If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer; and.

.5 Notwithstanding the above, Applications for Payment shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Design Professional, and shall include, at a minimum, an updated monthly Contractor's Construction Schedule clearly and graphically comparing the actual "work-in-place" completed to the Work previously projected to be complete for the period. Failure to provide this information in the proper form may be, in and of itself, grounds for rejection of the Application for Payment, at the discretion of the Design Professional.

b. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the stored materials and equipment which must be properly tagged as to material and job identification; must be available for inspection by the Design Professional; and such requests for payment must be accompanied by documentary evidence as specified, without limitation, in Sections 3.13 and 11.3, which supports the request's validity; quantity and value of materials; proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of Insurance or otherwise protects the Owner's interests. Such request shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Such materials shall be:

.1 Protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, and the Lender;

.2 Specifically marked for use on the Project; and

.3 Segregated from other materials at the storage facility.

c. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

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d. THE CONTRACTOR FURTHER EXPRESSLY UNDERTAKES TO DEFEND THE INDEMNITEES, AT THE CONTRACTOR'S SOLE EXPENSE, AGAINST ANY ACTIONS, LAWSUITS, OR PROCEEDINGS BROUGHT AGAINST THE INDEMNITEES AS A RESULT OF LIENS OR VERIFIED CLAIMS FILED AGAINST THE WORK, THE SITE OF ANY OF THE WORK, THE PROJECT SITE AND ANY IMPROVEMENTS THEREON, PAYMENTS DUE THE CONTRACTOR, THE PROJECT BOND OR ANY PORTION OF THE PROPERTY OF ANY OF THE INDEMNITEES (REFERRED TO COLLECTIVELY AS "LIENS OR VERIFIED CLAIMS" IN THIS SECTION 9.3.d). THE CONTRACTOR HEREBY AGREES TO INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH LIENS OR VERIFIED CLAIMS AND AGREES TO PAY ANY JUDGMENT OR LIENS OR VERIFIED CLAIMS RESULTING FROM ANY SUCH ACTIONS, LAWSUITS, OR PROCEEDINGS.

Section 9.4 Certificates for Payment

a. The Design Professional will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Design Professional recommends is properly due, and notify the Contractor and Owner of the Design Professional's reasons for withholding certification in part as provided in Section 9.5.a; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Design Professional's reason for withholding certification in whole as provided in Section 9.5.a.

b. The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional's evaluation of the Work and the data in the Application for Payment, that, to the best of the Design Professional's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Design Professional. However, the issuance of a Certificate for Payment will not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

c. Certification will be issued for ninety-five percent (95%) of the amount requested by the Contractor and approved by the Design Professional to be properly due until the Contractor is ninety-five percent (95%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that, should the Contractor at any time fail to keep current with the approved progress schedule, fail to assure payment to Subcontractors, Sub-

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subcontractors and suppliers as required hereunder; or fail to promptly and diligently correct Work that does not comply with the Contract Documents, certification of ninety-five percent (95%) shall automatically again become effective and shall apply as long as the Contractor lags behind such progress or fails to assure such payment.

Section 9.5 Decisions to Withhold Certification

a. The Design Professional may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Design Professional's opinion the representations to the Owner required by Section 9.4.b cannot be made. If the Design Professional is unable to certify payment in the amount of the Application, the Design Professional will notify the Contractor and Owner as provided in Section 9.4.a. If the Contractor and Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Certificate for Payment for the amount for which the Design Professional is able to make such representations to the Owner. The Design Professional may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Professional's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.b, because of any of the following:

    .1 defective Work not remedied;

    .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

    .3 failure of the Contractor to make payments properly to Subcontractors, Sub-subcontractors and suppliers or for labor, materials or equipment;

    .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

    .5 damage to the Owner or a Separate Contractor;

    .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

    .7 repeated failure to carry out the Work in accordance with the Contract Documents;

    .8 Contractor's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;

    .9 failure to fully execute the Contract with all associated documents as required;

    .10 bond claims, or liens, filed for any portion of the Work; or

    .11 failure of the Contractor to comply with any provisions of the Contract Documents, including without limitation Section 8.4.

b. Omitted

c. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld less all associated damages, costs and expenses, suffered or accrued by the Owner or Design Professional. In the event the Design Professional nullifies a previously

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issued Project Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Contractor shall promptly reimburse to the Owner amounts the latter had previously paid pursuant to the nullified project Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until and unless the reasons for nullification of the previously issued project Certificate for Payment have been remedied and all associated damages, costs, and expenses of Owner and Design Professional have been paid by the Contractor.

d. If the Design Professional withholds certification for payment under Section 9.5.a.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Design Professional and the Contractor shall reflect such payment on its next Application for Payment.
e. The Contractor shall not stop work or terminate the Contract if the Design Professional should refuse to issue any certificate because the Application for Payment does not conform with the requirements of Sections 9.3, 9.4, 9.5 or any other portion of these General Conditions, as supplemented herein.

Section 9.6 Progress Payments

a. After the Design Professional has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Design Professional.
b. The Contractor shall pay each Subcontractor, Sub-subcontractor and supplier, no later than ten (10) days after receipt of payment from the Owner the amount to which the Subcontractor, Sub-subcontractor and supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's, Sub-subcontractor's and supplier's portion of the Work, unless otherwise allowed by the provisions of the subcontract or by law. The Contractor shall notify Owner in advance and in writing of any payment(s) to be withheld from any Subcontractor. The Contractor shall, by appropriate agreement with each Subcontractor, Sub-subcontractor and supplier, require each to make payments to their Sub-subcontractors and suppliers in a similar manner.
c. The Design Professional will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Design Professional and Owner on account of portions of the Work done by such Subcontractor.
d. The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Design Professional shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.
e. The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.b, 9.6.c and 9.6.d.

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f. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of any Work.

g. The Contractor shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner unless allowed by the terms and conditions of the subcontract as stated in Section 5.3.C of the Agreement or by law. The Contractor shall notify Owner in advance and in writing of any payment(s) to be withheld from any Subcontractor. Sums withheld by the Owner from the Contractor for deficiencies solely attributable to the Contractor shall not be grounds for the Contractor to withhold sums due to any Subcontractor. All sums paid to the Contractor for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the Contractor for payment to those persons to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

h. PROVIDED THE OWNER HAS FULFILLED ITS PAYMENT OBLIGATIONS UNDER THE CONTRACT DOCUMENTS, THE CONTRACTOR SHALL DEFEND AND INDEMNIFY THE OWNER FROM ALL LOSS, LIABILITY, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES AND LITIGATION EXPENSES, ARISING OUT OF ANY LIEN CLAIM OR OTHER CLAIM FOR PAYMENT BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER. UPON RECEIPT OF NOTICE OF A LIEN CLAIM OR OTHER CLAIM FOR PAYMENT, THE OWNER SHALL NOTIFY THE CONTRACTOR. IF APPROVED BY THE APPLICABLE COURT, WHEN REQUIRED, THE CONTRACTOR MAY SUBSTITUTE A SURETY BOND FOR THE PROPERTY AGAINST WHICH THE LIEN OR OTHER CLAIM FOR PAYMENT HAS BEEN ASSERTED.

i. To the extent Contractor has received payment in accordance with the terms of this Agreement, the Contractor agrees to keep the Work and the site of the Project and all project bonds free and clear of all bond claim and verified claims related to labor and materials furnished in connection with the Work.

j. If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, at the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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Section 9.7 Failure of Payment

If the Design Professional does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within the date established in the Contract Documents, the amount certified by the Design Professional, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Design Professional, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

Section 9.8 Substantial Completion

a. "Substantial Completion" is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, all major systems are operational, and all safety features are completed and Owner's receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the Owner. In addition to the other requirements of the Contract Documents, and without limitation, the Contractor must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the Contractor shall be deemed to have achieved Substantial Completion.
b. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Professional a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor will also provide the Design Professional a comprehensive list of all claims previously and properly made in writing and identified by the Contractor as unsettled at the time of Substantial Completion.
c. Upon receipt of the Contractor's list, the Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Design Professional. In such case, the Contractor shall then submit a request for another inspection by the Design Professional to determine Substantial Completion.
d. When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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e. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

f. The Contractor's acceptance of payment per Section 9.8.e shall constitute a waiver for all purposes of all claims or causes of action by the Contractor against the Owner and the Design Professional, except those previously and properly made in writing and identified in the list provided by the Contractor as unsettled at the time of Substantial Completion per Sections 9.8.b.

Section 9.9 Partial Occupancy or Use

a. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, as such occupancy or use is consented to by the insurer and required under Section 11.3 provided it is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Professional as provided under Section 9.8.b. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Owner.

b. Immediately prior to such partial occupancy or use, the Owner, Contractor, and Design Professional shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

c. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

Section 9.10 Final Completion and Final Payment

a. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional will promptly make such inspection. When the Design Professional finds the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professional will promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Design Professional's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.b as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under Section 3.5 or otherwise required pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Design Professional as part of the final

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Application for Payment. The final Certificate for Payment will not be issued by the Design Professional until all warranties and guarantees have been received and accepted by the Owner. "Final Completion" occurs when all the conditions of this Section and the Contract Documents are met as set forth herein.

b. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Design Professional and Owner; (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect; (3) a written statement satisfactory to the Owner that the insurance will cover the period required by the Contract Documents; (4) consent of surety to final payment; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract for Construction, to the extent and in such form as may be designated by the Owner and Owner's lender; (6) certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Design Professional are complete and accurate in all respects; and (7)evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including, but not limited to, (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Design Professional's review and delivery to the Owner; (iv) delivery to the Owner of printed operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor may furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the

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Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and attorneys' fees.

i. In addition to items listed in 9.10.b to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local authorities having jurisdiction.

c. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Design Professional so confirms, the Owner shall, upon application by the Contractor and certification by the Design Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Design Professional prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

d. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 bond claims, Claims, liquidated damages, security interests, or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents;

.3 terms of special warranties required by the Contract Documents;

.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or

.5 gross negligence, willful misconduct, or fraudulent concealment in connection with the performance of the Contract.

e. Application for and acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee against the Owner or Design Professional except those previously made in writing and identified by that payee arising after the waiver given at Substantial Completion payment described in Sections 9.8.b and 9.8.f.

f. In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor being responsible for excess Design Professional's and other Owner's consultant(s)' fees beyond their original scope of services required to achieve final completion ("Excess Fees"). Excess Fees will be deducted from the amount due the Contractor.

Article 10. PROTECTION OF PERSONS AND PROPERTY

Section 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor's and all

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Subcontractors' Safety Programs shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations.

Section 10.2 Safety of Persons and Property

a. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to all of the following:
    .1 employees on the Work and other persons who may be affected thereby;
    .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
    .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
b. The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.
c. The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.
d. When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and the Contractor shall give the Owner and the Design Professional reasonable advance written notice of such planned activities.
e. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.a.2 and 10.2.a.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.a.2 and 10.2.a.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Design Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.
f. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Design Professional.
g. The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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h. Injury or Damage to Person or Property
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

i. The Contractor shall immediately report in writing to the Owner and Design Professional all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately electronically, as well as by telephone or messenger to the Owner and the Design Professional.

Section 10.3 Hazardous Materials and Substances

a. Hazardous materials include any material in such quantity, concentration, and physical or chemical characteristics including, but not limited to, ignitability or toxicity, so as to be capable of posing an unreasonable risk to health, safety and/or property if released into the atmosphere, transported, stored, or disposed of. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Design Professional of the condition in writing.

.1 For the purposes of this section, the following terms have the below meanings (however, each definition should be read as broadly as possible to incorporate similar hazardous materials or substances:

Asbestos: any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

Petroleum: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

Hazardous Waste: any solid waste listed as hazardous or which possesses one or more hazardous characteristics.

b. Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Design Professional the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or

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substance. The Contractor and the Design Professional will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Design Professional has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Design Professional have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order duly processed and approved, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, both as specified in Article 7. The term "rendered harmless" shall be interpreted to mean, without limitation that levels of hazardous materials, including, but not limited to, asbestos and polychlorinated biphenyls, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

c. Omitted.

d. The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

e. Omitted.

f. <u>THE CONTRACTOR SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.a, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE OWNER'S FAULT OR NEGLIGENCE.</u>

Section 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

Section 10.5 Site Visits

Anyone other than the Owner's designated representatives, the Design Professional, the Design Professional's consultants, and the Owner's other consultants visiting the job site who is not employed by a Contractor shall be required to register with the Contractor's site office before proceeding onto the job site.

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Article 11. INSURANCE AND BONDS

Section 11.1 Contractor's Liability Insurance

a. The Contractor shall purchase and maintain in a company or companies lawfully authorized to do business in Texas and as further qualified in Paragraph 11.6, such insurance as will protect the Contractor and the Indemnitees from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed; including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees; or persons or entities exempt by statute from the requirements of Section 11.1.a.1, but required by the Contract Documents to provide the insurance required by that Section;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle, including pollution clean-up if hauling hazardous materials; and

.7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than ten (10) years following final payment.

.8 Claims for damages to the Work, and/or materials and equipment used/stored at the Work, as may be covered under any Builder's Risk insurance policy.

b. The Contractor's Commercial General Liability Insurance should be written on ISO Form CG 00 01 10 01 or its equivalent and provide the following:

.1 Premises/operations (Including X-C-U coverages);

.2 Independent contractors;

.3 Products and completed operations with a per project aggregate limit, which coverage shall be maintained for a period of ten (10) years from the date of the Final Payment;

.4 Personal injury (libel, slander, false arrest) liability with employment exclusion deleted;

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.5 Blanket Contractual, including, but not limited to, a specified provision for the Contractor's obligations under Section 3.18 of the Contract Documents;

.6 Broad form property damage including, but not limited to, completed operations;

.7 Primary and Non-Contributory endorsement in favor of Indemnitees; and

.8 Contain a Waiver of Subrogation in favor of Indemnitees.

c. Professional Errors and Omissions Liability Insurance is required for all licensed and certified professionals, including, but not limited to, contractors, engineers, Design Professionals, design-build and design professionals as follows:

.1 The retroactive date preceding the date of the contract; and

.2 An extended reporting period of three (3) years past substantial completion.

d. Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

e. The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in this Article 11, procure, pay for, and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work; and for such duration as required in the Contract Documents; policies of insurance issued by a responsible carriers acceptable to the Owner, and in form and substance satisfactory to the Owner, that afford the coverages set forth in the Schedule of Insurance, attached to the Contract and made a part of it as Exhibit "YX" – Contractor's Insurance Certificate(s). All such insurance shall be written on an occurrence basis, with the sole exception of Professional Errors and Omissions Liability Insurance. In the event professional liability coverage is not available on "an occurrence" basis, a "claims made" basis policy with effective and retroactive dates prior to the effective date of the Contract Documents and an extended reporting period of at least three (3) years beyond Substantial Completion or as otherwise required by the Contract Documents, whichever is greater, may be substituted with the written consent and approval of the Owner and Design Professional. The Contractor's completed operations coverage shall be maintained until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

f. The Contractor agrees to deliver to the Design Professional, for transmittal to the Owner with a copy to the Design Professional within ten (10) days of the date of the Owner-Contractor Agreement and prior to bringing any equipment or personnel onto the site of the Work or the Project site, and thereafter upon renewal or replacement of each required policy of insurance, certified copies of all required insurance policies procured by the Contractor under or pursuant to this Article 11 or, with the written consent of the Owner and Design Professional, Certificates of

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Insurance in form and substance satisfactory to the Owner and Design Professional evidencing the required coverages with limits not less than those specified in Section 11.1.k below and all endorsements as required in Article 11 herein. The coverage afforded under any insurance policy obtained under or pursuant to this Section 11.1 shall be primary to any valid and collectible insurance carried separately by any of the Indemnitees. Furthermore, all policies and Certificates of Insurance shall expressly provide that no less than thirty (30) days prior written notice (ten (10) days for non-payment of premium) shall be given the Design Professional and Owner in the event of material alteration, cancellation, nonrenewal or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.b and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.e. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

g. Certificates of Insurance with the following or similar wording are not acceptable: "Failure to notify the certificate holder shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."
h. In no event shall any failure of the Design Professional to receive certified copies or certificates of policies required under Paragraph 11.1.f or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the Contractor's obligations to obtain insurance pursuant to this Article 11.
i. When any required insurance, due to the attainment of normal expiration date or renewal date, shall expire, the Contractor shall furnish to the Design Professional Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy forty-five (45) days prior to renewal date. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differ in any way from the previous policy, the Contractor shall also furnish the Design Professional with a certified copy of the renewal or replacement policy unless the Owner provide the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and Design Professional and written by carriers acceptable to the Owner and Design Professional.
j. Any Aggregate limit under the Contractor's liability insurance, shall by endorsement, apply to this Project separately.
k. The Contractor shall notify the Owner and Design Professional in writing of any reduction in collectible limits (aggregate limits) by an amount in excess of Fifty Thousand Dollars ($50,000), and the Contractor shall promptly procure, at no expense to the Owner, such additional coverage as necessary to restore the valid and collectible limits of such insurance to that required under the Contract Documents.
l. The Contractor shall cause each Subcontractor to procure insurance congruent with the Contractor's insurance requirements as specified in the Contract Documents and satisfactory to the Owner and Design Professional and name each of the Indemnitees as additional insureds under the Subcontractor's commercial general liability, automobile and umbrella excess liability

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policies. The additional insured endorsement included on the Subcontractor's commercial general liability policy shall state that coverage is afforded the additional insureds with respect to claims arising out of all on-going and completed operations performed by or on behalf of the Contractor. Each policy shall contain a Waiver of Subrogation in favor of the Indemnities, provide for forty-five (45) day notice of cancellation or non-renewal, and be primary without contribution if the additional insureds have other insurance that is applicable to the loss. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

m. The Indemnitees shall also be shown as "Additional Insureds" on the property, commercial general liability, automobile liability and umbrella (excess) liability policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided listing the Indemnities as Additional Insureds, using ISO forms CG2010, CG2037, CA0070, CA0032 or their equivalents, and approved as to form by Owner.
n. A "waiver of subrogation" clause in favor of the Owner will be attached to the workers compensation, commercial general liability, umbrella (excess) liability, automobile and the any applicable property insurance policies and evidence of same must be included in Certificates of Insurance. Copies of policy endorsements must be provided showing waivers of subrogation in favor of the Indemnities using ISO forms CG2404, CA0070, CA0032, WC0003 or their equivalents, and approved as to form by Owner.
o. The Owner reserves the right to review the insurance requirements during the effective period of its Agreement with the Contractor, and provide a written request for the Contractor to make any reasonable and commercially available adjustments to insurance coverages and\or limits when deemed reasonably prudent by the Owner based upon its unilateral interpretation of changes in statutory law, court decisions or the Owner's potential increase in exposure to loss.
p. Neither Contractor, Subcontractor, Sub-subcontractor, nor any of their insurance carrier's liability obligations shall be limited to the minimum limits of coverage of insurance maintained or required to be maintained by the Contract Documents.

Section 11.2 Owner's Liability Insurance

a. The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

Section 11.3 Property Insurance

a. The Contractor shall purchase and maintain "builder's risk" property insurance, or comparable coverage, for the full replacement cost value thereof, for (i) the Work that is to be done, (ii) all insurable items of Work, title to which has been acquired by Owner in accordance with the Contract Documents and (iii) all materials to be incorporated in the Work, if such materials are in or upon the Premises, or in transit to Premises, whether or not title has been acquired by Owner. Such insurance shall not cover any property owned, leased, or otherwise used in connection with the Work by Contractor, Contractor's subcontractors or the agents or employees of them, that is not forming a permanent part of the Project. This insurance shall include the interests of Owner, Contractor, and Subcontractors and shall provide coverage against loss for "direct physical damage" (previously known as "all risk" coverage) including, but not limited to, without

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duplication of coverage, fire, extended coverage, vandalism and malicious mischief, theft, collapse, earthquake, flood, sprinkler leakage, windstorm, testing and startup, temporary buildings and debris removal including demolition and increased cost of construction occasioned by enforcement of any applicable legal requirements.

b. Any coverage related to the builder's risk property insurance maintained by Contractor for time including delay in opening and/or extra expenses shall inure to the benefit of Owner only. Owner shall be the only party insured under such policy, with the sole exception that the Contractor may be entitled to payment of its fee and general conditions associated with the reconstruction, less any deductible.
c. The Contractor's insurance shall cover against loss for "direct physical damage" (previously known as "all risk" coverage) with sufficient limits to protect the full replacement cost value of the Work.
d. If by the terms of the property insurance there is a deductible amount, in the event of a loss covered by such insurance, Contractor shall be responsible for all deductibles per occurrence which shall be considered a Cost of the Work for all insurable items of Work and materials to be incorporated in the Work, title to which has not been acquired by Owner in accordance with the Contract Documents. Except for Contractor's deductible risk, Owner is bearing all risk of loss to the Property for which Owner, Contractor, and others have an insurable or financial interest during construction, and, in the event of a loss to the property during construction, Owner agrees to rely solely to the proceeds of the Builder's Risk Insurance which Owner Contractor has agreed to furnish.
e. To the extent permitted by law, Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) Owner's Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. Owner or Contractor, as appropriate, shall require of Owner's Separate Contractors, if any, and the subcontractors, sub-subcontractors, agents, and employees of any of them, by written appropriate agreement, similar waivers each in favor of other parties enumerated herein.
f. To the degree allowed by the insurer, Owner and Contractor shall each have its policies endorsed to provide for a waiver of the right of subrogation against the other respective party.
g. Any loss insured pursuant to this Section 11.3 Property Insurance is to be adjusted by Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. Contractor shall pay each Subcontractor a just share of any insurance monies received by Contractor, and by appropriate written agreement, shall require each Subcontractor to make payments to its Sub-subcontractors in similar manner.
h. Upon request, Owner shall make available for inspection by Contractor a copy of all policies to be furnished by Owner.

Section 11.4 Performance, Maintenance, and Payment Bond

a. The Contractor must furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Such bonds shall be issued in an amount equal to the total Contract Sum by a surety company licensed in the state where the

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Project is located, with a current A.M. Best rating of at least A- X, included on the U.S. Treasury Department's listing of approved sureties, and acceptable to the Owner and Design Professional, or as expressly agreed otherwise by the Owner and Design Professional in writing.

.1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment and shall satisfy the requirements Texas Government Code Chapters 2253 and 2269.

.2 The Performance Bond, Maintenance Bond, and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.

.3 Every Bond under this Section 11.4.a must display the Surety's Bond Number and a rider including the following provisions, which shall be attached to each Bond:

a) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents;

b) Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived; and

c) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

b. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.
c. The Bond Form shall be in a form provided by the Owner.
d. Additional Performance, Maintenance, and Payment Bonds may be recommended by the Design Professional and required by the Owner, at the Owner's sole discretion, from any Subcontractor. The Owner will pay such actual, additional expenditures as Cost of the Work using the process specified in Article 7 for Changes in the Work. All such bonds shall be in form and substance satisfactory to the Owner and Design Professional.
e. The Contractor shall deliver the required bonds to the Owner no later than three (3) business days following the date of the Agreement is entered into, or if the Work is to be commenced prior to the date the Agreement is entered into, in response to a notification of award. The Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.
f. The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

Section11.5 Adjustment and Settlement of Insured Loss

a. 11.5.1 Omitted.
b. Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have fourteen (14) days from receipt of notice to object to the proposed settlement or

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allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

Section 11.6 Insurance Companies

All insurance coverage procured by the Contractor shall be provided by insurance companies having current policyholder ratings no lower than "A- X" by A.M. Best and acceptable by the Owner and Design Professional, or as expressly agreed otherwise by the Owner, Contractor and Owner in writing. Such companies must be licensed to do business in the State of Texas.

Section 11.7 Failure to Purchase Insurance

If one or more of the Indemnitees, or the Contractor is damaged by the failure of either the Owner or the Contractor to purchase or maintain the insurance required under this Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees and court and settlement expenses) properly attributable to the failure.

Section 11.8 Insurance Limits Required

The following insurance limits are the minimums to be carried by the Design Professional, the Design Professional's consultants, the Owner's other consultants, the Contractor, and the Subcontractors, Sub-subcontractors, and suppliers, unless higher limits are required by their respective Agreements or Texas law (in which case those limits shall control):

.1 Automobile Liability
$1,000,000 Combined Single Limit

.2 Commercial General Liability
$1,000,000 Aggregate, Per Occurrence and Personal Injury
$2,000,000 General Aggregate

.3 Worker's Compensation
Statutory Limits *Employers Liability*
$100,000 each accident/occurrence
$100,000 Disease – each employee
$500,000 Disease – policy limit

.4 Contractor's Environmental Impairment/Pollution coverage
$2,000,000 Occurrence or Claim
$2,000,000 Policy Aggregate

.5 Builder's Risk (where applicable)
100% of the total value of the work

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a. Limits for primary policies may differ from those shown when Umbrella or Excess Liability insurance is provided, as long as all coverage is equal to or greater than the minimum limits required herein.

Article 12. UNCOVERING AND CORRECTION OF WORK

Section 12.1 Uncovering of Work

a. If a portion of the Work is covered contrary to the Design Professional's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Design Professional, be uncovered for the Design Professional's examination and be replaced at the Contractor's expense without change in the Contract Time.

b. If a portion of the Work has been covered that the Design Professional has not specifically requested to examine prior to its being covered, the Design Professional may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

Section 12.2 Correction of Work

a. Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Design Professional or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, specifically including but not limited to additional testing and inspections, the cost of uncovering and replacement; the cost of any additional supervision, material, labor, equipment, rental charges, home office overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work of both the Contractor and the Project, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions; as well as compensation for the Design Professional's services and expenses made necessary thereby, shall be at the Contractor's expense.

i. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable or for which the Contractor is otherwise responsible.

b. After Substantial Completion

i. In addition to the Contractor's obligations under Section 3.5, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date

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for commencement of warranties established under Section 9.9.a, or by terms of any applicable special warranty required by the Contract Documents, or within such longer period of time as may be prescribed by law, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the condition is reasonably discoverable, during the two-year period for correction of Work, and the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Design Professional, the Owner may correct it in accordance with Section 2.5, and charge the reasonable costs to the Contractor.

ii. The two-year period for correction of Work shall also be extended by the period of time between Substantial Completion and the actual completion of the corrective Work performed by the Contractor pursuant to this Section 12.2, but only with respect to the corrected portions of the Work.

iii. Omitted.

c. Omitted.

d. The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. These costs specifically include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office overhead, and other expenditures necessitated to rectify the non-complying conditions, protect adjacent Work, and restore Work by the Contractor and others necessarily damaged in the course of rectifying the non-complying conditions.

e. Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.b relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

f. The Contractor's obligations under this Section 12.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract.

Section 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. In the event final payment has been made by the Owner subsequent

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to accepting such non-conforming Work, the Contractor shall pay the Owner for the reduction in the Contact Sum occasioned by such acceptance.

Article 13. MISCELLANEOUS PROVISIONS

Section 13.1 Governing Law

The Contract shall be governed by the laws of the state of Texas. Venue on any dispute arising out of this Contract shall be in Denton County, Texas, which is the place where the Project is located and where performance is primarily to occur.

Section 13.2 Successors and Assigns

a. The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.b, neither party to the Contract shall assign the Contract, or any rights under the contract, in whole or in part without the written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
b. The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.
c. Written Notice
   Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

Section 13.3 Rights and Remedies

a. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.
b. No action or failure to act by the Owner, Design Professional, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

Section 13.4 Quality Management Tests and Inspections

a. Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Design Professional

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timely notice of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. As required by the provisions of Texas Government Code, Section 2269.058(a), the Owner shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the Owner. To the extent that any of the provisions of this Section 13.4 or other provisions of this Agreement conflict with any of the provisions of Section 2269.058(a) such conflict is unintentional, and the provisions of the Texas Government Code shall control.

b. If the Design Professional, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.a, the Design Professional will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Design Professional of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. Such costs, except as provided in Section 13.4.c, shall be at the Owner's expense.
c. If such procedures for testing, inspection, or approval under Sections 13.4.a and 13.4.b reveal failure of the portions of the Work to comply with requirements established by the Contract Documents ("Failed Work"), all costs made necessary by the Failed Work, including those of repeated procedures and compensation for the Design Professional's services and expenses and all costs specified in Section 12.2 shall be at the Contractor's expense. The Contractor also agrees all costs of testing, inspection, and approval services required for the correction of the Failed Work and the cost of such similar services related to remedial operations performed to the Failed Work shall be borne by the Contractor.
d. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Design Professional.
e. If the Design Professional is to observe tests, inspections, or approvals required by the Contract Documents, the Design Professional will do so promptly and, where practicable, at the normal place of testing.
f. It is the intent of the Construction Documents to require the Contractor to control the quality of the Work using the processes specified in the Contractor's Quality Management, Commissioning, and Turnover Plan contained within the most recent Construction Management Plan approved by the Owner and Design Professional. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work and shall conform to the most recently approved Contractor's Construction Schedule.
g. The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the Contractor's, as is the obligation to provide the Work and a complete and functional project per the Contract Documents. Notwithstanding anything herein, or in subsequently approved Quality Management, Commissioning and Turnover Plans, the Owner's review and Design

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Professional's approval of such plan(s) does not relieve the Contractor in any way of this responsibility.

h. The Contractor shall be in charge of scheduling; re-scheduling (when required); and confirming adequate distribution of reports and other findings from all testing and inspections of the Work. This responsibility includes, but is not limited to, scheduling the testing services of a certified testing laboratory which, by statute shall be contracted to and paid for by the Owner. The certified testing laboratory shall be acceptable to the Design Professional; and shall perform the tests as called for in the Contract Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:

.1 The frequency and type of Quality Control testing shall be established by the Contractor and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Contract Documents. The type and amount of testing required by the Contract Documents shall be seen as the minimums required, and shall be increased, if in the opinion of the Contractor, more testing is needed to meet the requirements of the Contractor.

.2 The Contractor shall concurrently provide the Design Professional copies of all test results it receives within three (3) business days of receipt of same.

.3 The Owner shall provide such Quality Assurance testing as it and the Design Professional mutually agree to be adequate for their own needs. The Owner shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the Owner, or lack thereof shall in no manner affect the responsibilities of the Contractor or Design Professional under this Agreement.

i. The Contractor shall facilitate and conduct weekly (or more frequent if necessary) meetings on site for the coordination of all mechanical, electrical and special systems installation activities and possible interference(s) above ceilings, in mechanical rooms, etc. The mechanical trades shall typically have preference in the event of conflicts, and therefore the mechanical contractor's coordinator will usually lead each meeting, unless the Contractor decides another trade or the Contractor should take the lead. The Design Professional shall be informed of the meetings at least seven (7) days in advance, and the appropriate Design Professional's consultants should be invited to attend by the Contractor, as supplemented and coordinated by the Design Professional.

j. The Contractor's Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes and Contractor will review, in detail, the steps for completing testing of all building systems with the Owner and Design Professional. This plan shall be coordinated with and shall be made part of the Contractor's Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate Owner's and Design Professional's consultant(s), representatives of the Owner, and at its option, either or both the Design Professional.

k. When heating, air conditioning, ventilating, exhaust, or other items of mechanical, electrical or other similar equipment are installed, or other systems or equipment requiring testing as may be specified in the Contractor's Quality Management, Commissioning and Turnover Plan, it shall be the responsibility of the Contractor, Subcontractor or Sub-subcontractor installing such

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equipment to operate it for a period of time satisfactory to the Owner prior to acceptance and before the start of Warranty. The duration of such operation shall be as the Owner, Owner's consultant(s), Design Professional's consultant(s), Owner' employees and other Owner's representatives (the Turnover Team) shall reasonably require for proper testing of the respective system and thorough instruction of the Owner's operating personnel.

l. All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the Owner's operating personnel on each system's operations and maintenance shall be provided by the Contractor, Subcontractor or Sub-subcontractor responsible for providing and installing the equipment. Such tests and instruction shall be in meetings held solely for this purpose (the Turnover Meetings), which shall be coordinated and managed by the Contractor, who shall show their dates in the Contractor's Construction Schedule at least sixty (60) days prior to occurrence. The Contractor shall schedule the Turnover Meetings at times reasonably convenient for the Owner's consultant(s), Design Professional's consultant(s), Owner's employees and other Owner's representatives that the Owner and Design Professional agree are necessary to attend for each system. The Design Professional may attend such Turnover Meetings at its discretion.
m. The Contractor shall provide a digital video record to the Owner, with copies to the Design Professional of all meetings for the purpose of Owner operational staff instruction or training; as well as commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.
n. The Contractor shall prepare a digital video record of the project for the Owner with copies to the Design Professional at such stages as shall be indicated by the Design Professional for the purpose of documenting the location of piping, conduit, equipment, or other construction to be concealed at a later date; recording key inspections and tests; providing evidence of unforeseeable conditions encountered by the Contractor on site; and other construction issues as the Design Professional may reasonably require from time to time.
o. The Contractor shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Contractor shall notify the Design Professional in writing immediately upon completion of this marking, and the Design Professional will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the Owner. The Design Professional will then give permission for removal in writing to the Contractor. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

Section 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as set forth in the provisions of Texas Government Code, Chapter 2251 or its successor statute.

Section 13.6 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work.

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Section 13.8 Measurement

Before ordering any material or doing any Work, the Contractor shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Design Professional for consideration before proceeding with the Work. The Contractor shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the Owner and Design Professional of these prior to commencing any Work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

Section 13.9 Expediting Materials

The Contractor shall immediately, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work, and shall submit to the Design Professional evidence that such orders have been placed in accordance with the Contractor's Construction Schedule.

Section 13.10 Addressing the Owner's Additional Needs and Concerns

a. Notwithstanding the above, the Owner has a unique set of stakeholders and organizational structure that creates special challenges the Contractor must completely and successfully address to the satisfaction of the Owner and Design Professional in the performance of the Work under this Agreement. The actions that shall be taken to address these special challenges include, but are not limited to, the following:

.1 The Contractor shall provide the Superintendent once per month for a scheduled meeting with the Owner for a progress update on the project if requested by the Owner. A walk-through of the site may be held as a part of this meeting, which shall be scheduled by mutual agreement during regular business hours.

.2 The Contractor may be required to provide the Superintendent for one meeting per month with the Design Professional for the purpose of assisting the Owner in preparing City Council agenda items and assisting City staff in preparing presentations to the City Council for the benefit of the public. The actual preparation and submission of the City Council of any agenda or work session item shall be performed by the Owner.

.3 In addition to the meetings required to complete the Project, it is anticipated the Owner may request tours from time to time of the project and the site. The Contractor shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Owner.

Section 13.11 Additional Provisions

a. In the event that any provision herein is held to be unlawful, against public policy, or a violation of the Charter or Ordinances of the Denton City, Texas, such provision shall be modified to make it valid, or if modification is not possible, such provision shall be deleted and the remainder of this Agreement shall remain in full force and effect.

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b. Each party hereto agrees to, without limitation, perform all acts; provide all services, material, equipment, labor and supervision; and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.
c. All exhibits referred to in the Contract Documents are, by reference, incorporated herein for all purposes.
d. The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of the Contract Documents.
e. Any specific requirement in this Contract that require responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Contract Documents or the applicable subcontract.
f. The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written document signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific material restated in the written document signed by Owner and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents.
g. The Contractor shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.
h. The Contractor shall provide Owner with copies of all notices received by Contractor from Subcontractors, Sub-subcontractors, and/or suppliers to Contractor.
i. The Owner is a Texas home-rule municipality and as such is generally exempt from taxation under Texas law, which may include the purchase of items, materials, or supplies purchased on behalf of the Owner for this public works project. Contractor shall confirm that the Owner is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the Owner.
j. Owner affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by Owner to Contractor subject to the terms and conditions of the Contract Documents. In the event that Owner approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by Contractor, (other than that contemplated by the Contract Documents under any remedy-granting provision), Owner will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the Owner's governing body.
k. In the event the Owner is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the Contractor shall notify the Owner and Design

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Professional of such requirement(s) in writing not less than thirty (30) days in advance and attach a copy of the specific advertising and noticing required.

l. The Contractor shall, in addition to compliance with the requirements of Section 3.7.f and without limitation, not knowingly employ or contract with an illegal alien to perform any of the Work under this Agreement. The Contractor shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (ii) fails to certify to the Contractor that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.
    i. The Contractor shall comply with any reasonable request of the Texas Workforce Commission made in the course of an investigation pursuant to state law.
    ii. In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Contract Document the Owner may be entitled to for a breach of the Agreement, if the Owner terminates this Agreement, in whole or in part, due to Contractor's breach of the obligations set forth above in this Section 13.11.l Contractor shall be liable for actual and consequential damages to the Owner.

m. It is the express intention of the parties that this Agreement is not to be construed as a waiver of any immunities or defenses of the Owner under Texas law.

n. Notwithstanding any other provision in the Contract Documents to the contrary, public property is protected from forced sale and therefore may not be made the subject of a mechanic's lien. Nothing in the Contract Documents shall be construed to allow a mechanic's lien on public property owned by the Owner. The Owner does not waive its immunities or right to object to or contest such a lien.

Article 14. TERMINATION OR SUSPENSION OF THE CONTRACT

Section 14.1 Termination by the Contractor

a. The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:
    .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
    .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

b. The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

c. If one of the reasons described in Section 14.1.a or 14.1.b exists, the Contractor may, upon seven (7) days' notice to the Owner and Design Professional, terminate the Contract and recover from the Owner payment for Work executed, including other costs allowed by the law.

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d. If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Design Professional, terminate the Contract and recover from the Owner as provided in Section 14.1.c.

Section 14.2 Termination by the Owner for Cause

a. The Owner may terminate the Contract if the Contractor:

.1 refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or

.5 contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

b. When any of the reasons described in Section 14.2.a exist, and upon certification by the Design Professional that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

c. When the Owner terminates the Contract for one of the reasons stated in Section 14.2.a, the Contractor shall not be entitled to receive further payment.

d. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's, Design Professional's consultants', and Owner's other consultants' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

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i. The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

Section 14.3 Suspension by the Owner for Convenience

a. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

b. The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.a. Adjustment of the Contract Sum shall be as specified in Article 7. No adjustment shall be made to the extent:

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

Section 14.4 Termination by the Owner for Convenience

a. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

b. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

c. Upon such termination for the Owner's convenience, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Contract Documents and Owner's further instructions. **The Contractor waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, lost opportunity costs, and potential and actual unabsorbed overhead costs.** The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work; (2) claims that the Owner has against the Contractor under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract.

Article 15. CLAIMS AND DISPUTES

Section 15.1 Claims

a. Definition

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A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.a does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

b. Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the dispute resolution method selected in the Agreement and within the period specified by applicable law.

c. Notice of Claims

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Design Professional, if the Design Professional is not serving as the Initial Decision Maker.; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Design Professional and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

i. Claims Made After Final Payment

After Final Payment, Claims made by the Contractor that have not otherwise been waived pursuant to this Contract, must be initiated within one hundred and eighty (180) days from the date of Final Payment by written notice to the Owner as a condition precedent to the Contractor's right to sue on the Contract.

ii. Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.b, shall be initiated by notice to the other party. In such event, no recommendation by the Initial Decision Maker is required.

d. Continuing Contract Performance

i. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

ii. The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Design Professional will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

e. Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.c shall be given before proceeding to execute the portion of the Work that is the

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subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Damages available to the Contractor are limited to those set forth in the Texas Local Government Code, Subchapter I, Section 271.153 or its successor statute(s).

f. Claims for Additional Time
   i. If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor shall provide written notice as required by Sections 8.3.d. and 8.3.e.
   ii. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in accordance with Section 8.3.e.

g. Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.g shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Section 15.2 Initial Decision
Omitted.

Section 15.3 Mediation

a. Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to precedent to filing suit in a state district court having competent jurisdiction per the Contract Documents. If a statute of limitations is at issue, then suit may be filed by either party to toll the statute, but the suit shall then be stayed pending completion of the agreed mediation. If the parties cannot agree on a mediator, then the court may appoint one upon application of either party.
b. The parties shall endeavor to resolve their Claims by mediation. A request for mediation, shall be made in writing, delivered to the other party to the Contract.
c. Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings.
d. The parties shall share the mediator's fee equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Written agreement(s)

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reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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SECTION 00 73 01

SUPPLEMENTARY CONDITIONS - CSP
TO
GENERAL CONDITIONS

Supplementary Conditions

These Supplementary Conditions modify and supplement Section 00 72 00 - General Conditions, and other provisions of the Contract Documents as indicated below. All provisions of the General Conditions that are modified or supplemented remain in full force and effect as so modified or supplemented. All provisions of the General Conditions which are not so modified or supplemented remain in full force and effect.

Defined Terms

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meaning assigned to them in the General Conditions, unless specifically noted herein.

Modifications and Supplements

The following are instructions that modify or supplement specific paragraphs in the General Conditions and other Contract Documents.

SC-1.01 "Defined Terms"

The following Terms are added to the General Conditions as follows:

Competitive Sealed Proposals – A procurement method by which a governmental entity requests proposals, evaluates and ranks the Offerors, and negotiates a contract with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

Daily Value – The City-determined value in dollars as indicated in the Proposal Form as the value of one Day for the purposes of determining the Incentive (if applicable) for Substantial Completion relative to the Contract Time and achievement of Substantial Completion.

Weekend Working Hours—Those hours between 8:00 a.m. and 8:30 p.m. on Saturday, and between 1:00 p.m. and 8:30 p.m. on Sunday or on a federal or state holiday observed by the City, as approved in advance by the City for performing Work.

Working Day—Defined as a Business Day but excluding any days that weather or other conditions beyond the reasonable control of the Contractor prevents the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7:00 a.m. and 8:00 p.m.

SC-2.01

Easement limits shown on the Drawings are approximate and were provided to establish a basis for proposals. Upon receiving the final easements descriptions, Contractor shall compare them to the lines shown on the Contract Drawings.

SC-2.01A., "Availability of Lands"

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of *June 2025*:

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Outstanding Right-Of-Way, and/or Easements to Be Acquired

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
None		

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

If Contractor considers the final easements provided to differ materially from the representations on the Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work, notify City in writing associated with the differing easement line locations.

SC-2.01B., "Availability of Lands"
Utilities or obstructions to be removed, adjusted, and/or relocated

The following is the list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of *June 2025*

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
None		

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

SC-3.01, "Subsurface and Physical Conditions"

The following are reports of explorations and tests of subsurface conditions at the site of the Work:

1. A Geotechnical Report provided by the City of Denton

The following are drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of the Work:
None

SC-4.01, "Underground Facilities

The following are additional resources for identification of Underground Facilities which are at or contiguous to the site of the Work, and which are not necessarily shown in the Drawings:
None

SC-5.01, "Hazardous Environmental Conditions at Site"

The following are reports and drawings of existing hazardous environmental conditions known to the City:
None

SC-6.01, "Certificates of Insurance"

The entities listed below are "additional insureds as their interest may appear" including their respective officers, directors, agents and employees.

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(1) City
(2) Consultant: *Westwood Professional Services, Inc.*

SC-7.01, "Concerning Subcontractors and Suppliers"

The following subcontractors shall be required to be utilized by the Contractor for specific portions of the Work as indicated below:

Required Subcontractors

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
None	

SC-8.01., "Permits and Utilities"

SC-8.01A., "Contractor obtained permits and licenses"
The following are known permits and/or licenses required by the Agreement to be acquired by the Contractor:

Other: Contractor is responsible for obtaining all necessary permits for this project. Utilize the following hyperlink for more information related to the permit applications.
http://www.cityofdenton.com/237/Permits-Licenses

SC-8.01B. "City obtained permits and licenses"
The following are known permits and/or licenses required by the Agreement to be acquired by the City:
None

SC-8.01C. "Outstanding permits and licenses"

The following is a list of known outstanding permits and/or licenses to be acquired, if any as of *August 2025*

Outstanding Permits and/or Licenses to Be Acquired

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
None		

SC-12.01, "City's Project Manager"

The City's Project Manager for this Contract is *Monica Martin* or his/her successor pursuant to **written notification from the City Engineer.**

SC-13.01, "Tests and Inspections"

1. *Geotechnical lab testing hired by contractor*
2. *Bridge Inspection – rebar concrete, densitites, etc.*
3. *Pavilion Inspection – rebar, concrete, densities, etc.*

SC-14.01, "Methods and Procedures"
None

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SC – 15.01, "Documents"

Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

SC – 16.01 "Labor; Working Hours"

1. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

2. Contractor shall be fully responsible to City for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.

3. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours on Business Days. Contractor will not permit the performance of Work outside of regular working hours on Business Days without City's prior written consent (which will not be unreasonably withheld)). Contractor's written request (by letter or electronic communication) for City's written consent must be made as follows:

    a. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;

    b. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and

    c. for Work on state or federal holidays observed by the City, request must be made sufficiently in advance of the holiday, to satisfy requirements for City Council approval.

END OF SECTION

Revision Log		
DATE	**NAME**	**SUMMARY OF CHANGE**

Docusign Envelope ID: C5C78B37-4FDB-4522-AE12-8F24F9EB1850

EXHIBIT C

KEY PERSONNEL RESUME FORM

Offerors may attach an organizational chart (maximum of 1 page) as supporting documentation. Please list the key team members that will be assigned to the Project. The Offeror should, at a minimum, provide personnel experience for the Project Manager, Superintendent, and the Foreman/Foremen. Past experience projects should demonstrate experience in the categories listed in 12.2.2.7 of Section 00 21 16 – Instructions to Offerors.

NAME:	Michael A. Heimlich
JOB TITLE:	President /Senior Project Manager

LICENSES AND CERTIFICATIONS: P.E. License - Texas

TOTAL YEARS OF EXPERINCE: 39

TOTAL YEARS WITH CURRENT FIRM: 32

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM:

Registered Profession Engineer - State of Texas - Certificate #71319

Storm Water Pollution Prevention (SW3P) Certified

OSHA 10-Hour Certification

Leading and coordinating complex civil projects

Overseeing cost estimating, scheduling and job planning

Manage budget with focus on efficiency and accountability

Coordinating with Owner and Engineers

Apply value engineering principles to optimize performance and cost

Ensurie excellence in construction management for pre-construction to close-out

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH:

City of Denton- Villages of Carmel Park - 60% End March, 2026

City of Dallas - Thurgood Marshall Field - 15% End April, 2026

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NAME:	Lucas S. Heimlich
JOB TITLE:	Project Manager/ Vice President

LICENSES AND CERTIFICATIONS: SW3P Certifed, OSHA 10 Hour, Traffic Control

TOTAL YEARS OF EXPERINCE: 16 Years

TOTAL YEARS WITH CURRENT FIRM: 15 Years

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM:

Directing and coordinating all phases of construction

Develop accurate cost estimates and value engineering solutions

Managing project planning, scheduling and budget control

Coordinate with Owners and Engineers to maintain clear communication

Overseeing on-site teams and ensuring compliance with quality and safety standars

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH:

City of Dallas- Thurgood Marshall Field - 40% End April, 2026

City of Dallas- Kelberg Trail - 25% End July, 2026

NAME:	Joshua S. Downing
JOB TITLE:	Vice President of Operations

LICENSES AND CERTIFICATIONS: OSHA 30 Hour, OSHA 10 Hour, SW3P Certified

TOTAL YEARS OF EXPERINCE: 15 Years

TOTAL YEARS WITH CURRENT FIRM: 11 Years

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM:

Supervise daily construction activities and coordinate subcontractor and crew

Enforce strict safety standards, ensuring all personnel follow approved safety practices

Monitor project quality to meet all specified requirements and expectations.

Maintain effective communication with Project Manager, Engineer and field teams

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Identify and resolve field issues to avoid delays or compromises quality.

Site management

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH:

City of Dallas- Thurgood Marshall - 50% End July, 2025

City of Dallas- Kleberg Trail - 20% End April, 2025

NAME:	Eduardo Adame
JOB TITLE:	Project Superintendent

LICENSES AND CERTIFICATIONS: OSHA 10 Hour, SW3P Certified

TOTAL YEARS OF EXPERINCE: 14 Years

TOTAL YEARS WITH CURRENT FIRM: 12 Years

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES. IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM:

Proficient in organizing overall construction operations and logistics

Strong background in supervising construction crews and subcontractors

Skilled in interpreting and implementing engineering and architectural blueprints

Concrete construction expertise

Utility installation: water, sanitary sewer, storm drain

SW3P (Storm Water Pollution Prevention Plan) compliance

Effective management reporting and field documentation

Knowledgeable in safety protocols and environmental regulations

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH:

City of Denton- Villages of Carmel Park- 100% End March, 2026

Docusign Envelope ID: C5C78B37-4FDB-4522-AE12-8F24F9EB1850

NAME: Jose Gaona
JOB TITLE: Superintendent

LICENSES AND CERTIFICATIONS: OSHA 10 Hour, SW3P Certified

TOTAL YEARS OF EXPERINCE: 40 Years

TOTAL YEARS WITH CURRENT FIRM: 34 Years

RELEVANT EXPERIENCE WITHIN LAST 5YRS., INCLUDE PROJECT ROLES AND RESPONSIBILITIES.

IDENTIFY IF PROJECTS WERE COMPLETED WITH CURRENT OR PREVIOUS FIRM:

Crew leader/superintendent for 25+ years

Concrete construction expertise

Equipment operator

Site layout and proficient in grades

Knowledgeable in safety protocols and environmental regulations

LIST OTHER ACTIVE PROJECTS FOR THE DURATION OF THIS PROJECT AND INCLUDE PERCENTAGE OF TIME ALLOCATED FOR EACH:

City of Denton- Villages of Carmel Park - 100% End March, 2026

Docusign Envelope ID: C5C78B37-4FDB-4522-AE12-8F24F9EB1850

NORTHSTAR CONSTRUCTION, LLC

MICHAEL A. HEIMLICH

PRESIDENT
SENIOR PROJECT MANAGER / QC MANAGER

SUMMARY

Mike has over 39 years experience in the design and construction of civil projects. Responsibilities include directing and coordinating multiple construction projects involving cost estimating, job planning, scheduling, budget control, Owner/Engineer/Architect coordination, value engineering, and construction management.

EDUCATION

Bachelor of Science in Civil Engineering, May 1986
University of Arkansas, Fayetteville, Arkansas

REGISTRATIONS

- Registered Professional Engineer in the State of Texas Certificate #71319
- Storm Water Pollution Prevention Certified (SWPPP)
- OSHAL 10-Hour Certification

PARTIAL PROJECT HISTORY:

PROJECT:	OWNER:	CONTRACT:
• Heritage Park – Phase III	Town of Flower Mound	$ 1,866,499.00
• Meacham Airport Taxilane E	TXDOT	$ 1,838,368.00
• Runyon Creek Greenbelt Trail	City of Dallas	$ 2,238,262.00
• Heritage Park – Phase II	City of Flower Mound	$ 1,469,085.00
• Thomas Baseball Fields Renovations	City of Carrollton	$ 464,749.00
• Playground Renovations at 4 Parks	City of Fort Worth	$ 715,283.00
• Playground Renovations at 5 Parks	City of Fort Worth	$ 885,040.00
• Kiest Park Loop Trail	City of Dallas	$ 1,620,000.00
• Cottonwood Creek Trail	City of Allen	$ 2,904,176.00
• Sycamore Park & Trail Improvements	City of Fort Worth	$ 429,000.00
• Meacham Airport Apron Exp.	TXDOT Aviation	$ 2,718,000.00
• Post Oak Park	City of Flower Mound	$ 1,238,000.00
• Spring Creek Park	City of Garland	$ 600,000.00
• Trinity Trails Improvements	City of Dallas	$2,922,000.00
• 20th Year Storm Drainage	City of Hurst	$ 42,971.30
• Arlington CSP Drainage Improvements	Arlington I.S.D	$319,000.00
• O.S. Gray Park	City of Arlington	$ 485,000.00
• Extension of Paul Boorman Trail	City of Longview	$3,149,388.00
• UTA Center Street	City of Arlington	$ 2,337,075.00
• Cottonwood Trail & Multi-Modal Improvements	Dallas County	$ 4,378,930.00
• Prairie Dog Park Renovation	City of Fort Worth	$ 452,703.00
• Veteran's Memorial Park	City of Irving	$ 2,240,168.00
• Lone Star Hike & Bike Trail	City of Grand Prairie	$ 3,462,103.00
• Lancaster Avenue Art Sculpture Installation	City of Fort Worth	$ 254,813.00
• Sam Houston Trail Park	City of Irving	$ 2,292,000.00
• Timber Creek Hike & Bike Trail	City of Lewisville	$ 1,387,925.00
• Sycamore Park Spray ground Addition	City of Fort Worth	$ 705,509.00
• Coppell Town Center Plaza Improvements	City of Coppell	$ 2,491,700.00

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NORTHSTAR CONSTRUCTION, LLC

LUCAS S. HEIMLICH

Vice President / Project Manager

817-980-0851 | Fort Worth, TX

PROFESSIONAL SUMMARY

Construction Project Manager with over 15 years of experience in the supervision, planning, and scheduling of top-quality construction projects. Highly skilled in managing multiple large-scale projects while ensuring quality, safety, schedule, and budget compliance. Experienced in cost estimating, job planning, value engineering, budget control, and construction management. Proven ability to coordinate effectively with Owners, Engineers, Architects, and Subcontractors to deliver successful projects.

EDUCATION

Bachelor of Science – Construction Management / Business Management
Western Illinois University — Macomb, IL
Graduated: May 2009

REGISTRATIONS & CERTIFICATIONS

- Storm Water Pollution Prevention Certified (SWPPP)
- OSHA 10-Hour Certification
- TXDOT Traffic Control Supervisor

CORE COMPETENCIES

- Project Planning & Scheduling
- Cost Estimating & Budget Control
- Construction Management
- Value Engineering
- Owner / Engineer / Architect Coordination
- Subcontractor Management
- Crew Supervision
- Blueprint Reading & Interpretation
- Safety & Compliance

PROFESSIONAL EXPERIENCE

- Organized and managed multiple concurrent construction projects from pre-construction through project closeout.
- Collaborated with owners, engineers, architects, and subcontractors to ensure timely project delivery.
- Supervised construction crews and subcontractors to maintain quality standards and safety compliance.

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- Conducted job planning, scheduling, and cost control to meet project financial goals.
- Performed detailed blueprint and specification reviews to ensure accuracy in construction execution.

PARTIAL PROJECT HISTORY (Last 5 Years)

Project	Owner	Contract Value
Harry Hines Multimodal Connection	Dallas County	$4,586,854
Playground Renovations at 8 Parks	City of Fort Worth	$2,174,833
Playground Renovations at 7 Parks	City of Fort Worth	$2,049,896
Parking Improvements, Bailey Lake/Chisholm	City of Burleson	$1,781,753
Downtown Sidewalk Renovation	City of Cleburne	$932,337
Irene Street – Safe Routes to Schools	City of Burleson	$2,438,672
Fish Creek Linear Park	City of Grand Prairie	$447,177

REFERENCES

Patrick Vicknair, City of Fort Worth Parks Department, Project Manager
Phone: 682-225-6819
Email: Patrick.Vicknair@fortworthtexas.gov

Oliver Penny, City of Fort Worth Parks Department, Project Manager
Phone: 817-988-7636
Email: oliver.penny@fortworthtexas.gov

Tom Clark, City of Burleson Construction Inspection Manager
Phone: 817-426-9878
Email: tclark@burlesontx.com

Tewodros Tegene, PE., CFM Sr. Project Manager, Dallas County
Phone: 214-653-6421
Email: tewodros.tegene@dallascounty.org

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Seamus Downing

GENERAL SUPERINTENDENT/ VICE PRESIDENT OF OPERATIONS

Responsibilities

The primary role of the Civil Superintendent is to supervise the field construction of a project, including planning, safety, quality, and scheduling, in order to complete the work on time and to the specified quality standards. Seamus ensures that all field personnel are thoroughly trained in safety practices and strictly enforces these standards to maintain a safe work environment.

Experience

- Over 15 years of experience in the construction industry
- Skilled in organizing and managing full-scale construction projects
- Proven ability to interface effectively with architects, engineers, subcontractors, and owners
- Proficient in reading and interpreting engineering and architectural blueprints
- Extensive experience supervising construction crews across a variety of project types

Certifications

- OSHA 10-Hour
- OSHA 30-Hour
- Storm Water Management (SWPPP)
- First Aid / CPR

Selected Project Experience

Project	Owner	Contract Amount
Harry Hines Multimodal Connection	Dallas County	$4,586,854.00
Playground Renovations at 3 Parks	City of Fort Worth	$1,088,615.00
Bunche Park Phase I	City of Fort Worth	$405,949.00
Harris Rd Neighborhood Park Improvements	City of Arlington	$1,206,252.00
Nathan Lowe Pocket Park	City of Arlington	$257,383.00
Taxilane Improvements – Meacham Airport	City of Fort Worth	$1,928,134.00
Thomas Baseball Fields	City of Carrollton	$464,749.00
Playground Renovations at 6 Parks	City of Fort Worth	$1,245,712.00
Forest Park Improvements	City of Fort Worth	$972,962.00
Northwest Park	City of Irving	$228,800.00
Fish Creek Linear Park	City of Grand Prairie	$447,000.00
Riverside Community Park	City of Fort Worth	$1,867,855.00
Elmwood Parkway Trail	City of Dallas	$950,377.00

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EXHIBIT D

ALTERNATES

NONE

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EXHIBIT E

ALLOWANES

NONE

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Exhibit F

UNIT PRICE BAFO PROPOSAL FORM - CSP

To: City of Denton - Capital Projects
901-B Texas Street
Denton, TX 76209
Erica Garcia/Purchasing Dept.

From: Northstar Construction
211 Solona Street
Haltom City, TX 76117
Michael A. Heimlich
817-244-8885
mike@northstar93.com

PROJ.: **Bowling Green Park Improvements Project**

RFP: 8635

ENG PMO: CEP23-0005

OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL

Item No.	Spec. Section No.	Description	UOM	BID QTY	BAFO Unit Price	BAFO Extended Price
1	DIV 00	MOBILIZATION, BONDS, AND INSURANCE	LS	1	$ 158,000.00	$ 158,000.00
2	34 71 13	TRAFFIC CONTROL	LS	1	$ 10,000.00	$ 10,000.00
3	31 25 00	TEMPORARY EROSION, SEDIMENTATION, AND STORMWATER POLLUTION PREVENTION PLAN	LS	1	$ 27,000.00	$ 27,000.00
4	31 10 00	CLEARING AND GRUBBING	LS	1	$ 17,000.00	$ 17,000.00
5	01 58 13	TEMPORARY PROJECT SIGN	LS	1	$ 750.00	$ 750.00
6	31 25 00	TREE PROTECTION FENCING	LF	3,810	$ 3.00	$ 11,430.00
7	31 25 00	TREE TRUNK PROTECTION FENCING	EA	13	$ 360.00	$ 4,680.00
8	31 10 00	MINOR EARTHWORK	LS	1	$ 35,000.00	$ 35,000.00
9	03 00 00	18" RCP	LF	39	$ 100.00	$ 3,900.00
10	03 30 00	TXDOT CD-CH-PWS-20 HEADWALL, 18" RCP 3 BARREL	EA	2	$ 5,100.00	$ 10,200.00
11	31 25 14	RIP-RAP, 18" D50, DMAX 27" BLANKET THICKNESS = 24"	SY	120	$ 138.00	$ 16,560.00
12	31 23 16	HEADWALL AND CHANNEL GRADING	LS	1	$ 12,000.00	$ 12,000.00
13	32 13 13	6" THICK 3000 PSI CONCRETE - TRAIL	SF	20,332	$ 10.50	$ 213,486.00
14	32 13 13	4" THICK 3000 PSI CONCRETE - SIDEWALK	SF	9,140	$ 7.50	$ 68,550.00
15	32 13 13	6" THICH 3600 PSI CONCRETE PAVING - PARKING LOT	SF	373	$ 12.00	$ 4,476.00
16	32 05 16	GARDEN PATHS (DECOMPOSED GRANITE OVER FABRIC)	SF	5,087	$ 6.00	$ 30,522.00
17	32 17 23	PARKING LOT STRIPING	LS	1	$ 2,500.00	$ 2,500.00
18	32 13 13	PAVILION & PAD (40 X 40 DOUBLE HIP STEEL WITH STONE COLUMNS)	EA	1	$ 287,000.00	$ 287,000.00
19	32 13 13	18" TALL CONCRETE RAISED GARDEN BED PLANTER WALL	LF	385	$ 82.00	$ 31,570.00
20	32 13 13	30" TALL CONCRETE RAISED GARDEN BED PLANTER WALL	LF	308	$ 96.50	$ 29,722.00
21	12 93 00	BIKE RACK - BY DUMOR INC.	EA	1	$ 1,250.00	$ 1,250.00
22	12 93 00	BENCH (CASSIDY 6' STEEL SLAT STRAIGHT BACK, BLACK ONYX) BY BARCO PRODUCTS	EA	8	$ 1,445.00	$ 11,560.00
23	12 93 00	TRASH RECEPTACLE (WITH RECYCLED PLASTIC SLATS) BY DOTY AND SONS, INC.	EA	8	$ 1,430.00	$ 11,440.00
24	12 93 00	REMOVEABLE BOLLARD (TEXTURED GREY) BY DUMOR INC.	EA	5	$ 1,480.00	$ 7,400.00
25	12 93 00	PICNIC TABLE (CASSIDY SLAT PEDESTAL, STANDARD AND ADA) BY BARCO PRODUCTS	EA	4	$ 3,000.00	$ 12,000.00
26	32 13 13	COMPOST AREA AND STORAGE	LS	1	$ 10,500.00	$ 10,500.00
27	32 12 12	ADA RAMP	EA	3	$ 2,100.00	$ 6,300.00
28	32 13 14	6" MOW CURB AT GARDEN	LF	1,900	$ 12.00	$ 22,800.00
29	12 93 00	90' PEDESTRIAN BRIDGE	EA	1	$ 180,000.00	$ 180,000.00
30	321723	ADA SIGNAGE	EA	2	$ 500.00	$ 1,000.00
31	32 31 00	GUARDRAIL FENCE (4' HT, COLOR: BLACK)	LF	26	$ 130.00	$ 3,380.00
32	32 16 00	6" PARKING LOT CONCRETE CURB AND GUTTER	LF	120	$ 10.00	$ 1,200.00
33	32 93 00	MIXED GARDEN SOILS (12" ALL LOCATIONS, MOUNDED ONLY IN GARDEN)	CY	385	$ 70.00	$ 26,950.00
34	32 93 00	FRUIT TREES (NEW OR RELOCATED)	EA	19	$ 900.00	$ 17,100.00
35	32 93 00	SODDING REPAIR (EDGES AND FORMER GARDEN AREAS)	SY	13,767	$ 9.00	$ 123,903.00
36	32 93 00	SHADE TREES (3" CALIPER)	EA	16	$ 900.00	$ 14,400.00
37	32 93 00	SHRUBS (3 GAL.)	EA	80	$ 50.00	$ 4,000.00
38	32 93 00	SHRUBS (1 GAL.)	EA	172	$ 13.00	$ 2,236.00
39	32 93 00	GROUNDCOVER (1 GAL.)	EA	65	$ 13.00	$ 845.00
40	32 93 00	TEXAS NATIVE SEED	SF	1,867	$ 1.00	$ 1,867.00
41	32 84 00	IRRIGATION WATER METER AND ASSOCIATED EQUIPMENT - INCLUDING RPZ	EA	2	$ 20,000.00	$ 40,000.00
42	32 84 00	WATER MAIN REVISIONS FOR IRRIGATION	EA	6	$ 200.00	$ 1,200.00
43	32 84 00	WATER HOSE BIBBS AT PLANTING AREAS	EA	16	$ 400.00	$ 6,400.00
44	32 84 00	TEMPORARY IRRIGATION	LS	1	$ 25,000.00	$ 25,000.00
45	26 05 19	ELECTRICAL	LS	1	$ 115,000.00	$ 115,000.00
46	26 56 13	LIGHT POLES & FIXTURES - INCLUDING BASE AND FIXTURES	EA	11	$ 6,528.00	$ 71,808.00
47	03 00 00	CONCRETE BRIDGE ABUTMENT	EA	2	$ 17,200.00	$ 34,400.00
48	03 00 00	STRAIGHT SHAFT PIER FOUNDATIONS	LS	1	$ 14,700.00	$ 14,700.00
49	03 00 00	18" CONCRETE PIERS	LS	1	$ 17,000.00	$ 17,000.00
					TOTAL BAFO PROPOSAL:	**$ 1,759,985.00**

Bowling Green Park Improvements Project **TOTAL PROPOSAL: $1,759,985.00**

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EXHIBIT G

INITIAL SCHEDULE OF VALUES

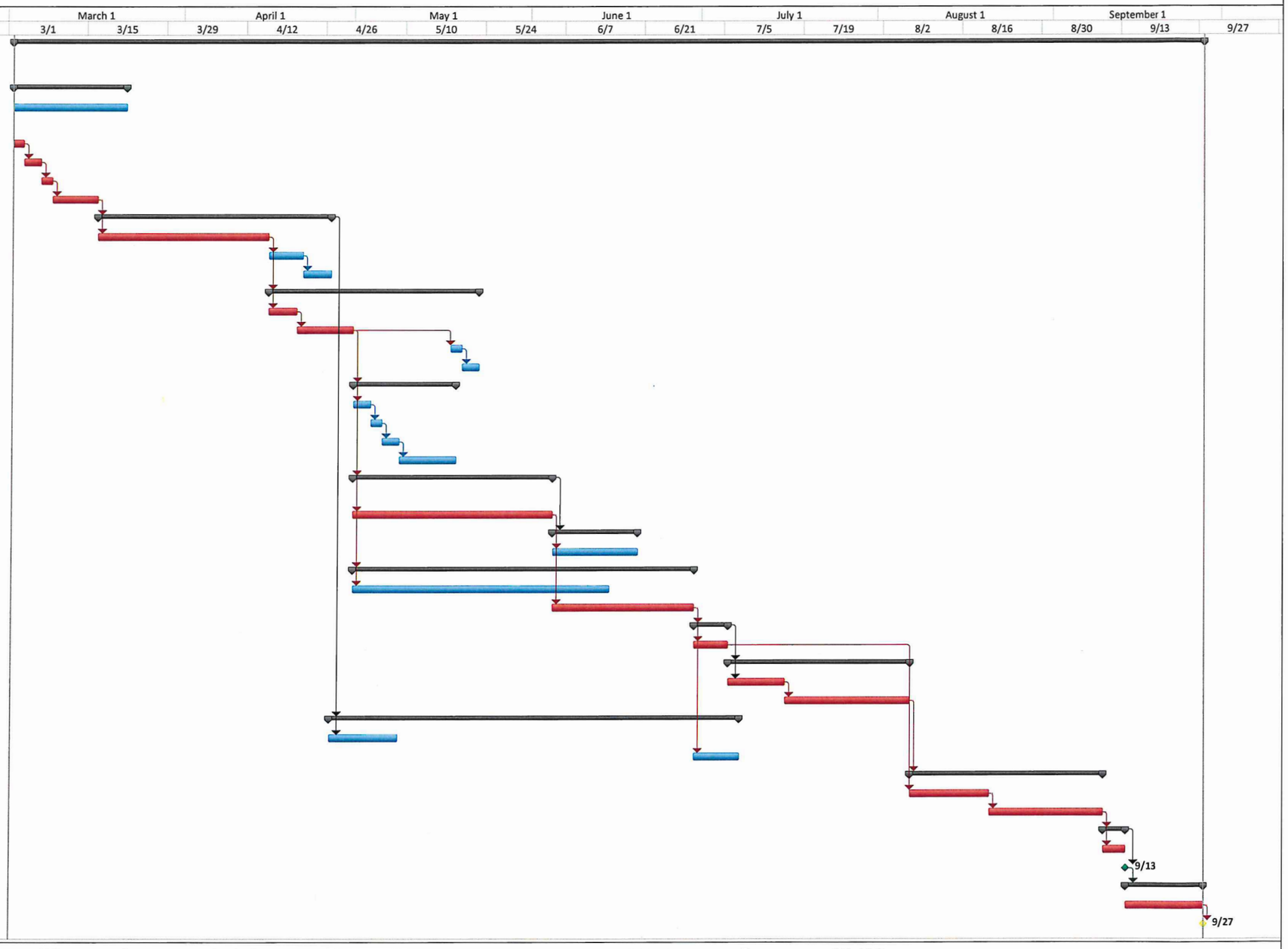
NONE

EXHIBIT H

NORTHSTAR CONSTRUCTION, LLC

CITY OF DENTON
CSP 8635 BOWLING GREEN PARK CONSTRUCTION

ID	Task Name	Duration	Start	Finish	Predecessors
1	**Bowling Green Park Construction**	**210 days**	**Mon 3/2/26**	**Sun 9/27/26**	
2	**Moblization, Demolition, Site Prep**	**20 days**	**Mon 3/2/26**	**Sat 3/21/26**	
3	Submittals, Permitting Applications	20 days	Mon 3/2/26	Sat 3/21/26	
4	Mobilization	2 days	Mon 3/2/26	Tue 3/3/26	
5	Erosion Control	3 days	Wed 3/4/26	Fri 3/6/26	4
6	Tree Protection/Prunning	2 days	Sat 3/7/26	Sun 3/8/26	5
7	Demolition/Tree Removal	8 days	Mon 3/9/26	Mon 3/16/26	6
8	**Grading & Drainage**	**41 days**	**Tue 3/17/26**	**Sun 4/26/26**	**7**
9	Earthwork	30 days	Tue 3/17/26	Wed 4/15/26	7
10	Box Culvert	6 days	Thu 4/16/26	Tue 4/21/26	9
11	Rock Rip Rap	5 days	Wed 4/22/26	Sun 4/26/26	10
12	**Abutments & Pedestrian Bridge**	**37 days**	**Thu 4/16/26**	**Fri 5/22/26**	**9**
13	Drilled Piers	5 days	Thu 4/16/26	Mon 4/20/26	9
14	Abutments	10 days	Tue 4/21/26	Thu 4/30/26	13
15	Bridge Delivery and Installation	2 days	Mon 5/18/26	Tue 5/19/26	14
16	Bridge Deck	3 days	Wed 5/20/26	Fri 5/22/26	15
17	**Pavilion Construction**	**18 days**	**Fri 5/1/26**	**Mon 5/18/26**	**14**
18	Subgrade	3 days	Fri 5/1/26	Sun 5/3/26	14
19	Spread Footings	2 days	Mon 5/4/26	Tue 5/5/26	18
20	Concrete Slab	3 days	Wed 5/6/26	Fri 5/8/26	19
21	Pavilion Delivery and Erection	10 days	Sat 5/9/26	Mon 5/18/26	20
22	**Concrete Structures (walls, stairs, ramps, etc)**	**35 days**	**Fri 5/1/26**	**Thu 6/4/26**	**14**
23	Concrete Garden Plot Walls	35 days	Fri 5/1/26	Thu 6/4/26	14
24	**Garden Plots**	**15 days**	**Fri 6/5/26**	**Fri 6/19/26**	**22**
25	Decomposed Granite	15 days	Fri 6/5/26	Fri 6/19/26	23
26	**Paving - Trail**	**60 days**	**Fri 5/1/26**	**Mon 6/29/26**	**14**
27	6" Concrete Trail	45 days	Fri 5/1/26	Sun 6/14/26	14
28	Plaza paving and sidewalks	25 days	Fri 6/5/26	Mon 6/29/26	23
29	**Paving - Parking Lot Improvements**	**6 days**	**Tue 6/30/26**	**Sun 7/5/26**	**28**
30	Parking Lot Paving Improvements	6 days	Tue 6/30/26	Sun 7/5/26	28
31	**Water Service & Irrigation**	**32 days**	**Mon 7/6/26**	**Thu 8/6/26**	**29**
32	Waterline Tap	10 days	Mon 7/6/26	Wed 7/15/26	29
33	Irrigation Underground	22 days	Thu 7/16/26	Thu 8/6/26	32
34	**Electrical Service & Lighting**	**72 days**	**Mon 4/27/26**	**Tue 7/7/26**	**8**
35	Light Pole Piers and Underground	12 days	Mon 4/27/26	Fri 5/8/26	8
36	Lighting Fixtures and Poles	8 days	Tue 6/30/26	Tue 7/7/26	28
37	**Irrigation & Landscaping**	**34 days**	**Fri 8/7/26**	**Wed 9/9/26**	**33**
38	Irrigation Final	14 days	Fri 8/7/26	Thu 8/20/26	30
39	Landscaping	20 days	Fri 8/21/26	Wed 9/9/26	38
40	**Site Furnishings**	**4 days**	**Thu 9/10/26**	**Sun 9/13/26**	**39**
41	Site Furnishings	4 days	Thu 9/10/26	Sun 9/13/26	39
42	**Substaintial Completion**	**0 days**	**Sun 9/13/26**	**Sun 9/13/26**	**40**
43	**Punchlist/Final Acceptance**	**14 days**	**Mon 9/14/26**	**Sun 9/27/26**	**42**
44	Punchlist/Final Acceptance	14 days	Mon 9/14/26	Sun 9/27/26	
45	**Final Acceptance Deadline**	0 days	Sun 9/27/26	Sun 9/27/26	44



Schedule- Bowling Green Park
Wed 11/19/25

Task	Summary	External Milestone	Inactive Summary	Manual Summary Rollup	Finish-only	Critical Split
Split	Project Summary	Inactive Task	Manual Task	Manual Summary	Deadline	Progress
Milestone	External Tasks	Inactive Milestone	Duration-only	Start-only	Critical	

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NORTHSTAR
CONSTRUCTION, LLC

EXHIBIT H

November 19, 2025

City of Denton
901-B Texas Street
Denton, Texas 76209

RE: CSP 8635 Bowling Green Park Construction
Written Plan to Achieve Substantial Completion

To whom it may concern,

Thank you for the opportunity for us to provide a proposal. Northstar is excited about the prospect of partnering with the City of Denton on a self-sustaining, and community driven project.

Upon careful review of the scope and proposed timeline, we have identified several opportunities to significantly accelerate construction while upholding the highest standards of quality, safety, and long-term community benefit. To achieve this expedited schedule, Northstar plans to deploy multiple dedicated crews working simultaneously across the site. One specialized crew will focus on the community garden and associated amenities, while a second crew will advance the trail system and pedestrian bridge. This parallel-work strategy—supported by our proven project management and local subcontractor network—will reduce overall project duration without compromising craftsmanship or stakeholder priorities.

To maximize efficiency and deliver the project ahead of the baseline schedule, Northstar will mobilize multiple specialized crews working in parallel immediately upon Notice to Proceed. The anticipated sequence is as follows:

1. Submit all permits, shop drawings, and required submittals for concurrent review and approval.
2. Conduct a comprehensive kickoff site walk with the city, design engineer, and stakeholders to finalize access, tree preservation, protection measures, and other critical site features.
3. Install tree protection, erosion controls, and temporary facilities; commence selective site demolition.
4. Upon demolition completion, initiate mass grading, box culverts, rock riprap, underground electrical rough-in, and light-pole pier drilling.
5. Begin bridge pier and abutment construction concurrently with earthwork. The prefabricated bridge has an anticipated 12–16-week lead time following shop-drawing approval; we will expedite approvals to align delivery with foundation readiness. Once delivered, the bridge will be set, deck poured, and approach slabs completed.
6. Simultaneously, a second crew will form and pour pavilion footings and slab (12–14-week pavilion lead time after approval).

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7. Upon completing bridge foundations, this crew transitions to pouring the concrete trail along Windsor Drive and continuing toward the community garden, the largest single concrete scope item.
8. Once the pavilion slab is ready and the structure is delivered and erected, the crew shifts to the community garden to construct raised concrete beds, mow strips, and plaza sidewalks while the irrigation subcontractor installs underground lines.
9. Install decomposed-granite pathways throughout the community garden areas.
10. Construct parking lot improvements while irrigation, landscaping, and electrical finish-out occur concurrently.
11. Install site amenities, furnishings, and signage; perform final cleanup.
12. Conduct punch-list walkthroughs with the city and stakeholders, address any items, and achieve Substantial and Final Completion.

This overlapping, multi-crew strategy—supported by proactive permitting, early shop-drawing submission, and close coordination with subcontractors—positions Northstar to substantially accelerate the overall timeline while maintaining the highest standards of quality, safety, and community protection.

Northstar is fully committed to delivering this project on an accelerated schedule without sacrificing the quality, craftsmanship, or community focus that the City of Denton deserves. By deploying multiple specialized crews, proactively managing long-lead items, and maintaining open daily communication with City staff, we are confident we can complete the trail, pedestrian bridge, community garden, pavilion, and all associated improvements well ahead of traditional timelines – creating a lasting, vibrant asset for Denton residents sooner than expected. We would be honored to earn your trust and bring this shared vision to life. Thank you for considering Northstar. We look forward to the opportunity to partner with the City of Denton and to celebrating the grand opening together.

Sincerely,

NORTHSTAR CONSTRUCTION, LLC

Michael A. Heimlich
President

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EXHIBIT I

ESCROW AGREEMENT

NONE

Docusign Envelope ID: C5C78B37-4FDB-4522-AE12-8F24F9EB1850

Exhibit J

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.**

NORTHSTAR 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 relations hip 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:
Michael Heimlich
557B81DDBF3Q419
Signature of vendor doing business with the governmental entity

1/13/2026
Date

Docusign Envelope ID: C5C78B37-4FDB-4522-AE12-8F24F9EB1850

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. 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.

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SECTION 00 41 01

PROPOSAL FORM - CSP

TO: City of Denton
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: Bowling Green Park Construction

1 Enter into Agreement

The undersigned Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with City in the form included in the Proposal Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Unit Price Proposal and within the Contract Time indicated in this Proposal and in accordance with the other terms and conditions of the Contract Documents.

2 OFFEROR Acknowledgements and Certification

2.1 In submitting this Proposal, Offeror accepts all of the terms and conditions of the INVITATION TO OFFORERS and INSTRUCTIONS TO OFFORERS, including without limitation those dealing with the disposition of Offeror's Bond.

2.2 Offeror is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.

2.3 Offeror certifies that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.

2.4 Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal.

2.5 Offeror has not solicited or induced any individual or entity to refrain from proposing.

2.6 Offeror has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Agreement. For the purposes of this Paragraph:

a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process.

b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process to the detriment of City (b) to establish proposal prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.

c. "collusive practice" means a scheme or arrangement between two or more Offerors, with or without the knowledge of City, a purpose of which is to establish proposal prices at artificial, non-competitive levels.

d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

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2.7 The Offeror acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

3 Time of Completion

3.1 The Work will be Substantially Complete as defined in the General Conditions within 240 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.2 The Work will be complete for Final Acceptance within 300 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 8 of the General Conditions.

3.3 Offeror accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable), Substantial Completion, and Final Acceptance within the times specified in the Agreement.

4 Attached to this Proposal

4.1 The following documents are attached to and made a part of this Proposal:

a. Section 00 35 14 – Conflict of Interest Affidavit – CSP
b. Section 00 41 01 – This Proposal Form – CSP
c. Section 00 42 44 – Unit Price Proposal Form – CSP – Excel Electronic Copy (either included in the hard copy Proposal, or submitted via Ionwave)
d. Section 00 43 14 – Required Offeror's Bond – CSP, issued by a surety meeting the requirements of Paragraph 11.4 of the General Conditions.
e. Section 00 43 38 – Proposed Subcontractors Form – CSP
f. Section 00 43 39 – Vendor Compliance to State Law Non-Resident Offeror – CSP
g. Section 00 45 14 – Safety Record Questionnaire – CSP
h. Section 00 45 27 – Contractor Compliance with Workers Compensation Law – CSP
i. Section 00 45 44 – Corporate Resolution of Authorized Signatories – CSP
j. Any additional documents required by Paragraph 12 of Section 00 21 16 – Instructions to Offerors

5 Total Proposal Amount

5.1 Offeror will complete the Work in accordance with the Contract Documents for the following proposal amount. In the space provided below, please enter the total proposed amount for this project. This figure will be read publicly by the City at the proposal opening.

5.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

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Total Proposal Amount: $ 1,776,777.00

6 Proposal Submittal

6.1 It is understood by Offeror that submission of the total proposal amount is only one of the factors for the City's evaluation process, and that any award of contract will be based on the complete evaluation of the Proposal and Offeror by City under the terms provided in the Instructions to Offerors or any validly issued amendments or addenda.

6.2 This Proposal is submitted on November 19, 2025 by the entity named below.

Respectfully submitted,

By: Michael A. Heimlich
(Signature)

Michael A. Heimlich
(Printed Name)

Title: President

Company: Northstar Construction, LLC

Address: 2112 Solona Street
Fort Worth, TX 76117

State of Incorporation: Texas

Email: mike@northstar93.com

Phone: 817-244-8885

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	MAH
Addenda No. 2:	MAH
Addenda No. 3:	MAH
Addenda No. 4:	
Addenda No. 5:	

END OF SECTION

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BAFO PROPOSAL FORM ATTACHMENT

To: Erica Garcia
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: CSP 8635 – Bowling Green Park Construction

The undersigned Offeror hereby submits this Proposal Form Revision and Best and Final Offer (this "BAFO") for CSP 8635 – Bowling Green Park Construction and confirms that this BAFO Proposal is based on the project requirements per the CSP documents and any subsequent addenda.

1 Total BAFO Proposal Amount

1.1 Offeror will complete the Work in accordance with the Contract Documents for the following BAFO proposal amount. In the space provided below, please enter the total proposed BAFO amount for this project.

1.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed BAFO amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Total BAFO Proposal Amount: **$ 1,759,985.00**

2 BAFO Proposal Submittal

2.1 It is understood by Offeror that submission of the total BAFO proposal amount is only one of the factors for the City's evaluation process, and that any award of contract will be based on the complete evaluation of the Proposal and Offeror by City under the terms provided in the Instructions to Offerors or any validly issued amendments or addenda.

2.2 This BAFO Proposal is submitted on December 17, 2025 by the entity named below.

Respectfully submitted,

By: Michael A. Heimlich
(Signature)

Michael A. Heimlich
(Printed Name)

Title: President

Company: Northstar Construction, LLC

Docusign Envelope ID: C5C78B37-4FDB-4522-AE12-8F24F9EB1850

Address: 2112 Solona Street

HALTOM CITY, TX 76117

State of Incorporation: Texas

Email: mike@northstar93.com

Phone: (817) 244-8885

END OF SECTION

Docusign Envelope ID: C5C78B37-4FDB-4522-AE12-8F24F9EB1850

Exhibit L

"General Decision Number: TX20260016 01/02/2026

Superseded General Decision Number: TX20250016

State: Texas

Construction Type: Heavy

County: Denton County in Texas.

Heavy Construction, Including Treatment Plants (Does not include water/sewer lines)

Modification Number	Publication Date
0	01/02/2026

ASBE0021-003 06/01/2025

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Includes application of all insulating materials, protective coverings, coatings, and finishings to all types of mechanical systems)	$ 33.23	7.52

ELEC0020-004 06/01/2025

	Rates	Fringes
Electricians:		
Cable Splicer	$ 29.81	8.84
Electrician	$ 39.75	11.67

ELEC0220-001 06/02/2024

	Rates	Fringes
Line Construction:		
CABLE SPLICERS	$ 17.12	14.5%+3.75
EQUIPMENT OPERATORS	$ 25.83	20.50%+7.75
GROUNDMAN	$ 19.28	4.5%+7.80
LINEMAN	$ 41.31	20.5%+7.25
TRUCK DRIVER	$ 23.14	9.5%+7.25

ENGI0178-001 06/01/2020

	Rates	Fringes
Cranes:		
Hydraulic Crane (35 ton & under)	$ 32.35	13.10
Hydraulic over 35 tons,Derricks, Overhead Gentry,Stiffleg,Tower,etc., and Cranes with Piledriving or Caisson attachements	$ 32.60	13.10

IRON0263-010 06/01/2025

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	Rates	Fringes
Ironworkers:		
Reinforcing & Structural	$ 29.64	8.43

PLUM0100-002 11/01/2024

	Rates	Fringes
Plumbers and Pipefitters	$ 39.76	14.04

SHEE0068-002 11/01/2012

	Rates	Fringes
Sheet metal worker	$ 27.64	8.84

SUTX1990-039 08/01/1990

	Rates	Fringes
CARPENTER	$ 10.536	
Concrete Finisher	$ 9.603	
Form Builder	$ 8.036	
Form Setter	$ 9.578	
Laborers:		
Common	$ 7.25	
Utility	$ 7.25	
Pipelayer	$ 7.961	
Power equipment operators:		
Backhoe	$ 10.971	
Bulldozer	$ 9.942	
Front end loader	$ 10.771	
Mechanic	$ 9.88	
Motor Grader	$ 11.633	
Oiler	$ 9.183	
Scraper	$ 8.00	
TRUCK DRIVER	$ 7.465	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is

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like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a

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weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION
"

Docusign Envelope ID: C5C78B37-4FDB-4522-AE12-8F24F9EB1850

"General Decision Number: TX20260294 01/02/2026

Superseded General Decision Number: TX20250294

State: Texas

Construction Type: Highway

Counties: Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/02/2026

SATX2025-007 11/15/2023

	Rates	Fringes
Asphalt Distributor Operator	$ 24.40	0.00
Asphalt Paving Machine Operator	$ 22.52	0.00
Asphalt Raker	$ 19.87	0.00
Broom or Sweeper Operator	$ 18.01	0.00
Concrete Finisher, Paving and Structures	$ 22.48	0.00
Concrete Pavement Finishing Machine Operator	$ 24.07	0.00
Concrete Saw Operator	$ 20.34	0.00
Crane Operator, Hydraulic 80 tons or less	$ 31.32	0.00
Crane Operator, Lattice Boom 80 Tons or Less	$ 29.90	0.00
Crane Operator, Lattice Boom Over 80 Tons	$ 33.55	0.00
Crawler Tractor Operator	$ 24.06	0.00
Electrician	$ 36.10	0.00
Excavator Operator, 50,000 pounds or less	$ 25.08	0.00
Excavator Operator, Over 50,000 pounds	$ 25.34	0.00
Flagger	$ 14.80	0.00
Form Builder/Setter, Structures	$ 22.50	0.00
Form Setter, Paving & Curb	$ 20.89	0.00

Docusign Envelope ID: C5C78B37-4FDB-4522-AE12-8F24F9EB1850

Foundation Drill Operator, Crawler Mounted	$ 29.25	0.00
Foundation Drill Operator, Truck Mounted	$ 29.86	0.00
Front End Loader Operator, 3 CY or Less	$ 20.93	0.00
Front End Loader Operator, Over 3 CY	$ 22.56	0.00
Laborer, Common	$ 18.01	0.00
Laborer, Utility	$ 19.32	0.00
Loader/Backhoe Operator	$ 23.22	0.00
Mechanic	$ 27.44	0.00
Milling Machine Operator	$ 20.94	0.00
Motor Grader Operator, Fine Grade	$ 27.09	0.00
Motor Grader Operator, Rough	$ 24.90	0.00
Off Road Hauler	$ 23.70	0.00
Pavement Marking Machine Operator	$ 22.35	0.00
Pipelayer	$ 22.46	0.00
Reclaimer/Pulverizer Operator	$ 22.17	0.00
Reinforcing Steel Worker	$ 23.50	0.00
Roller Operator, Asphalt	$ 20.35	0.00
Roller Operator, Other	$ 18.60	0.00
Scraper Operator	$ 21.54	0.00
Servicer	$ 24.86	0.00
Sign Erector	$ 18.01	0.00
Small Slipform Machine Operator	$ 25.09	0.00
Spreader Box Operator	$ 23.59	0.00
Telecommunication Technician	$ 23.14	0.00
Truck Driver Lowboy Float	$ 25.57	0.00
Truck Driver, Single Axle	$ 20.60	0.00
Truck Driver, Single or Tandem Axle Dump Truck	$ 22.64	0.00
Truck Driver, Tandem Axle Tractor with Semi Trailer	$ 23.22	0.00

Docusign Envelope ID: C5C78B37-4FDB-4522-AE12-8F24F9EB1850

Truck Driver, Transit-Mix	$ 21.97	0.00
Welder	$ 23.72	0.00
Work Zone Barricade Servicer	$ 18.01	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

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Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the

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state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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Washington, DC 20210.

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END OF GENERAL DECISION
"

Certificate Of Completion

Envelope Id: C5C78B37-4FDB-4522-AE12-8F24F9EB1850
Status: Sent
Subject: Please DocuSign: City Council Contract 8635 Bowling Green Park
Source Envelope:
Document Pages: 142
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Cori Power
901B Texas Street
Denton, TX 76209
cori.power@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
1/12/2026 4:44:11 PM
Holder: Cori Power
cori.power@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 1/12/2026 5:03:22 PM Viewed: 1/12/2026 5:03:51 PM Signed: 1/12/2026 5:04:10 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/12/2026 5:04:13 PM Viewed: 1/13/2026 3:27:23 PM Signed: 1/13/2026 3:43:26 PM
Leah Bush leah.bush@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/13/2026 4:19:57 PM ID: 21091bb2-a4cd-45e5-9973-abbd3c093045	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 1/13/2026 3:44:09 PM Viewed: 1/13/2026 4:19:57 PM Signed: 1/13/2026 4:54:45 PM
Michael Heimlich mike@northstar93.com President Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/13/2026 5:39:28 PM ID: d9c9b558-dfc0-4308-b651-19e8841fc5ec	 Signature Adoption: Pre-selected Style Using IP Address: 96.40.55.182	Sent: 1/13/2026 4:54:48 PM Viewed: 1/13/2026 5:39:28 PM Signed: 1/13/2026 5:43:48 PM

Signer Events	Signature	Timestamp
Allison Wing Allison.Wing@cityofdenton.com Interim Director Security Level: Email, Account Authentication (None)	Signed by:  75387A6F0F1B4F3...	Sent: 1/13/2026 5:43:52 PM Viewed: 1/14/2026 8:47:52 AM Signed: 1/14/2026 8:53:17 AM
	Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	
Electronic Record and Signature Disclosure: Accepted: 1/14/2026 8:47:52 AM ID: 80469e64-01c2-4d73-92b2-8188e931980f		
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: 1/14/2026 8:53:21 AM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingred Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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: 1/12/2026 5:04:13 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 1/13/2026 3:44:12 PM

Carbon Copy Events	Status	Timestamp
Electronic Record and Signature Disclosure: Not Offered via Docusign		
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: 1/14/2026 8:53:21 AM Viewed: 1/15/2026 3:59:29 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ziad Kharrat Ziad.Kharrat@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/15/2026 10:33:43 AM ID: 795b8b67-9b99-46cd-bd37-79c9ded2516d		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/12/2026 5:03:22 PM
Envelope Updated	Security Checked	1/13/2026 3:42:14 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

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At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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 request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Longhorn Incorporated, for the purchase of irrigation systems, supplies, parts, and accessories to be stocked in the City of Denton Warehouse; providing for the expenditure of funds therefor; and providing an effective date (RFP 8950 – awarded to Longhorn Incorporated, for one (1) year, with the option for two (2) additional one (1) year extensions, in the total three (3) year not-to-exceed amount of $500,000.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

This Request for Proposal (RFP) is for the supply of irrigation systems, supplies, parts, and accessories that are stocked in the Warehouse, for ease of accessibility, to be used by the Parks Department in their daily operations, and for repair and maintenance of their irrigation systems. Materials will be ordered on an as-needed basis to maintain appropriate stocking levels in the Warehouse. These commodities are deemed common stock items and will be funded out of the Warehouse Working Capital account, stocked in the Warehouse, and charged back to the using department as needed.

Project Description	Estimated 5-Year Expenditure
Year 1	$150,000
Year 2	150,000
Year 3	150,000
Contingency	50,000
Total	**$500,000**

Request for Proposals was sent to 182 prospective suppliers, including 16 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Two (2) proposals were received, references were checked, and proposals were evaluated based upon published criteria, including price, delivery, compliance with specifications, and probable performance. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, Longhorn Incorporated was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	515 – Lawn Maintenance Equipment and Accessories
Notifications sent for Solicitation sent in IonWave:	182
Number of Suppliers that viewed Solicitation in IonWave:	17
HUB-Historically Underutilized Business Invitations sent out:	25
SBE-Small Business Enterprise Invitations sent out:	80
Responses from Solicitation:	2

RECOMMENDATION

Award a contract to Longhorn Incorporated, for the supply of irrigation systems, supplies, parts, and accessories for the City of Denton Warehouse, in a one (1) year, with the option for two (2) additional one (1) year extensions, in the total three (3) year not-to-exceed amount of $500,000.

PRINCIPAL PLACE OF BUSINESS

Longhorn Incorporated
Dallas, TX

ESTIMATED SCHEDULE OF PROJECT

This is an initial one (1) year contract with options to extend the contract for two (2) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

These items will be funded from Warehouse Working Capital account, stocked in the Warehouse, and charged back to the using department as needed. The budgeted amount for this item is $500,000.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Pricing Evaluation
Exhibit 3: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Keith Kading, 940-349-7178.

Legal point of contact: Leah Bush 940-349-8672.

Exhibit 2
RFP 8950 - Pricing Evaluation for Irrigation Systems, Supplies, Parts, and Accessories

						Respondent's Business Name:	**Longhorn Inc.**	SiteOne Landscape Supply	
						Principal Place of Business (City and State):	**Dallas, TX**	Cleveland, OH	
Line #	**Description**	**Mfgr**	**Mfgno**	**QTY**	**UOM**	**Unit**	**Extended**	**Unit**	**Extended**
1	**Section A - Class 315 PVC, Class 200 PVC, SCH40 PVC**								
2	1/2inches x 20feet	Cresline	50PVC315BE	10	EA	**$2.58**	**$25.80**	$2.88	$28.80
3	3/4inches x 20feet	Cresline	75PVC200BE	20	EA	**$2.84**	**$56.80**	$3.92	$78.40
4	1inches x 20feet	Cresline	1PVC200BE	20	EA	**$3.75**	**$75.00**	$5.14	$102.80
5	1 1/4inches x 20feet	Cresline	125PVC200BE	10	EA	**$6.57**	**$65.70**	$8.20	$82.00
6	1 1/2inches x 20feet	Cresline	150PVC200BE	10	EA	**$8.13**	**$81.30**	$10.10	$101.00
7	2inches x 20feet	Cresline	2PVC200BE	10	EA	**$11.25**	**$112.50**	$13.30	$133.00
8	2 1/2inches x 20feet	Cresline	250PVC200BE	8	EA	**$19.38**	**$155.04**	$22.96	$183.68
9	3inches x 20feet	Cresline	3PVC200BE	6	EA	**$26.46**	**$158.76**	$33.30	$199.80
10	4inches x 20feet	Cresline	4PVC200BE	6	EA	**$44.09**	**$264.54**	$54.32	$325.92
11	6inches x 20feet	Cresline	6PVCBE	2	EA	**$231.29**	**$462.58**	$91.48	$182.96
12	**Section B - Fittings Tees**								
13	1/2inches x1/2inches x 1/2inches slip Tee	Spears	401-005	1	EA	**$0.45**	**$0.45**	$0.457	$0.457
14	1/2inches x FIP x 1/2inches slip Tee	Spears	402-005	50	EA	**$0.64**	**$32.00**	$0.608	$30.40
15	3/4inches x 3/4inches x3/4inches Slip Tee	Spears	401-007	50	EA	**$0.55**	**$27.50**	$0.524	$26.20
16	3/4inches x FIP x3/4inches Slip Tee	Spears	402-007	50	EA	**$0.99**	**$49.50**	$0.863	$43.15
17	1inches x 1inches x 1inches Slip Tee	Spears	401-010	50	EA	**$1.03**	**$51.50**	$0.972	$48.60
18	1inches x FIP x 1inches Slip Tee	Spears	402-010	50	EA	**$1.82**	**$91.00**	$1.742	$87.10
19	1 1/4inches x 1 1/4inches x 1 1/4inches Slip Tee	Spears	401-012	50	EA	**$1.60**	**$80.00**	$1.394	$69.70
20	1 1/4inches x FIP x 1 1/4inches Slip Tee	Spears	402-012	50	EA	**$2.89**	**$144.50**	$2.526	$126.30
21	1 1/2inches x 1 1/2inches x 1 1/2inches Slip Tee	Spears	401-015	50	EA	**$2.07**	**$103.50**	$1.699	$84.95
22	1 1/2inches x FIP x 1 1/2inches Slip Tee	Spears	402-015	50	EA	**$3.75**	**$187.50**	$3.29	$164.50
23	2inches x 2inches x2inches Slip Tee	Spears	401-020	50	EA	**$3.03**	**$151.50**	$2.477	$123.85
24	2inches x Fip x2inches Slip Tee	Spears	402-020	10	EA	**$4.76**	**$47.60**	$4.169	$41.69
25	3inchesx3inchesx3inches	Spears	401-030	10	EA	**$12.24**	**$122.40**	$10.729	$107.29
26	4inchesx4inchesx4inches	Spears	401-040	6	EA	**$20.49**	**$122.94**	$19.417	$116.502
27	6inchesx6inchesx6inches	Spears	401-060	4	EA	**$68.95**	**$275.80**	$65.362	$261.448
28	**Section C - Fittings Couplings**								
29	1/2inches Slip	Spears	477-005	50	EA	**$0.35**	**$17.50**	$0.247	$12.35
30	1/2inches Slip x FIP	Spears	435-005	50	EA	**$0.43**	**$21.50**	$0.416	$20.80
31	1/2inches full FIP	Spears	430-005-45	50	EA	**$0.48**	**$24.00**	$0.595	$29.75
32	3/4inches Slip	Spears	477-007	50	EA	**$0.40**	**$20.00**	$0.335	$16.75
33	3/4inches Slip x FIP	Spears	435-007	50	EA	**$0.55**	**$27.50**	$0.524	$26.20
34	3/4inches full FIP	Spears	430-007	50	EA	**$0.87**	**$43.50**	$0.862	$43.10
35	1inches Slip	Spears	477-010	50	EA	**$0.64**	**$32.00**	$0.581	$29.05
36	1inches Slip x FIP	Spears	435-010	50	EA	**$0.64**	**$32.00**	$0.608	$30.40
37	1inches full FIP	Spears	430-010	50	EA	**$1.18**	**$59.00**	$1.126	$56.30

Exhibit 2
RFP 8950 - Pricing Evaluation for Irrigation Systems, Supplies, Parts, and Accessories

						Respondent's Business Name:	**Longhorn Inc.**	SiteOne Landscape Supply	
						Principal Place of Business (City and State):	**Dallas, TX**	Cleveland, OH	
Line #	**Description**	**Mfgr**	**Mfgno**	**QTY**	**UOM**	**Unit**	**Extended**	**Unit**	**Extended**
38	1-1/4inches Slip	Spears	429-012	50	EA	**$0.84**	**$42.00**	$0.806	$40.30
39	1-1/4inches Slip x FIP	Spears	435-012	25	EA	**$0.99**	**$24.75**	$0.95	$23.75
40	1-1/4inches full FIP	Spears	430-012	10	EA	**$1.28**	**$12.80**	$3.472	$34.72
41	1-1/2inches Slip	Spears	429-015	50	EA	**$0.90**	**$45.00**	$0.784	$39.20
42	1-1/2inches Slip x FIP	Spears	435-015	25	EA	**$1.12**	**$28.00**	$0.981	$24.525
43	1-1/2inches full FIP	Spears	430-015	25	EA	**$1.99**	**$49.75**	$10.038	$250.95
44	2inches Slip	Spears	429-020	50	EA	**$1.37**	**$68.50**	$1.197	$59.85
45	2inches Slip x FIP	Spears	435-020	20	EA	**$1.50**	**$30.00**	$1.315	$26.30
46	2inches Full FIP	Spears	430-020	25	EA	**$5.99**	**$149.75**	$10.951	$273.775
47	3inches Slip	Spears	429-030	20	EA	**$4.73**	**$94.60**	$4.145	$82.90
48	3inches Slip x FIP	Spears	435-030	10	EA	**$5.12**	**$51.20**	$4.489	$44.89
49	4inches Slip	Spears	429-040	6	EA	**$6.34**	**$38.04**	$6.006	$36.036
50	6inches Slip	Spears	429-060	5	EA	**$20.04**	**$100.20**	$18.986	$94.93
51	**Section D - Fittings Male Adapter**								
52	1/2inches Slip x MIP	Spears	436-005	50	EA	**$0.35**	**$17.50**	$0.335	$16.75
53	3/4inches Slip x MIP	Spears	436-007	50	EA	**$0.39**	**$19.50**	$0.363	$18.15
54	1inches Slip x MIP	Spears	436-010	50	EA	**$0.69**	**$34.50**	$0.662	$33.10
55	2inches Slip x MIP	Spears	436-020	25	EA	**$1.47**	**$36.75**	$1.287	$32.175
56	3inches Slip x MIP	Spears	436-030	10	EA	**$5.87**	**$58.70**	$5.558	$55.58
57	**Section E - Fittings 45 Elbows**								
58	1/2inches Slip	Spears	417-005	50	EA	**$0.65**	**$32.50**	$0.608	$30.40
59	3/4inches Slip	Spears	417-007	50	EA	**$0.99**	**$49.50**	$0.863	$43.15
60	1inches Slip	Spears	417-010	50	EA	**$1.18**	**$59.00**	$1.126	$56.30
61	1-1/2inches Slip	Spears	417-015	50	EA	**$2.06**	**$103.00**	$1.796	$89.80
62	2inches Slip	Spears	417-020	50	EA	**$2.69**	**$134.50**	$2.353	$117.65
63	2-1/2inches Slip	Spears	417-025	10	EA	**$6.99**	**$69.90**	$6.129	$61.29
64	3inches Slip	Spears	417-030	10	EA	**$10.03**	**$100.30**	$9.506	$95.06
65	4inches Slip	Spears	417-040	5	EA	**$17.98**	**$89.90**	$17.038	$85.19
66	6inches Slip	Spears	417-060	8	EA	**$44.41**	**$355.28**	$42.101	$336.808
67	**Section F - Fittings Reducer Bushings**								
68	6inches x 4inches	Spears	437-532	5	EA	**$20.75**	**$103.75**	$19.673	$98.365
69	6inches x 3inches	Spears	437-530	5	EA	**$20.75**	**$103.75**	$19.673	$98.365
70	6inches x 2inches	Spears	437-528	5	EA	**$20.75**	**$103.75**	$19.673	$98.365
71	4inches x 3inches	Spears	437-422	6	EA	**$8.38**	**$50.28**	$7.937	$47.622
72	4inches x 2inches	Spears	437-420	6	EA	**$8.38**	**$50.28**	$7.937	$47.622
73	4inches x 2inches FIP	Spears	438-420	6	EA	**$8.36**	**$50.16**	$7.918	$47.508
74	3inches x 2inches	Spears	437-338	10	EA	**$3.75**	**$37.50**	$3.548	$35.48

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						Respondent's Business Name:	**Longhorn Inc.**	SiteOne Landscape Supply	
						Principal Place of Business (City and State):	**Dallas, TX**	Cleveland, OH	
Line #	**Description**	**Mfgr**	**Mfgno**	**QTY**	**UOM**	**Unit**	**Extended**	**Unit**	**Extended**
75	3inches x 2inches FIP	Spears	438-338	10	EA	**$3.75**	**$37.50**	$3.548	$35.48
76	2inchesx 1-1/2inches	Spears	437-251	50	EA	**$1.72**	**$86.00**	$1.50	$75.00
77	2inches x 1-1/2inches FIP	Spears	438-251	10	EA	**$2.43**	**$24.30**	$2.128	$21.28
78	2inches x 1-1/4inches	Spears	437-250	10	EA	**$1.71**	**$17.10**	$1.50	$15.00
79	2inches x 1-1/4inches FIP	Spears	438-250	10	EA	**$2.43**	**$24.30**	$2.128	$21.28
80	2inches x 1inches	Spears	437-249	20	EA	**$1.72**	**$34.40**	$1.50	$30.00
81	2inches x 1inches FIP	Spears	438-249	20	EA	**$2.43**	**$48.60**	$2.128	$42.56
82	1inches x 3/4inches	Spears	437-131	50	EA	**$0.72**	**$36.00**	$0.70	$35.00
83	1 x 3/4inches FIP	Spears	438-131	50	EA	**$1.03**	**$51.50**	$0.972	$48.60
84	3/4inches x 1/2inches	Spears	437-101	50	EA	**$0.40**	**$20.00**	$0.383	$19.15
85	3/4inches x 1/2inches FIP	Spears	438-101	50	EA	**$0.64**	**$32.00**	$0.608	$30.40
86	**Section G - Fittings Slip Fix**								
87	1/2inches	Spears	SH118-05	36	EA	**$7.99**	**$287.64**	$6.536	$235.296
88	3/4inches	Spears	SH118-07	30	EA	**$8.84**	**$265.20**	$7.315	$219.45
89	1inches	Spears	SH118-10	35	EA	**$10.17**	**$355.95**	$7.936	$277.76
90	1-1/4inches	Spears	SH118-12	25	EA	**$19.19**	**$479.75**	$16.006	$400.15
91	1-1/2inches	Spears	SH118-15	32	EA	**$20.91**	**$669.12**	$17.345	$555.04
92	2inches	Spears	SH118-20	30	EA	**$32.34**	**$970.20**	$26.046	$781.38
93	2-1/2inches	Spears	S118-25	5	EA	**$46.90**	**$234.50**	$37.10	$185.50
94	3inches	Spears	S118-30	4	EA	**$58.58**	**$234.32**	$41.339	$165.356
95	**Section H -Risers**								
96	1/2inches Female x Male Riser Extention	Spears	M434-005-3	100	EA	**$0.91**	**$91.00**	$1.492	$149.20
97	3/4inches Female x Male Riser Extention	Spears	CRE-0750-4	100	EA	**$1.79**	**$179.00**	$2.602	$260.20
98	1inches Female x Male Riser Extention	Spears	434-010	100	EA	**$1.52**	**$152.00**	$1.411	$141.10
99	**Section I - Swing Joints**								
100	1/2inches X 12 Thread X Thread	Hunter	SJ512	10	EA	**$1.84**	**$18.40**	$1.642	$16.42
101	3/4inches X 12 Thread X Thread	Hunter	SJ712	10	EA	**$1.93**	**$19.30**	$1.969	$19.69
102	1inches X 12 Thread X Thread	King Brothers	TSA-1000-TT	10	EA	**$43.82**	**$438.20**	$46.862	$468.62
103	1 1/2inches X 12 Thread X Thread	Hunter	HSJ332212	10	EA	**$45.51**	**$455.10**	$68.278	$682.78
104	3/4inches X 12 Slip X Thread	Lasco	T722-212	10	EA	**$18.03**	**$180.30**	$23.75	$237.50
105	1inches X 12 Slip X Thread	Lasco	G172-212	10	EA	**$16.09**	**$160.90**	$39.399	$393.99
106	1 1/2inches X 12 Slip X Thread	Lasco	T522-212	10	EA	**$14.64**	**$146.40**	$22.545	$225.45
107	Rainbird 1 1/2inches x 12inches NPT x Acme Thread	RainBird	SJ1212513	10	EA	**$41.23**	**$412.30**	$71.605	$716.05
108	Rainbird 1inches x 12inchesPressure Regulating	RainBird	TSJ100PRS	10	EA	**$37.10**	**$371.00**	$37.098	$370.98
109	**Section J - Spray Heads**								
110	RD1800 Rainbird 4inches SAM-PRS	RainBird	RD04SP45F	30	EA	**$8.79**	**$263.70**	$8.224	$246.72
111	RD1800 Rainbird 6inches SAM-PRS	RainBird	RD06SP30NP	30	EA	**$19.92**	**$597.60**	$19.913	$597.39

Exhibit 2
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						Respondent's Business Name:		SiteOne Landscape Supply	
						Principal Place of Business (City and State):		Cleveland, OH	
Line #	**Description**	**Mfgr**	**Mfgno**	**QTY**	**UOM**	**Unit**	**Extended**	**Unit**	**Extended**
112	RD1800 Rainbird 12inches SAM-PRS	RainBird	RD12SP30FN	30	EA	**$24.17**	**$725.10**	$24.197	$725.91
113	1800 Rainbird 4inches SAM-PRS	RainBird	1804SAMPRS	30	EA	**$6.55**	**$196.50**	$6.573	$197.19
114	1800 Rainbird 6inches SAM-PRS	RainBird	1806SAMPRS	30	EA	**$16.86**	**$505.80**	$15.524	$465.72
115	1800 Rainbird 12inches SAM-PRS	RainBird	1812SAMPRS	30	EA	**$20.39**	**$611.70**	$18.993	$569.79
116	**Section K - Spray Nozzles**								
117	VAN Series Variable Arc Nozzles	RainBird	P10004 - 4-VAN:3 to 4 feet (0.9 to 1.2 m)	50	EA	**$1.09**	**$54.50**	$0.888	$44.40
118	VAN Series Variable Arc Nozzles	RainBird	P10006 - 6-VAN:4 to 6 feet (1.2 to 1.8 m)	50	EA	**$1.09**	**$54.50**	$0.888	$44.40
119	VAN Series Variable Arc Nozzles	RainBird	P10008 - 8-VAN:6 to 8 feet (1.8 to 2.4 m)	50	EA	**$1.09**	**$54.50**	$0.888	$44.40
120	VAN Series Variable Arc Nozzles	RainBird	P10001001 - 10-VAN:7 to 10 feet (2.1 to 3.1 m)	50	EA	**$1.09**	**$54.50**	$0.888	$44.40
121	VAN Series Variable Arc Nozzles	RainBird	P1001201 - 12-VAN:9 to 12 feet (2.7 to 3.7 m)	50	EA	**$1.09**	**$54.50**	$0.888	$44.40
122	VAN Series Variable Arc Nozzles	RainBird	P1001501 - 15-VAN:11 to 15 feet (3.4 to 4.6 m)	50	EA	**$1.09**	**$54.50**	$0.888	$44.40
123	VAN Series Variable Arc Nozzles	RainBird	P10018 - 18-VAN:14 to 18 feet (4.3 to 5.5 m)	50	EA	**$1.09**	**$54.50**	$0.888	$44.40
124	Rainbird R-VAN	RainBird	A84664 - R-VAN 14-360	30	EA	**$5.47**	**$164.10**	$4.09	$122.70
125	Rainbird R-VAN	RainBird	A84660 - R-VAN 18	30	EA	**$5.47**	**$164.10**	$4.09	$122.70
126	Rainbird R-VAN	RainBird	A84665 - R-VAN 18-360	30	EA	**$5.47**	**$164.10**	$4.09	$122.70
127	Rainbird R-VAN	RainBird	A84661 - R-VAN 24	30	EA	**$5.47**	**$164.10**	$4.09	$122.70
128	Rainbird R-VAN	RainBird	A84666 - R-VAN 24-360	30	EA	**$5.47**	**$164.10**	$4.09	$122.70
129	Rainbird R-VAN	RainBird	A84667 - R-VAN-LCS	30	EA	**$5.47**	**$164.10**	$4.09	$122.70
130	Rainbird R-VAN	RainBird	A84669 - R-VAN-SST	30	EA	**$5.47**	**$164.10**	$4.09	$122.70
131	Rainbird R-VAN	RainBird	A84668 - R-VAN-RCS	30	EA	**$5.47**	**$164.10**	$4.09	$122.70
132	**Section L - Rotor Heads**								
133	Rainbird 3504	RainBird	Y34500 - 3504-PC-SAM	40	EA	**$14.23**	**$569.20**	$14.227	$569.08
134	Rainbird 5004 Plus PRS	RainBird	Y65655 - 5004+PCSR	60	EA	**$19.81**	**$1,188.60**	$18.157	$1,089.42
135	Rainbird Falcon 6504	RainBird	B65011 - F4FC - Falcon 6504	60	EA	**$36.58**	**$2,194.80**	$47.548	$2,852.88
136	Rainbird 8005	RainBird	B81100 - 8005 - 5" Part Circle	60	EA	**$67.93**	**$4,075.80**	$88.303	$5,298.18
137	Rainbird 752	RainBird	752	8	EA	**$423.91**	**$3,391.28**	$499.308	$3,994.464
138	**Section M - Quick Couplers**								
139	Rainbird 33-DRC	RainBird	B11502 - 33DRC	15	EA	**$56.17**	**$842.55**	$67.908	$1,018.62
140	Rainbird 44-RC	RainBird	B12103 - 44RC	8	EA	**$119.01**	**$952.08**	$132.253	$1,058.024
141	**Section N - Control Valves**								

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						Respondent's Business Name:	Longhorn Inc.	SiteOne Landscape Supply	
						Principal Place of Business (City and State):	Dallas, TX	Cleveland, OH	
Line #	**Description**	**Mfgr**	**Mfgno**	**QTY**	**UOM**	**Unit**	**Extended**	**Unit**	**Extended**
142	Rainbird 1inches PEB	RainBird	B34183 - 100PEB	30	EA	**$78.64**	**$2,359.20**	$77.064	$2,311.92
143	Rainbird 1 1/2inches PEB	RainBird	B34383 - 150PEB	24	EA	**$105.03**	**$2,520.72**	$102.922	$2,470.128
144	Rainbird 2inches PEB	RainBird	B34583 - 200PEB	24	EA	**$141.60**	**$3,398.40**	$138.766	$3,330.384
145	Rainbird 2inches PGA	RainBird	B30510 - 200PGA	24	EA	**$104.51**	**$2,508.24**	$91.145	$2,187.48
146	Rainbird 3/4inches XCZ-075-PRF	RainBird	XCZ075PRF	10	EA	**$42.20**	**$422.00**	$53.112	$531.12
147	Rainbird 1inches XCZ-100-PRB-COM	RainBird	XCZ100PRBCOM	10	EA	**$194.67**	**$1,946.70**	$245.275	$2,452.75
148	Rainbird 1 1/2inches XCZ-150-LCS	RainBird	XCZ150LCS	5	EA	**$256.57**	**$1,282.85**	$275.685	$1,378.425
149	Rainbird 3inches 300-BPES	RainBird	B38013 - 300BPES	4	EA	**$751.89**	**$3,007.56**	$678.466	$2,713.864
150	**Section O - Repair**								
151	Weathermatic Solenoid AC Plastic	Weathermatic	HD24JHPSA - Weathermatic Nitro	5	EA	**$23.58**	**$117.90**	$19.336	$96.68
152	Weathermatic Solenoid AC Brass	Weathermatic	S24BSA	5	EA	**$42.98**	**$214.90**	$54.629	$273.145
153	Weathermatic 1inches Diaphragm Plastic	Weathermatic	11024FCR-10D - BlackBullet 1"	5	EA	**$95.22**	**$476.10**	$96.834	$484.17
154	Weathermatic 1inches Diaphragm Brass	Weathermatic	45-110DMSA	5	EA	**$11.57**	**$57.85**	$15.751	$78.755
155	Weathermatic 1 1/2inches Diaphragm Plastic	Weathermatic	11024FCR-15D - BlackMax 1 1/2"	5	EA	**$123.40**	**$617.00**	$125.724	$628.62
156	Weathermatic 1 1/2inches Diaphragm Brass	Weathermatic	49-110DSMA	5	EA	**$9.97**	**$49.85**	$12.365	$61.825
157	Weathermatic 2inches Diaphragm Plastic	Weathermatic	11024FCR-20D - BlackMax 2"	5	EA	**$180.79**	**$903.95**	$174.672	$873.36
158	Weathermatic 2inches Diaphragm Brass	Weathermatic	50-110DMSA	5	EA	**$16.41**	**$82.05**	$19.452	$97.26
159	Toro Solenoid AC	Toro	118-5982	5	EA	**$22.89**	**$114.45**	$26.047	$130.235
161	Toro 1inches Diaphragm	Toro	35-2824	5	EA	**$13.45**	**$67.25**	$15.307	$76.535
162	Toro 1 1/2inches Diaphragm	Toro	102-0770	5	EA	**$19.92**	**$99.60**	$22.662	$113.31
163	Toro 2inches Diaphragm	Toro	934501	5	EA	**$48.02**	**$240.10**	$61.988	$309.94
164	Rainbird Solenoid AC	RainBird	SOLASSG4	15	EA	**$34.97**	**$524.55**	$32.918	$493.77
165	Rainbird Solenoid DC	RainBird	TBOSPSOL	15	EA	**$34.21**	**$513.15**	$35.06	$525.90
166	Rainbird 1inches Diaphragm	RainBird	100PEB	5	EA	**$48.81**	**$244.05**	$55.254	$276.27
167	Rainbird 1 1/2inches Diaphragm	RainBird	150PEDIBO	5	EA	**$62.22**	**$311.10**	$67.403	$337.015
168	Rainbird 2inches Diaphragm	RainBird	20PEBDIBO	5	EA	**$72.53**	**$362.65**	$78.571	$392.855
169	Rainbird 1inches Diaphragm Brass	RainBird	DIAPH100G	5	EA	**$33.62**	**$168.10**	$32.526	$162.63
170	Rainbird 1 1/2inches Diaphragm Brass	RainBird	DIAPH150EF	5	EA	**$51.56**	**$257.80**	$55.842	$279.21
171	Rainbird 2inches Diaphragm Brass	RainBird	202615P	5	EA	**$68.55**	**$342.75**	$74.26	$371.30
172	Mighty Max 35 AMP	Mighty Max	ML35-12	4	EA	**$0.00**	**$0.00**	No Bid	No Bid
172 ALT1	Ameresco Deka U1 12v at 36Ah	Deka	U1	4	EA	**$145.50**			
173	K-Rain Replacement Solenoid Kit 24V w/ 1 Rain Bird & 1 Hunter Adapter	K-Rain	P3004755-NLA	8	EA	**$26.58**	**$212.64**	$16.69	$133.52
174	K-Rain Replacement 9V Solenoid Kit w/ 1 Rain Bird & 1 Hunter Adapter	K-Rain	P3004758	8	EA	**$22.68**	**$181.44**	$34.762	$278.096
175	Rainbird 3inches Diaphragm Brass	RainBird		5	EA	**$342.93**	**$1,714.65**	$371.498	$1,857.49

Exhibit 2
RFP 8950 - Pricing Evaluation for Irrigation Systems, Supplies, Parts, and Accessories

						Respondent's Business Name:		SiteOne Landscape Supply	
						Principal Place of Business (City and State):		Cleveland, OH	
Line #	**Description**	**Mfgr**	**Mfgno**	**QTY**	**UOM**	**Unit**	**Extended**	**Unit**	**Extended**
176	**Section P - Drip Pipe & Fittings**								
177	Rainbird 100feet Roll .9 Drip Tubing XFS & XFCV	RainBird	XFS-09-12-100	5	EA	**$32.70**	**$163.50**	$62.211	$311.06
178	Rainbird 500feet Roll .9 Drip Tubing XFS & XFCV	RainBird	XFS-09-12-500	2	EA	**$211.88**	**$423.76**	$270.496	$540.99
179	Rainbird 100feet Roll .6 Drip Tubing XFS & XFCV	RainBird	XFS-06-12-100	5	EA	**$42.22**	**$211.10**	$62.211	$311.06
180	Rainbird 500feet Roll .6 Drip Tubing XFS & XFCV	RainBird	XFS-06-12-500	2	EA	**$212.48**	**$424.96**	$270.496	$540.99
181	Rainbird 17mm Drip Coupling	RainBird	X36370 - XFF-COUP	250	EA	**$0.25**	**$62.50**	$0.277	$69.25
182	Rainbird 17mm Drip Tee	RainBird	X36373 - XFF-TEE	250	EA	**$0.37**	**$92.50**	$0.408	$102.00
183	Rainbird 17mm Drip Elbow	RainBird	X36372 - XFF-ELBOW	250	EA	**$0.32**	**$80.00**	$0.357	$89.25
184	Rainbird 17mm Drip 1/2inchesMPT Male Adapter	RainBird	X36374 - XFF-MA-050	250	EA	**$0.36**	**$90.00**	$0.396	$99.00
185	Rainbird 17mm Drip 3/4inchesMPT Male Adapter	RainBird	X36375 - XFF-MA-075	250	EA	**$0.38**	**$95.00**	$0.416	$104.00
186	Tee male adapter 17mm x ”	RainBird	X36377 - XFF-TFA-050	250	EA	**$0.48**	**$120.00**	$0.531	$132.75
187	Barb cross 17mm x 17mm x 17mm x 17mm	RainBird	X36278 - XFD-CROSS	160	EA	**$0.66**	**$105.60**	$0.816	$130.56
188	Rainbird Drip Tool	RainBird	X36380 - FITING-TOOL	100	EA	**$6.34**	**$634.00**	$9.938	$993.80
189	RainBird 100-ft Polyethylene Riser Flex Pipe	RainBird	A82060 - SPX-FLEX-100	8	EA	**$20.50**	**$164.00**	$25.10	$200.80
190	RAINBIRD - 1/2inches M NPT X 1/2inches BARB ELBOW	RainBird	SBE-050	100	EA	**$0.26**	**$26.00**	$0.172	$17.20
191	RAINBIRD - 1/2inches BARB X 1/2inches BARB X 1/2inches BARB TEE	RainBird	SB-TEE	100	EA	**$0.37**	**$37.00**	$0.336	$33.60
192	RAINBIRD ACETAL SWING PIPE COUPLING 1/2inches BARB	RainBird	SB-CPLG	100	EA	**$0.27**	**$27.00**	$0.25	$25.00
193	RAIN BIRD - 3/4inches MALE NPT X 1/2inches BARB ADAPTER	RainBird	SBE-075	100	EA	**$0.27**	**$27.00**	$0.187	$18.70
194	RAIN BIRD - 1/2inches MARLEX STREET ELBOW FITTING, FEMALE X MALE	RainBird	SWGS050S	100	EA	**$0.73**	**$73.00**	$0.31	$31.00
195	RAIN BIRD - 1/2inches AIR/VACUUM RELIEF VALVE	RainBird	ARV050	100	EA	**$7.82**	**$782.00**	$8.743	$874.30
196	RAIN BIRD - 1/2inches DRIP END CLOSURE	RainBird	EC50/2PK	100	EA	**$0.14**	**$14.00**	$0.164	$16.40
197	RAIN BIRD - 1/2inches FPT THREAD X 1/4inches BARB CONNECTOR	RainBird	XT025	100	EA	**$0.78**	**$78.00**	$0.865	$86.50
198	Tee male adapter 17mm x 3/4inches	RainBird	X36279 - XFD-TFA-075	80	EA	**$0.29**	**$23.20**	$1.571	$125.68
199	1/2inches Lasco Blue Twister Elbow Adapter	Lasco	3300-005	500	EA	**$0.36**	**$180.00**	$0.504	$252.00
200	3/4inches Lasco Blue Twister Elbow Adapter	Lasco	3300-007	500	EA	**$0.38**	**$190.00**	$0.489	$244.50
201	Lasco Blue Twister Tee	Lasco	3100-005	100	EA	**$1.10**	**$110.00**	$0.70	$70.00
202	Lasco Blue Twister Male Adapter 1/2inches	Lasco	3400-005	100	EA	**$0.69**	**$69.00**	$0.525	$52.50
203	Lasco Blue Twister Male Adapter 3/4inches	Lasco	3400-007	100	EA	**$0.52**	**$52.00**	$0.487	$48.70
204	Lasco Blue Twister coupling	Lasco	3201-004	100	EA	**$1.00**	**$100.00**	$0.659	$65.90
205	Tubing cutter		PPC-200X	1	EA	**$31.23**	**$31.23**	$48.977	$48.98
206	Metal Rounded Drip Stakes		TDS-6500	500	EA	**$0.08**	**$40.00**	$0.346	$173.00
207	Hunter Eco-Drip Indicator	Hunter	ECO-ID	20	EA	**$8.26**	**$165.20**	$10.557	$211.14
208	Hunter Bubbler-Nozzles PCN Series	Hunter	PCN-10	50	EA	**$1.86**	**$93.00**	$1.785	$89.25
209	Hunter Bubbler-Nozzles PCN Series	Hunter	PCN-20	50	EA	**$1.86**	**$93.00**	$1.785	$89.25
210	Hunter Bubbler-Nozzles PCN Series	Hunter	PCN-25	50	EA	**$1.86**	**$93.00**	$1.785	$89.25
211	Hunter Bubbler-Nozzles PCN Series	Hunter	PCN-50	50	EA	**$1.86**	**$93.00**	$1.785	$89.25
212	Hunter Bubbler-Nozzles PCB Series	Hunter	PCB-10	50	EA	**$3.75**	**$187.50**	$3.597	$179.85

Exhibit 2
RFP 8950 - Pricing Evaluation for Irrigation Systems, Supplies, Parts, and Accessories

						Respondent's Business Name:	**Longhorn Inc.**	SiteOne Landscape Supply	
						Principal Place of Business (City and State):	**Dallas, TX**	Cleveland, OH	
Line #	**Description**	**Mfgr**	**Mfgno**	**QTY**	**UOM**	**Unit**	**Extended**	**Unit**	**Extended**
213	Hunter Bubbler-Nozzles PCB Series	Hunter	PCB-20	50	EA	**$3.56**	**$178.00**	$3.597	$179.85
214	Hunter Bubbler-Nozzles PCB Series	Hunter	PCB-25	50	EA	**$3.75**	**$187.50**	$3.597	$179.85
215	Hunter Bubbler-Nozzles PCB Series	Hunter	PCB-50	50	EA	**$3.52**	**$176.00**	$3.597	$179.85
216	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-10F	50	EA	**$1.75**	**$87.50**	$1.785	$89.25
217	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-10H	50	EA	**$1.75**	**$87.50**	$1.785	$89.25
218	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-20F	50	EA	**$1.75**	**$87.50**	$1.785	$89.25
219	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-25Q	50	EA	**$1.75**	**$87.50**	$1.785	$89.25
220	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-50Q	50	EA	**$1.75**	**$87.50**	$1.785	$89.25
221	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-50H	50	EA	**$1.75**	**$87.50**	$1.785	$89.25
222	**Section Q - Controls**								
223	K Rain 2 Station Bluetooth Controller	K-Rain	BLUE-2	4	EA	**$141.32**	**$565.28**	$178.572	$714.288
224	K Rain 4 Station Bluetooth Controller	K-Rain	BLUE-4	4	EA	**$182.11**	**$728.44**	$224.021	$896.084
225	RainbirdWireless Rain/Freeze Sensor	RainBird	WR2RFC	4	EA	**$73.90**	**$295.60**	$100.227	$400.908
226	**Section R - Backflow Prevention**								
227	Wilkins 1inches RPZ - 375XL	Wilkins	1-375XL	4	EA	**$617.15**	**$2,468.60**	$562.346	$2,249.384
228	Wilkins 1 1/2inches RPZ - 375XL	Wilkins	112-375XL	4	EA	**$1,116.51**	**$4,466.04**	$1,071.941	$4,287.764
229	Wilkins 2inches RPZ - 375XL	Wilkins	2-375XL	4	EA	**$1,205.45**	**$4,821.80**	$1,157.346	$4,629.384
230	Wilkins 3inches RPZ - 375AST	Wilkins	375	1	EA	**$3,540.00**	**$3,540.00**	$4,498.96	$4,498.96
231	Wilkins 4inches RPZ - 375AST	Wilkins	375DA 4"	1	EA	**$3,845.00**	**$3,845.00**	$5,419.234	$5,419.234
232	**Section S - Backflow Cover**								
233	Dekorra Enclosure Small	Dekorra	301-BG-C1	4	EA	**$267.20**	**$1,068.80**	$448.779	$1,795.12
234	Dekorra Enclosure Large	Dekorra	302-GT	4	EA	**$235.40**	**$941.60**	$504.523	$2,018.09
235	Dekorra Insulated Pouch Small	Dekorra	602-GN	4	EA	**$45.81**	**$183.24**	$72.492	$289.97
236	Dekorra Insulated Pouch Large	Dekorra	614-GN	4	EA	**$217.31**	**$869.24**	$319.208	$1,276.83
237	Hot Box	Hubbell	HB2T	2	EA	**$1,057.62**	**$2,115.24**	$2,204.793	$4,409.586
238	Hot Box	Hubbell	HB3N	1	EA	**$3,237.50**	**$3,237.50**	$7,866.996	$7,866.996
239	**Section T - Valve Boxes**								
240	NDS 10inches Round Box	NDS	111BC	15	EA	**$11.74**	**$176.10**	$11.004	$165.06
241	NDS Rectangular Box	NDS	113BC	20	EA	**$26.65**	**$533.00**	$24.427	$488.54
242	NDS Jumbo Rectangular Box	NDS	117BC	10	EA	**$52.44**	**$524.40**	$48.867	$488.67
243	**Section U - Wire & Connectores**								
244	2500feet Roll of 14ga wire Red	Regency	R7001D	2	EA	**$375.00**	**$750.00**	$430.00	$860.00
245	2500feet Roll of 14ga wire White	Regency	R7001D	2	EA	**$375.00**	**$750.00**	$437.50	$875.00
246	2500feet Roll of 14ga wire Yellow	Regency	R7001D	2	EA	**$375.00**	**$750.00**	$452.50	$905.00
247	2500feet Roll of 14ga wire Blue	Regency	R7001D	2	EA	**$375.00**	**$750.00**	$452.50	$905.00
248	King Large Wire Nuts	King DryConn	62250 DryConn	150	EA	**$0.87**	**$130.50**	$343.407	$51,511.05
249	King Blue Small Wire Nuts	King DryConn	22AWG-12AWG	150	EA	**$0.83**	**$124.50**	$1.048	$157.20

Exhibit 2
RFP 8950 - Pricing Evaluation for Irrigation Systems, Supplies, Parts, and Accessories

						Respondent's Business Name:		Longhorn Inc.	
						Principal Place of Business (City and State):		Dallas, TX	
Line #	**Description**	**Mfgr**	**Mfgno**	**QTY**	**UOM**	**Unit**	**Extended**	**Unit**	**Extended**
250	King Dry Con	King DryConn	20210	150	EA	**$0.60**	**$90.00**	$0.706	$105.90
251	Rain Bird - 2 Wire	RainBird	142BLK1000	1	EA	**$459.00**	**$459.00**	$587.00	$587.00
252	**Section V - Glue & Primer**								
253	Christyfeets Red Hot Blue Glue 32oz	Christy's	505201	8	EA	**$39.51**	**$316.08**	$36.88	$295.04
254	Weld-On 711 Gray Glue 32oz	Weld-On	10119	8	EA	**$40.93**	**$327.44**	$46.353	$370.824
255	Weld-On P-68 Purple Primer 32oz	Weld-On	10210	8	EA	**$24.30**	**$194.40**	$29.766	$238.128
256	**Section W - Ball Valves**								
257	PVC Ball Valve 1/2 in	Spears	2622-005	8	EA	**$11.20**	**$89.60**	$12.038	$96.304
258	PVC Ball Valve 1/2 in. FIPT	Spears	2621-005	8	EA	**$13.11**	**$104.88**	$12.038	$96.304
259	PVC Ball Valve 3/4 in	Spears	2622-007	8	EA	**$15.55**	**$124.40**	$14.386	$115.088
260	PVC Ball Valve 3/4 in. FIPT	Spears	2621-007	8	EA	**$12.44**	**$99.52**	$14.386	$115.088
261	PVC Ball Valve 1 in	Spears	2622-010	8	EA	**$21.14**	**$169.12**	$18.879	$151.032
262	Ball Valve Fipt 150 PSI 1 in	Spears	2621-010	8	EA	**$16.91**	**$135.28**	$19.566	$156.528
263	PVC Ball Valve 1-1/4 in	Spears	2622-012	8	EA	**$27.97**	**$223.76**	$24.98	$199.84
264	PVC Ball Valve 1-1/2 in	Spears	2622-015G	8	EA	**$42.70**	**$341.60**	$62.281	$498.248
265	Ball Valve Fipt 150 PSI 1 - 1/2 in	Spears	2621-015	8	EA	**$42.70**	**$341.60**	$39.691	$317.528
266	Ball Valve 2 in	Spears	2622-020	8	EA	**$53.97**	**$431.76**	$48.265	$386.12
267	PVC Ball Valve 2 in. FIPT	Spears	2621-020	8	EA	**$53.97**	**$431.76**	$48.265	$386.12
268	PVC Ball Valve 3 in	Spears	2622-030	4	EA	**$165.68**	**$662.72**	$251.103	$1,004.412
269	PVC Ball Valve 4 in	Spears	2622-040	4	EA	**$303.67**	**$1,214.68**	$460.248	$1,840.992
					Total:	**$100,988.47**		$169,852.58	

Evaluation

Item #	**Standard Criteria**	**Longhorn Inc.**	SiteOne Landscape Supply
1	Delivery/Project Schedule - 20%	**16.00**	12.00
2	Compliance with Specifications- 30%	**22.00**	18.00
3	Probable Performance-20%	**17.33**	12.00
4	Price, Total Cost of Ownership - 30%	**30.00**	18.00
	Total Score:	**85.33**	60.00

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH LONGHORN INCORPORATED, FOR THE PURCHASE OF IRRIGATION SYSTEMS, SUPPLIES, PARTS, AND ACCESSORIES TO BE STOCKED IN THE CITY OF DENTON WAREHOUSE; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8950 – AWARDED TO LONGHORN INCORPORATED, FOR ONE (1) YEAR, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL THREE (3) YEAR NOT-TO-EXCEED AMOUNT OF $500,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the purchase of irrigation systems, supplies, parts, and accessories to be stocked in the City of Denton Warehouse; 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.

RFP NUMBER	CONTRACTOR	AMOUNT
8950	Longhorn Incorporated	$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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

RFP	8950
File Name	Irrigation Systems, Supplies, Parts and Accessories
Purchasing Contact	Ginny Brummett
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: 168B1722-E8F7-4BD3-8C0C-3A0FE9D1EEB1

CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND LONGHORN INCORPORATED
(Contract #8950)

THIS CONTRACT is made and entered into this date _____, by and between Longhorn Incorporated a Texas corporation whose address 1220 Shady Trail, Denton, Texas 76205, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or their duly authorized designee.

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

SCOPE OF SERVICES

Contractor shall provide products in accordance with the City's RFP 8950 Irrigation Systems, Supplies, Parts and Accessories, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFP 8950 (the "Solicitation") **(Exhibit "B" on file at the office of the Purchasing Agent**);
(c) City of Denton Standard Terms and Conditions **(Exhibit "C");**
(d) Certificate of Interested Parties Electronic Filing **(Exhibit "D");**
(e) Contractor's Proposal ("Contractor's Offer") **(Exhibit "E")**;
(f) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "F")**

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

Prohibition on Contracts with Companies Boycotting Israel
Contractor 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 Contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Contract.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies
Contractor acknowledges that in accordance with Chapter 2276 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"

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shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the Contract.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor 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 Contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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 this 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.

Prohibition On Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Section 2252 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 Contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapter 2252, is not ineligible to enter into this Contract and will not become ineligible to receive payments under this Contract 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.

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 2275, 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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

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CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY
CITY MANAGER

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Signed by: Leah Bush 2A936B08B5D7485...

CONTRACTOR

BY: Signed by: Matt Swor 4B68CF841EF0437...
AUTHORIZED SIGNATURE

Printed Name: Matt Swor

Title: sales

214-882-8731
PHONE NUMBER

mswor@longhorninc.com
EMAIL ADDRESS

_____
TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

THIS CONTRACT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

DocuSigned by: Christine Taylor 2B3E02EGE8184D8...
SIGNATURE

Christine Taylor
PRINTED NAME

Assistant City Manager
TITLE

City Manager's Office
DEPARTMENT

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Exhibit A
Special Terms and Conditions

1. The Quantities

The quantities indicated on Exhibit E are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

2. Product Changes During Contract Term

The Contractor shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to purchasing@cityofdenton.com, with the above file number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the contractor's expense. Products that have been installed will be replaced at the contractor's expense.

3. Authorized Distributor

The Contractor shall be the manufacturer or authorized distributor of the proposed products. The distributor shall be authorized to sell to the City of Denton, and make available the manufacturer's representative as needed by the City.

4. Contract Terms

The contract term will be one (1) year, effective from date of award. The City and the Contractor shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Contractor's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

5. Price Escalation and De-escalation

On Contractor's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8%

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limit per year. The Contractor should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

6. Total Contract Amount

The contract total shall not exceed $500,000. Pricing shall be per Exhibit E attached.

7. Delivery Lead Time

Products or services will be delivered four (4) weeks after receipt of an order from the City.

8. Performance Liquidated Damages

The Contractor shall incur contractual payment losses, as initiated by the City for performance that falls short of specified performance standards as outlined below:

- Delivery beyond contracted lead times
- Performance below contracted levels (services only)

The Contractor shall be assessed a one (1%) percent fee each month when any one of the performance standards outlined above are not met in full. The Contractor shall be assessed a two (2%) percent profit fee each month when any two (2) or more performance standards outlined above are not met in full. At the end of each month, the City will review the monthly reports and determine the percentage of penalty to be assessed to the Contractor's monthly profit margin.

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Exhibit B
City of Denton's RFP 8950 File

On File at the Office of the Purchasing Agent

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Exhibit C
City of Denton
Standard Purchase Terms and Conditions

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

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

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

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

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

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

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

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

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

8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract to perform but not afterward. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

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

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

10. **WORKFORCE** This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way.
A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

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B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not (1) while engaged in, participating, or responding to a solicitation; or (2) while in the course and scope of delivering goods or services under a City of Denton contract; or (3) on the City's property.

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

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

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

IMMIGRATION: THE CONTRACTOR REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE REQUIREMENTS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 AND 1990 REGARDING EMPLOYMENT VERIFICATION AND RETENTION OF VERIFICATION FORMS FOR ANY INDIVIDUALS HIRED ON OR AFTER NOVEMBER 6, 1986, WHO WILL PERFORM ANY LABOR OR SERVICES UNDER THE CONTRACT AND THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 ("IIRIRA) ENACTED ON SEPTEMBER 30, 1996, AND SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY ACTION ARISING RELATED THERETO.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS**: This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules, and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**

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

12. **INVOICES**:

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

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

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C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:
A. All proper invoices need to be sent to Accounts Payable – accountspayable@cityofdenton.com. Approved invoices will be paid within thirty (30) calendar days of the invoice being received in Accounts Payable.
B. **If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, including, but not limited to, those in Paragraph D , below, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches such shipment or delivery.
D. The City may withhold or set off the entire payment or part of any payment otherwise due to the Contractor to such extent as may be necessary on account of:

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

E. Notice is hereby given to any awarded firm who is in arrears to the City for delinquent taxes of any kind or otherwise indebted to the City that the City shall be entitled to counterclaim and/or offset against any such debt, claim, demand, or account owed to the City through payment withholding until the debt is paid in full, and no assignment of such debt, claim, demand, or account after the said taxes or debt are due shall affect the right of the City to offset the said taxes or debt against same.
F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
G. The Contractor acknowledges and agrees that the awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and

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solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City will not incur a debt or obligation to pay Contractor any amounts the City does not have the current funds available to pay. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty or liability to the City, nor removal fees, cancellation fees, or the like charged to the City.

14. **TRAVEL EXPENSES**: All travel, lodging, and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the Contract Documents. During the term of this Contract, the Contractor shall bill and the City shall reimburse Contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the Contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. **FINAL PAYMENT AND CLOSE-OUT**:

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

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

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

ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. **RIGHT TO AUDIT**:

A. The Contractor agrees that the City shall, until the expiration of five (5) years after final payment under this Contract unless required to be retained for longer under applicable law, have electronic access to and the right to examine all books, records, and computations pertaining to this Contract. If necessary, the City shall have the right to audit and make copies of the books, records, and computations pertaining to the Contract. The Contractor shall retain such books, records, documents, and other evidence pertaining to the Contract period and five (5) years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case

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records shall be kept until all audit tasks are completed and resolved. These books, records, documents, and other evidence shall be available, within ten (10) business days of written request. All books and records will be made available within a fifty (50) mile radius of the City of Denton if the vendor is not able to provide electronic access. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Subcontractor, material supplier, or other payee agrees that the City shall, until the expiration of five (5) years after final payment under the subcontract unless required to be retained for longer under applicable law, have electronic access to and the right to examine all books, records, documents, and other evidence of the Subcontractor, material supplier, or other payee involving transactions relating to the subcontract. If necessary, the City maintains the right to photocopy any physical books, documents, papers, and records of the subconsultant involving transactions relating to the subcontract. All books and records will be made available within a fifty (50) mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

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

18. **SUBCONTRACTORS**:

A. If the Contractor-identified subcontractors ("Subcontractor") in a DBE/MBE/WBE agreed-to plan (the "Plan"), the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract Documents, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment

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to the City in accordance with the terms of the Contract;

iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

V. REQUIRE THAT THE SUBCONTRACTOR INDEMNIFY AND HOLD THE CITY HARMLESS TO THE SAME EXTENT AS THE CONTRACTOR IS REQUIRED TO INDEMNIFY THE CITY.

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

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

19. **WARRANTY-PRICE**:

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

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

C. In the event Contractor breaches this warranty, in addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase, or in the alternative, the City may cancel this Contract without liability to Contractor for breach.

20. **WARRANTY – TITLE**: **THE CONTRACTOR WARRANTS THAT IT HAS GOOD AND INDEFEASIBLE TITLE TO ALL DELIVERABLES FURNISHED UNDER THE CONTRACT, AND THAT THE DELIVERABLES ARE FREE AND CLEAR OF ALL LIENS, CLAIMS, SECURITY INTERESTS, AND ENCUMBRANCES. THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL ADVERSE TITLE CLAIMS TO THE DELIVERABLES.**

21. **WARRANTY – DELIVERABLES**: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship, or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Contract Documents, to any samples furnished by the Contractor, to the terms, covenants, and conditions of the Contract, and to all applicable State, federal, or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned. In addition, Contractor warrants that the goods sold to City shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA). In the event the product does not conform to OSHA standards, City may return the product for correction or replacement at the Contractor's expense. In the event Contractor fails to make the appropriate correction within a reasonable time, correction made by City will be at Contractor's expense.

A. Recycled deliverables shall be clearly identified as such.

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

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C. Unless otherwise specified in the Contract or required by the Solicitation, the warranty period shall be at least one (1) year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
F. Contractor shall not limit, exclude, or disclaim any implied warranties, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

22. **WARRANTY – SERVICES**: The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable federal, State, and local laws, rules or regulations.
A. The Contractor may not limit, exclude, or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.
B. Unless otherwise specified in the Contract, the warranty period shall be at least one (1) year from the date of acceptance of the work. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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

24. **RIGHT TO ASSURANCE**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified (being a minimum of 5 days) after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

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

26. **DEFAULT**:

A. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely, and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 25, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

B. In the event the City terminates the awarded contract for default or any other reason, the Contractor shall not be relieved of liability to the City for damages sustained by the City by reason of any default of the contract by the Contractor or otherwise, and the City may withhold any payments to the Contractor for the purpose of an offset until such time as the amount of damages due the City from the Contractor can be determined.

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and/or any offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if

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the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause and/or for convenience any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof, provided such payment amount is not disputed by City. The City reserves all rights, causes of action, and remedies available under law or in equity with respect to any dispute under this Contract and a termination under this provision does not waive such rights, causes of action, and remedies.

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

30. **DELAYS**:
A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in Paragraph 53. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **TIME OF COMPLETION AND LIQUIDATED DAMAGES**: Contractor agrees and acknowledges that completing the services and/or delivering the goods described in this Contract in a timely manner is very important to the City. Contractor agrees to perform all obligations within the timeframes required. As it is impracticable and extremely difficult to fix the actual damages, if any, that may proximately result from a failure by Contractor to provide the goods or perform the service, should Contractor fail to timely perform its obligations, Contractor agrees to pay to City, or have withheld and offset from monies due it, the amount stated in the Contract Documents as liquidated damages for each calendar day of delay or nonperformance. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract. Execution of the Contract shall constitute agreement by the City and Contractor that said amount is the minimum value of the costs and actual damage caused by the Contractor's failure to timely perform. Adjustments to the contract times can only be made as provided in the Contract Documents and any conditions or specifications referenced therein.

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32. **INDEMNITY**:

A. Definitions:

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

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

33. **LIMITATION OF LIABILITY**: This Contract does not, and shall not be interpreted to, contain an artificial limitation of liability (e.g. liability limited to contract price or liability capped at an amount actually paid in previous 3 months, etc.) or an artificial statute of limitations (e.g. any lawsuit must be commenced within one year of the event).

34. **INSURANCE**: The Contractor shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton outlined in the Insurance Exhibit attached hereto, if applicable. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton. The City of Denton reserves the right to add insurance during the contract term.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the Solicitation and the Insurance Exhibit.

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

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Hall, 215 East McKinney Street, Denton, Texas 76201.

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

37. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

38. **INDEMNIFICATION AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. Moreover, Contractor does not know of any valid basis for any such claims. **THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM: (I) ANY CLAIM THAT THE CITY'S EXERCISE ANYWHERE IN THE WORLD OF THE RIGHTS ASSOCIATED WITH THE CITY'S' OWNERSHIP, AND IF APPLICABLE, LICENSE RIGHTS, AND ITS USE OF THE DELIVERABLES INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; OR (II) THE CONTRACTOR'S BREACH OF ANY OF CONTRACTOR'S REPRESENTATIONS OR WARRANTIES STATED IN THIS CONTRACT. IN THE EVENT OF ANY SUCH CLAIM, THE CITY SHALL HAVE THE RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF. FURTHER, CONTRACTOR AGREES THAT THE CITY'S SPECIFICATIONS REGARDING THE DELIVERABLES SHALL IN NO WAY DIMINISH CONTRACTOR'S WARRANTIES OR OBLIGATIONS UNDER THIS PARAGRAPH AND THE CITY MAKES NO WARRANTY THAT THE PRODUCTION, DEVELOPMENT, OR DELIVERY OF SUCH DELIVERABLES WILL NOT IMPACT SUCH WARRANTIES OF CONTRACTOR. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

39. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business

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information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 41 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 41 A., B., and C. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should

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desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 40 above.

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

42. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, State, or local government.

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

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

45. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: The Contractor agrees to comply with the conflict of interest provisions of the City of Denon Code of Ordinances and/or State law. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance codified at Chapter 2, Article XI and in the City Charter Section 14.04, as amended. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire. The Contractor agrees to maintain current, updated disclosure of information on file with the Procurement Department throughout the term of this Contract.

46. **NO SUBCONTRACTING BID AFTER AWARD**: Following the award of the Contract, no subcontracting except that specifically identified in the response to the Solicitation will be permitted without the express prior written consent of the City.

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47. **NO GIFT OF PUBLIC PROPERTY**: The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Contractor.

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

49. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

50. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

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

52. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties

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or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

53. **DISPUTE RESOLUTION**:
A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute, however any decision requiring approval of the City Council of the City will be required to be submitted to the City Council and the senior level person shall have authority to recommend approval of any resolution. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
C. The parties shall not be required to submit to binding arbitration.

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

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

56. **HOLIDAYS:** The following holidays are observed by the City:

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

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

57. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract for fifteen (15) years.

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

59. **EQUAL OPPORTUNITY** Contractor agrees that during the performance of its contract it will:
A. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age, or handicap.
B. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or request.
The Contractor shall be advised of any complaints filed with the City alleging that Contractor is

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not an Equal Opportunity Employer. The City reserves the right to consider its reports from its human relations administrator in response to such complaints in determining whether or not to terminate any portion of this contract for which purchase orders or authorities to deliver have not been included, however, the Contractor is specifically advised that no Equal Opportunity Employment complaint will be the basis for cancellation of this contract for which a purchase order has been issued or authority to deliver granted.

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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

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

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

64. **COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The Contractor or supplier shall comply with all State, federal, and local laws and requirements. The Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; and (iii) Chapter 552 of the Texas Government Code, which outlines policy for public information. The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

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

66. **ATTORNEY'S FEES; LEGAL COSTS:** Contractor and City agree that the City will not be required to pay Contractor's attorney's fees or legal costs under any circumstances, unless expressly required by law.

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

68. **CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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

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

72. **RECORDS RETENTION:** The Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Contractor shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract. In the event the value of this Contract is One Million ($1,000,000) Dollars or greater: (i) all contracting information related to this contract will be preserved for the duration of the Contact; (ii) the Contractor shall provide any contracting information in its possession promptly upon request by the City; and (iii) at the expiration of this Contract, the Contractor will either provide all contracting information in its possession to the City or preserve same as required by the record retention requirements of the State of Texas.

73. **PROCUREMENT LAWS**: The City will not agree to any terms or conditions that cause the City to violate any federal, State, or local procurement laws, including its own Charter or Procurement Policy and any such laws included in boilerplate terms, online terms or other terms provided by the Contractor are considered null and void.

74. **AUTHORITY**: Contractor represents and warrants to the other that (a) it has company authority to execute and perform this Contract; (b) executing this Contract does not constitute a material conflict with, breach, or default under any applicable law, its respective organizational documents, or any documents, agreements, contracts or instruments which are binding upon it; and (c) this Contract creates valid, legal, and binding obligation enforceable against it, subject to applicable insolvency and bankruptcy laws. Contractor recognizes and agrees that a violation of this provision constitutes a material breach under this Contract.

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Exhibit D

Certificate of Interested Parties Electronic Filing

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

Contractor will be required to furnish a Certificate of Interest Parties before the Contract is awarded, in accordance with Government Code 2252.908.

The Contractor shall:

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

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

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		8950 Irrigation Systems, Supplies, Parts and Accessories					
		Exhibit E-Pricing					Longhorn Inc.
	Line #	Description	Mfgr	Mfgno	QTY	UOM	Unit
	1	**Section A - Class 315 PVC, Class 200 PVC, SCH40 PVC**					
	2	1/2inches x 20feet	Cresline	50PVC315BE	10	EA	$2.58
	3	3/4inches x 20feet	Cresline	75PVC200BE	20	EA	$2.84
	4	1inches x 20feet	Cresline	1PVC200BE	20	EA	$3.75
	5	1 1/4inches x 20feet	Cresline	125PVC200BE	10	EA	$6.57
	6	1 1/2inches x 20feet	Cresline	150PVC200BE	10	EA	$8.13
	7	2inches x 20feet	Cresline	2PVC200BE	10	EA	$11.25
	8	2 1/2inches x 20feet	Cresline	250PVC200BE	8	EA	$19.38
	9	3inches x 20feet	Cresline	3PVC200BE	6	EA	$26.46
	10	4inches x 20feet	Cresline	4PVC200BE	6	EA	$44.09
	11	6inches x 20feet	Cresline	6PVCBE	2	EA	$231.29
	12	**Section B - Fittings Tees**					
	13	1/2inches x1/2inches x 1/2inches slip Tee	Spears	401-005	1	EA	$0.45
	14	1/2inches x FIP x 1/2inches slip Tee	Spears	402-005	50	EA	$0.64
	15	3/4inches x 3/4inches x3/4inches Slip Tee	Spears	401-007	50	EA	$0.55
	16	3/4inches x FIP x3/4inches Slip Tee	Spears	402-007	50	EA	$0.99
	17	1inches x 1inches x 1inches Slip Tee	Spears	401-010	50	EA	$1.03
	18	1inches x FIP x 1inches Slip Tee	Spears	402-010	50	EA	$1.82
	19	1 1/4inches x 1 1/4inches x 1 1/4inches Slip Tee	Spears	401-012	50	EA	$1.60
	20	1 1/4inches x FIP x 1 1/4inches Slip Tee	Spears	402-012	50	EA	$2.89
	21	1 1/2inches x 1 1/2inches x 1 1/2inches Slip Tee	Spears	401-015	50	EA	$2.07
	22	1 1/2inches x FIP x 1 1/2inches Slip Tee	Spears	402-015	50	EA	$3.75
	23	2inches x 2inches x2inches Slip Tee	Spears	401-020	50	EA	$3.03
	24	2inches x Fip x2inches Slip Tee	Spears	402-020	10	EA	$4.76
	25	3inchesx3inchesx3inches	Spears	401-030	10	EA	$12.24
	26	4inchesx4inchesx4inches	Spears	401-040	6	EA	$20.49
	27	6inchesx6inchesx6inches	Spears	401-060	4	EA	$68.95
	28	**Section C - Fittings Couplings**					
	29	1/2inches Slip	Spears	477-005	50	EA	$0.35
	30	1/2inches Slip x FIP	Spears	435-005	50	EA	$0.43
	31	1/2inches full FIP	Spears	430-005-45	50	EA	$0.48
	32	3/4inches Slip	Spears	477-007	50	EA	$0.40
	33	3/4inches Slip x FIP	Spears	435-007	50	EA	$0.55
	34	3/4inches full FIP	Spears	430-007	50	EA	$0.87
	35	1inches Slip	Spears	477-010	50	EA	$0.64
	36	1inches Slip x FIP	Spears	435-010	50	EA	$0.64
	37	1inches full FIP	Spears	430-010	50	EA	$1.18
	38	1-1/4inches Slip	Spears	429-012	50	EA	$0.84
	39	1-1/4inches Slip x FIP	Spears	435-012	25	EA	$0.99
	40	1-1/4inches full FIP	Spears	430-012	10	EA	$1.28
	41	1-1/2inches Slip	Spears	429-015	50	EA	$0.90
	42	1-1/2inches Slip x FIP	Spears	435-015	25	EA	$1.12
	43	1-1/2inches full FIP	Spears	430-015	25	EA	$1.99
	44	2inches Slip	Spears	429-020	50	EA	$1.37
	45	2inches Slip x FIP	Spears	435-020	20	EA	$1.50
	46	2inches Full FIP	Spears	430-020	25	EA	$5.99
	47	3inches Slip	Spears	429-030	20	EA	$4.73
	48	3inches Slip x FIP	Spears	435-030	10	EA	$5.12
	49	4inches Slip	Spears	429-040	6	EA	$6.34
	50	6inches Slip	Spears	429-060	5	EA	$20.04
	51	**Section D - Fittings Male Adapter**					
	52	1/2inches Slip x MIP	Spears	436-005	50	EA	$0.35
	53	3/4inches Slip x MIP	Spears	436-007	50	EA	$0.39
	54	1inches Slip x MIP	Spears	436-010	50	EA	$0.69
	55	2inches Slip x MIP	Spears	436-020	25	EA	$1.47
	56	3inches Slip x MIP	Spears	436-030	10	EA	$5.87
	57	**Section E - Fittings 45 Elbows**					
	58	1/2inches Slip	Spears	417-005	50	EA	$0.65
	59	3/4inches Slip	Spears	417-007	50	EA	$0.99
	60	1inches Slip	Spears	417-010	50	EA	$1.18
	61	1-1/2inches Slip	Spears	417-015	50	EA	$2.06
	62	2inches Slip	Spears	417-020	50	EA	$2.69
	63	2-1/2inches Slip	Spears	417-025	10	EA	$6.99
	64	3inches Slip	Spears	417-030	10	EA	$10.03
	65	4inches Slip	Spears	417-040	5	EA	$17.98
	66	6inches Slip	Spears	417-060	8	EA	$44.41
	67	**Section F - Fittings Reducer Bushings**					

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	68	6inches x 4inches	Spears	437-532	5	EA	$20.75
	69	6inches x 3inches	Spears	437-530	5	EA	$20.75
	70	6inches x 2inches	Spears	437-528	5	EA	$20.75
	71	4inches x 3inches	Spears	437-422	6	EA	$8.38
	72	4inches x 2inches	Spears	437-420	6	EA	$8.38
	73	4inches x 2inches FIP	Spears	438-420	6	EA	$8.36
	74	3inches x 2inches	Spears	437-338	10	EA	$3.75
	75	3inches x 2inches FIP	Spears	438-338	10	EA	$3.75
	76	2inchesx 1-1/2inches	Spears	437-251	50	EA	$1.72
	77	2inches x 1-1/2inches FIP	Spears	438-251	10	EA	$2.43
	78	2inches x 1-1/4inches	Spears	437-250	10	EA	$1.71
	79	2inches x 1-1/4inches FIP	Spears	438-250	10	EA	$2.43
	80	2inches x 1inches	Spears	437-249	20	EA	$1.72
	81	2inches x 1inches FIP	Spears	438-249	20	EA	$2.43
	82	1inches x 3/4inches	Spears	437-131	50	EA	$0.72
	83	1 x 3/4inches FIP	Spears	438-131	50	EA	$1.03
	84	3/4inches x 1/2inches	Spears	437-101	50	EA	$0.40
	85	3/4inches x 1/2inches FIP	Spears	438-101	50	EA	$0.64
	86	**Section G - Fittings Slip Fix**					
	87	1/2inches	Spears	SH118-05	36	EA	$7.99
	88	3/4inches	Spears	SH118-07	30	EA	$8.84
	89	1inches	Spears	SH118-10	35	EA	$10.17
	90	1-1/4inches	Spears	SH118-12	25	EA	$19.19
	91	1-1/2inches	Spears	SH118-15	32	EA	$20.91
	92	2inches	Spears	SH118-20	30	EA	$32.34
	93	2-1/2inches	Spears	S118-25	5	EA	$46.90
	94	3inches	Spears	S118-30	4	EA	$58.58
	95	**Section H -Risers**					
	96	1/2inches Female x Male Riser Extention	Spears	M434-005-3	100	EA	$0.91
	97	3/4inches Female x Male Riser Extention	Spears	CRE-0750-4	100	EA	$1.79
	98	1inches Female x Male Riser Extention	Spears	434-010	100	EA	$1.52
	99	**Section I - Swing Joints**					
	100	1/2inches X 12 Thread X Thread	Hunter	SJ512	10	EA	$1.84
	101	3/4inches X 12 Thread X Thread	Hunter	SJ712	10	EA	$1.93
	102	1inches X 12 Thread X Thread	King Brothers	TSA-1000-TT	10	EA	$43.82
	103	1 1/2inches X 12 Thread X Thread	Hunter	HSJ332212	10	EA	$45.51
	104	3/4inches X 12 Slip X Thread	Lasco	T722-212	10	EA	$18.03
	105	1inches X 12 Slip X Thread	Lasco	G172-212	10	EA	$16.09
	106	1 1/2inches X 12 Slip X Thread	Lasco	T522-212	10	EA	$14.64
	107	Rainbird 1 1/2inches x 12inches NPT x Acme Thread	RainBird	SJ1212513	10	EA	$41.23
	108	Rainbird 1inches x 12inchesPressure Regulating	RainBird	TSJ100PRS	10	EA	$37.10
	109	**Section J - Spray Heads**					
	110	RD1800 Rainbird 4inches SAM-PRS	RainBird	RD04SP45F	30	EA	$8.79
	111	RD1800 Rainbird 6inches SAM-PRS	RainBird	RD06SP30NP	30	EA	$19.92
	112	RD1800 Rainbird 12inches SAM-PRS	RainBird	RD12SP30FN	30	EA	$24.17
	113	1800 Rainbird 4inches SAM-PRS	RainBird	1804SAMPRS	30	EA	$6.55
	114	1800 Rainbird 6inches SAM-PRS	RainBird	1806SAMPRS	30	EA	$16.86
	115	1800 Rainbird 12inches SAM-PRS	RainBird	1812SAMPRS	30	EA	$20.39
	116	**Section K - Spray Nozzles**					
	117	VAN Series Variable Arc Nozzles	RainBird	P10004 - 4-VAN:3 to 4 feet (0.9 to	50	EA	$1.09
	118	VAN Series Variable Arc Nozzles	RainBird	P10006 - 6-VAN:4 to 6 feet (1.2 to	50	EA	$1.09
	119	VAN Series Variable Arc Nozzles	RainBird	P10008 - 8-VAN:6 to 8 feet (1.8 to	50	EA	$1.09
	120	VAN Series Variable Arc Nozzles	RainBird	P10001001 - 10-VAN:7 to 10 feet	50	EA	$1.09
	121	VAN Series Variable Arc Nozzles	RainBird	P1001201 - 12-VAN:9 to 12 feet (2	50	EA	$1.09
	122	VAN Series Variable Arc Nozzles	RainBird	P1001501 - 15-VAN:11 to 15 feet	50	EA	$1.09
	123	VAN Series Variable Arc Nozzles	RainBird	P10018 - 18-VAN:14 to 18 feet (4.	50	EA	$1.09
	124	Rainbird R-VAN	RainBird	A84664 - R-VAN 14-360	30	EA	$5.47
	125	Rainbird R-VAN	RainBird	A84660 - R-VAN 18	30	EA	$5.47
	126	Rainbird R-VAN	RainBird	A84665 - R-VAN 18-360	30	EA	$5.47
	127	Rainbird R-VAN	RainBird	A84661 - R-VAN 24	30	EA	$5.47
	128	Rainbird R-VAN	RainBird	A84666 - R-VAN 24-360	30	EA	$5.47
	129	Rainbird R-VAN	RainBird	A84667 - R-VAN-LCS	30	EA	$5.47
	130	Rainbird R-VAN	RainBird	A84669 - R-VAN-SST	30	EA	$5.47
	131	Rainbird R-VAN	RainBird	A84668 - R-VAN-RCS	30	EA	$5.47
	132	**Section L - Rotor Heads**					
	133	Rainbird 3504	RainBird	Y34500 - 3504-PC-SAM	40	EA	$14.23
	134	Rainbird 5004 Plus PRS	RainBird	Y65655 - 5004+PCSR	60	EA	$19.81
	135	Rainbird Falcon 6504	RainBird	B65011 - F4FC - Falcon 6504	60	EA	$36.58
	136	Rainbird 8005	RainBird	B81100 - 8005 - 5" Part Circle	60	EA	$67.93
	137	Rainbird 752	RainBird	752	8	EA	$423.91
	138	**Section M - Quick Couplers**					

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	139	Rainbird 33-DRC	RainBird	B11502 - 33DRC	15	EA	$56.17
	140	Rainbird 44-RC	RainBird	B12103 - 44RC	8	EA	$119.01
	141	**Section N - Control Valves**					
	142	Rainbird 1inches PEB	RainBird	B34183 - 100PEB	30	EA	$78.64
	143	Rainbird 1 1/2inches PEB	RainBird	B34383 - 150PEB	24	EA	$105.03
	144	Rainbird 2inches PEB	RainBird	B34583 - 200PEB	24	EA	$141.60
	145	Rainbird 2inches PGA	RainBird	B30510 - 200PGA	24	EA	$104.51
	146	Rainbird 3/4inches XCZ-075-PRF	RainBird	XCZ075PRF	10	EA	$42.20
	147	Rainbird 1inches XCZ-100-PRB-COM	RainBird	XCZ100PRBCOM	10	EA	$194.67
	148	Rainbird 1 1/2inches XCZ-150-LCS	RainBird	XCZ150LCS	5	EA	$256.57
	149	Rainbird 3inches 300-BPES	RainBird	B38013 - 300BPES	4	EA	$751.89
	150	**Section O - Repair**					
	151	Weathermatic Solenoid AC Plastic	Weathermatic	HD24JHPSA - Weathermatic Nitro	5	EA	$23.58
	152	Weathermatic Solenoid AC Brass	Weathermatic	S24BSA	5	EA	$42.98
	153	Weathermatic 1inches Diaphragm Plastic	Weathermatic	11024FCR-10D - BlackBullet 1"	5	EA	$95.22
	154	Weathermatic 1inches Diaphragm Brass	Weathermatic	45-110DMSA	5	EA	$11.57
	155	Weathermatic 1 1/2inches Diaphragm Plastic	Weathermatic	11024FCR-15D - BlackMax 1 1/2"	5	EA	$123.40
	156	Weathermatic 1 1/2inches Diaphragm Brass	Weathermatic	49-110DSMA	5	EA	$9.97
	157	Weathermatic 2inches Diaphragm Plastic	Weathermatic	11024FCR-20D - BlackMax 2"	5	EA	$180.79
	158	Weathermatic 2inches Diaphragm Brass	Weathermatic	50-110DMSA	5	EA	$16.41
	159	Toro Solenoid AC	Toro	118-5982	5	EA	$22.89
	161	Toro 1inches Diaphragm	Toro	35-2824	5	EA	$13.45
	162	Toro 1 1/2inches Diaphragm	Toro	102-0770	5	EA	$19.92
	163	Toro 2inches Diaphragm	Toro	934501	5	EA	$48.02
	164	Rainbird Solenoid AC	RainBird	SOLASSG4	15	EA	$34.97
	165	Rainbird Solenoid DC	RainBird	TBOSPSOL	15	EA	$34.21
	166	Rainbird 1inches Diaphragm	RainBird	100PEB	5	EA	$48.81
	167	Rainbird 1 1/2inches Diaphragm	RainBird	150PEDIBO	5	EA	$62.22
	168	Rainbird 2inches Diaphragm	RainBird	20PEBDIBO	5	EA	$72.53
	169	Rainbird 1inches Diaphragm Brass	RainBird	DIAPH100G	5	EA	$33.62
	170	Rainbird 1 1/2inches Diaphragm Brass	RainBird	DIAPH150EF	5	EA	$51.56
	171	Rainbird 2inches Diaphragm Brass	RainBird	202615P	5	EA	$68.55
	172	Mighty Max 35 AMP	Mighty Max	ML35-12	4	EA	$0.00
	172 ALT1	Ameresco Deka U1 12v at 36Ah	Deka	U1	4	EA	$145.50
	173	K-Rain Replacement Solenoid Kit 24V w/ 1 Rain Bird & 1 Hunter Adapter	K-Rain	P3004755-NLA	8	EA	$26.58
	174	K-Rain Replacement 9V Solenoid Kit w/ 1 Rain Bird & 1 Hunter Adapter	K-Rain	P3004758	8	EA	$22.68
	175	Rainbird 3inches Diaphragm Brass	RainBird		5	EA	$342.93
	176	**Section P - Drip Pipe & Fittings**					
	177	Rainbird 100feet Roll .9 Drip Tubing XFS & XFCV	RainBird	XFS-09-12-100	5	EA	$32.70
	178	Rainbird 500feet Roll .9 Drip Tubing XFS & XFCV	RainBird	XFS-09-12-500	2	EA	$211.88
	179	Rainbird 100feet Roll .6 Drip Tubing XFS & XFCV	RainBird	XFS-06-12-100	5	EA	$42.22
	180	Rainbird 500feet Roll .6 Drip Tubing XFS & XFCV	RainBird	XFS-06-12-500	2	EA	$212.48
	181	Rainbird 17mm Drip Coupling	RainBird	X36370 - XFF-COUP	250	EA	$0.25
	182	Rainbird 17mm Drip Tee	RainBird	X36373 - XFF-TEE	250	EA	$0.37
	183	Rainbird 17mm Drip Elbow	RainBird	X36372 - XFF-ELBOW	250	EA	$0.32
	184	Rainbird 17mm Drip 1/2inchesMPT Male Adapter	RainBird	X36374 - XFF-MA-050	250	EA	$0.36
	185	Rainbird 17mm Drip 3/4inchesMPT Male Adapter	RainBird	X36375 - XFF-MA-075	250	EA	$0.38
	186	Tee male adapter 17mm x ”	RainBird	X36377 - XFF-TFA-050	250	EA	$0.48
	187	Barb cross 17mm x 17mm x 17mm x 17mm	RainBird	X36278 - XFD-CROSS	160	EA	$0.66
	188	Rainbird Drip Tool	RainBird	X36380 - FITING-TOOL	100	EA	$6.34
	189	RainBird 100-ft Polyethylene Riser Flex Pipe	RainBird	A82060 - SPX-FLEX-100	8	EA	$20.50
	190	RAINBIRD - 1/2inches M NPT X 1/2inches BARB ELBOW	RainBird	SBE-050	100	EA	$0.26
	191	RAINBIRD - 1/2inches BARB X 1/2inches BARB X 1/2inches BARB TEE	RainBird	SB-TEE	100	EA	$0.37
	192	RAINBIRD ACETAL SWING PIPE COUPLING 1/2inches BARB	RainBird	SB-CPLG	100	EA	$0.27
	193	RAIN BIRD - 3/4inches MALE NPT X 1/2inches BARB ADAPTER	RainBird	SBE-075	100	EA	$0.27
	194	RAIN BIRD - 1/2inches MARLEX STREET ELBOW FITTING, FEMALE X MALE	RainBird	SWGS050S	100	EA	$0.73
	195	RAIN BIRD - 1/2inches AIR/VACUUM RELIEF VALVE	RainBird	ARV050	100	EA	$7.82
	196	RAIN BIRD - 1/2inches DRIP END CLOSURE	RainBird	EC50/2PK	100	EA	$0.14
	197	RAIN BIRD - 1/2inches FPT THREAD X 1/4inches BARB CONNECTOR	RainBird	XT025	100	EA	$0.78
	198	Tee male adapter 17mm x 3/4inches	RainBird	X36279 - XFD-TFA-075	80	EA	$0.29
	199	1/2inches Lasco Blue Twister Elbow Adapter	Lasco	3300-005	500	EA	$0.36
	200	3/4inches Lasco Blue Twister Elbow Adapter	Lasco	3300-007	500	EA	$0.38
	201	Lasco Blue Twister Tee	Lasco	3100-005	100	EA	$1.10
	202	Lasco Blue Twister Male Adapter 1/2inches	Lasco	3400-005	100	EA	$0.69
	203	Lasco Blue Twister Male Adapter 3/4inches	Lasco	3400-007	100	EA	$0.52
	204	Lasco Blue Twister coupling	Lasco	3201-004	100	EA	$1.00
	205	Tubing cutter		PPC-200X	1	EA	$31.23
	206	Metal Rounded Drip Stakes		TDS-6500	500	EA	$0.08
	207	Hunter Eco-Drip Indicator	Hunter	ECO-ID	20	EA	$8.26
	208	Hunter Bubbler-Nozzles PCN Series	Hunter	PCN-10	50	EA	$1.86
	209	Hunter Bubbler-Nozzles PCN Series	Hunter	PCN-20	50	EA	$1.86

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	210	Hunter Bubbler-Nozzles PCN Series	Hunter	PCN-25	50	EA	$1.86
	211	Hunter Bubbler-Nozzles PCN Series	Hunter	PCN-50	50	EA	$1.86
	212	Hunter Bubbler-Nozzles PCB Series	Hunter	PCB-10	50	EA	$3.75
	213	Hunter Bubbler-Nozzles PCB Series	Hunter	PCB-20	50	EA	$3.56
	214	Hunter Bubbler-Nozzles PCB Series	Hunter	PCB-25	50	EA	$3.75
	215	Hunter Bubbler-Nozzles PCB Series	Hunter	PCB-50	50	EA	$3.52
	216	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-10F	50	EA	$1.75
	217	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-10H	50	EA	$1.75
	218	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-20F	50	EA	$1.75
	219	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-25Q	50	EA	$1.75
	220	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-50Q	50	EA	$1.75
	221	Hunter Bubbler-Nozzles MSBN Series	Hunter	MSBN-50H	50	EA	$1.75
	222	**Section Q - Controls**					
	223	K Rain 2 Station Bluetooth Controller	K-Rain	BLUE-2	4	EA	$141.32
	224	K Rain 4 Station Bluetooth Controller	K-Rain	BLUE-4	4	EA	$182.11
	225	RainbirdWireless Rain/Freeze Sensor	RainBird	WR2RFC	4	EA	$73.90
	226	**Section R - Backflow Prevention**					
	227	Wilkins 1inches RPZ - 375XL	Wilkins	1-375XL	4	EA	$617.15
	228	Wilkins 1 1/2inches RPZ - 375XL	Wilkins	112-375XL	4	EA	$1,116.51
	229	Wilkins 2inches RPZ - 375XL	Wilkins	2-375XL	4	EA	$1,205.45
	230	Wilkins 3inches RPZ - 375AST	Wilkins	375	1	EA	$3,540.00
	231	Wilkins 4inches RPZ - 375AST	Wilkins	375DA 4(Wilkins 4-375ASTDA)	1	EA	$3,845.00
	232	**Section S - Backflow Cover**					
	233	Dekorra Enclosure Small	Dekorra	301-BG-C1	4	EA	$267.20
	234	Dekorra Enclosure Large	Dekorra	302-GT	4	EA	$235.40
	235	Dekorra Insulated Pouch Small	Dekorra	602-GN	4	EA	$45.81
	236	Dekorra Insulated Pouch Large	Dekorra	614-GN	4	EA	$217.31
	237	Hot Box	Hubbell	HB2T	2	EA	$1,057.62
	238	Hot Box	Hubbell	HB3N	1	EA	$3,237.50
	239	**Section T - Valve Boxes**					
	240	NDS 10inches Round Box	NDS	111BC	15	EA	$11.74
	241	NDS Rectangular Box	NDS	113BC	20	EA	$26.65
	242	NDS Jumbo Rectangular Box	NDS	117BC	10	EA	$52.44
	243	**Section U - Wire & Connectores**					
	244	2500feet Roll of 14ga wire Red	Regency	R7001D	2	EA	$375.00
	245	2500feet Roll of 14ga wire White	Regency	R7001D	2	EA	$375.00
	246	2500feet Roll of 14ga wire Yellow	Regency	R7001D	2	EA	$375.00
	247	2500feet Roll of 14ga wire Blue	Regency	R7001D	2	EA	$375.00
	248	King Large Wire Nuts	King DryConn	62250 DryConn	150	EA	$0.87
	249	King Blue Small Wire Nuts	King DryConn	22AWG-12AWG	150	EA	$0.83
	250	King Dry Con	King DryConn	20210	150	EA	$0.60
	251	Rain Bird - 2 Wire	RainBird	142BLK1000	1	EA	$459.00
	252	**Section V - Glue & Primer**					
	253	Christyfeets Red Hot Blue Glue 32oz	Christy's	505201	8	EA	$39.51
	254	Weld-On 711 Gray Glue 32oz	Weld-On	10119	8	EA	$40.93
	255	Weld-On P-68 Purple Primer 32oz	Weld-On	10210	8	EA	$24.30
	256	**Section W - Ball Valves**					
	257	PVC Ball Valve 1/2 in	Spears	2622-005	8	EA	$11.20
	258	PVC Ball Valve 1/2 in. FIPT	Spears	2621-005	8	EA	$13.11
	259	PVC Ball Valve 3/4 in	Spears	2622-007	8	EA	$15.55
	260	PVC Ball Valve 3/4 in. FIPT	Spears	2621-007	8	EA	$12.44
	261	PVC Ball Valve 1 in	Spears	2622-010	8	EA	$21.14
	262	Ball Valve Fipt 150 PSI 1 in	Spears	2621-010	8	EA	$16.91
	263	PVC Ball Valve 1-1/4 in	Spears	2622-012	8	EA	$27.97
	264	PVC Ball Valve 1-1/2 in	Spears	2622-015G	8	EA	$42.70
	265	Ball Valve Fipt 150 PSI 1 - 1/2 in	Spears	2621-015	8	EA	$42.70
	266	Ball Valve 2 in	Spears	2622-020	8	EA	$53.97
	267	PVC Ball Valve 2 in. FIPT	Spears	2621-020	8	EA	$53.97
	268	PVC Ball Valve 3 in	Spears	2622-030	4	EA	$165.68
	269	PVC Ball Valve 4 in	Spears	2622-040	4	EA	$303.67

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EXHIBIT F-CIQ

CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 **Name of vendor who has a business relationship with local governmental entity.**

Longhorn Inc

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.**

N/A

Name of Officer

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

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

N/A

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

Signature of vendor doing business with the governmental entity

11-25-25

Date

Certificate Of Completion

Envelope Id: 168B1722-E8F7-4BD3-8C0C-3A0FE9D1EEB1
Status: Sent
Subject: Please DocuSign: City Council Contract 8950 Irrigation Systems, Supplies, Parts and Accessories
Source Envelope:
Document Pages: 33
Signatures: 3
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Ginny Brummett
901B Texas Street
Denton, TX 76209
Ginny.Brummett@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
1/16/2026 3:51:51 PM
Holder: Ginny Brummett
Ginny.Brummett@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Ginny Brummett Ginny.Brummett@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 1/16/2026 3:54:51 PM Viewed: 1/16/2026 3:55:04 PM Signed: 1/16/2026 3:55:18 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 1/16/2026 3:55:20 PM Viewed: 1/20/2026 9:26:05 AM Signed: 1/20/2026 9:26:22 AM
Leah Bush Leah.Bush@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/20/2026 9:54:09 AM ID: b2511e0c-1b00-4ab2-90f0-8dd87d20471f	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 1/20/2026 9:26:24 AM Viewed: 1/20/2026 9:54:09 AM Signed: 1/20/2026 10:07:04 AM
Matt Swor mswor@longhorninc.com sales Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/20/2026 10:16:37 AM ID: f42288a4-8ba8-44c3-83b9-b0718daa6431	 Signature Adoption: Pre-selected Style Using IP Address: 50.84.212.122	Sent: 1/20/2026 10:07:06 AM Viewed: 1/20/2026 10:16:37 AM Signed: 1/20/2026 10:19:29 AM

Signer Events	Signature	Timestamp
Christine Taylor christine.taylor@cityofdenton.com Assistant City Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by: Christine Taylor 2B3E02ECE3184D8... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/20/2026 10:19:31 AM Viewed: 1/20/2026 10:31:14 AM Signed: 1/20/2026 10:31:30 AM
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: 1/20/2026 10:31:33 AM
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		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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: 1/16/2026 3:55:20 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:**	COPIED	Sent: 1/20/2026 10:31:32 AM Viewed: 1/20/2026 11:25:57 AM

Carbon Copy Events	Status	Timestamp
Not Offered via Docusign		
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Keith Kading Keith.Kading@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/20/2026 7:50:41 AM ID: 665520a2-5649-4719-ae94-0f3a649688e9		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/16/2026 3:54:51 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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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:
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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..
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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, IS 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.
By checking the 'I Agree' box, I confirm that:

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- 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.

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Ennis-Flint, Inc. dba Ennis Traffic Safety Solutions, for the purchase of pavement markings for the Traffic Department to be stocked in the City of Denton Warehouse; providing for the expenditure of funds therefor; and providing an effective date (IFB 8952 – awarded to Ennis-Flint, Inc. dba Ennis Traffic Safety Solutions, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $475,000.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

This Invitation for Bid (IFB) is for the supply of items that are stocked in the Warehouse for ease of accessibility to be used by the Traffic Department in their daily operations, and for the repair and maintenance of the streets. These pavement markers are used in everyday commuting to provide messages to roadway users. They are used on roads to mark bike lanes, if a driver can pass, and to indicate which part of the road to use, etc. Materials will be ordered on an as-needed basis to maintain appropriate stocking levels in the City's Warehouse. As these commodities are "common stock items" in the Warehouse working capital inventory under the City of Denton General Government.

Project Description	Estimated 5-Year Expenditure
Year 1	$80,000.00
Year 2	80,000.00
Year 3	80,000.00
Year 4	80,000.00
Year 5	80,000.00
Contingency for Price Increases	75,000.00
Total	**$475,000.00**

Invitation for Bids was sent to 135 prospective suppliers of this item. In addition, specifications were placed on the Procurement website for prospective suppliers to download, and advertised in the local newspaper.

Four (4) bids meeting specifications were received. The lowest bid was received by Ennis Flint, Inc. dba Ennis Traffic Safety Solutions.

NIGP Code Used for Solicitation:	550 - Markers, Plaques and Traffic Control Devices
Notifications sent for Solicitation sent in IonWave:	135
Number of Suppliers that viewed Solicitation in IonWave:	30
HUB-Historically Underutilized Business Invitations sent out:	13
SBE-Small Business Enterprise Invitations sent out:	46
Responses from Solicitation:	4

RECOMMENDATION

Award a contract to Ennis Flint, Inc. dba Ennis Traffic Safety Solutions, for the purchase of pavement markings for the Traffic Department to be stocked in the City of Denton Warehouse, in a one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $475,000.

PRINCIPAL PLACE OF BUSINESS

Ennis Flint, Inc. dba Ennis Traffic Safety Solutions
Greensboro, NC

ESTIMATED SCHEDULE OF PROJECT

This is an initial one (1) year contract with options to extend the contract for four (4) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

These items will be funded out of the Warehouse Working Capital account, stocked in the Warehouse, and charged back to the using department as needed. The budgeted amount for this item is $475,000.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Bid Tabulation
Exhibit 3: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Keith Kading, 940-349-7178.

Legal point of contact: Leah Bush at 940-349-8333.

Exhibit 2
IFB 8952 - Bid Tabulation for Pavement Markings

						Respondent's Business Name:	**Ennis Flint, Inc. dba Ennis Traffic Safety Solutions**		Centerline Supply		Flasher Equipment Company		Greenville Enterprises LLC	
						Principal Place of Business (City and State):	**Ennis, TX**		Grand Prairie, TX		San Antonio, TX		Southlake, TX	
Line #	**Description**	**Mfgr**	**Mfgno**	**QTY**	**UOM**		**Unit**	**Extended**	**Unit**	**Extended**	**Unit**	**Extended**	**Unit**	**Extended**
2	PADS, BLACK BUNDY 5 inches X 5 inches	Ennis-Flint PreMark	8430055BK	5	PK		**$60.00**	**$300.00**	$115.40	$577.00	$158.89	$794.45	$590.00	$2,950.00
3	BIKE/CHEVRN MARKING 39 inches X 111 inches	Ennis-Flint PreMark	PM600833LVG	5	PK		**$200.00**	**$1,000.00**	$154.06	$770.30	$224.71	$1,123.55	$780.00	$3,900.00
4	MARKING, PAVEMENT WHITE 4 inches X 36 inches	Ennis-Flint PreMark	8432060	12	BX		**$64.00**	**$768.00**	$66.00	$792.00	$96.27	$1,155.24	$580.00	$6,960.00
5	MARKING PAVEMENT WHITE 24 inches X 36 inches	Ennis-Flint PreMark	8430566	60	BX		**$64.00**	**$3,840.00**	$66.00	$3,960.00	$96.27	$5,776.20	$680.00	$40,800.00
6	MARKING PAVEMENT WHITE 12 inchesX36 inches	Ennis-Flint PreMark	8431064	20	BX		**$64.00**	**$1,280.00**	$66.00	$1,320.00	$96.27	$1,925.40	$480.00	$9,600.00
7	MARKING, PAVEMENT BLUE 4 inches X 36 inches	Ennis-Flint PreMark	8432060BHS	5	EA		**$65.00**	**$325.00**	$70.69	$353.45	$103.11	$515.55	$60.00	$300.00
8	MARKING PAVEMENT YELLOW 4 inches X 36 inches	Ennis-Flint PreMark	PM600101	5	EA		**$75.00**	**$375.00**	$70.69	$353.45	$103.11	$515.55	$385.00	$1,925.00
9	MARKING, PAVEMENT WHITE 8 inches X 36 inches	Ennis-Flint PreMark	8432062	20	EA		**$109.00**	**$2,180.00**	$66.00	$1,320.00	$96.27	$1,925.40	$230.00	$4,600.00
10	RUMBLE BAR KIT, 2 inches X 3 feet WHITE	Ennis-Flint Stimsonite	PM602009	8	PK		**$100.00**	**$800.00**	$129.85	$1,038.80	$148.99	$1,191.92	$490.00	$3,920.00
11	C80FH AY-2WAY YELLOW	Ennis-Flint Stimsonite	806132	25	EA		**$96.60**	**$2,415.00**	$1.00	$25.00	$1.03	$25.75	$60.00	$1,500.00
12	C80FH AB-2 WAY BLUE C80 CARTONS WITH INSERTS	Ennis-Flint Stimsonite	806134	10	EA		**$96.60**	**$966.00**	$1.00	$10.00	$1.03	$10.30	$70.00	$700.00
13	C80FH ERW-2 WAY RED/WHT	Ennis-Flint PaveMark	806141	10	EA		**$96.60**	**$966.00**	$1.00	$10.00	$1.03	$10.30	$70.00	$700.00
14	THERMOPLASTIC-CTY/CNTY WHITE	Ennis-Flint PaveMark	884081	10	EA		**$1,344.87**	**$13,448.70**	$1,617.65	$16,176.50	$1,696.50	$16,965.00	$145.00	$1,450.00
15	THERMOPLASTIC CTY/CNTY YELLOW	Ennis-Flint PreMark	884892	8	EA		**$1,344.87**	**$10,758.96**	$1,617.65	$12,941.20	$1,696.50	$13,572.00	$145.00	$1,160.00
16	PADS, WHITE BUNDY 5 inches X 5 inches	Ennis-Flint PreMark	8430055	5	EA		**$100.00**	**$500.00**	$115.40	$577.00	$158.89	$794.45	$45.00	$225.00
17	PADS, YELLOW BUNDY 5 inches X 5 inches	Ennis-Flint PreMark	8430055Y	5	EA		**$100.00**	**$500.00**	$115.40	$577.00	$158.89	$794.45	$45.00	$225.00
18	PADS, GREY BUNDY 8 inches X 8 inches	Ennis-Flint PreMark	8434056	5	EA		**$178.00**	**$890.00**	$174.20	$871.00	$239.88	$1,199.40	$60.00	$300.00
19	ENNIS-FLINT SEALER-5 GL PAIL LOW VOC	Ennis-Flint PreMark	624206-5SL	5	EA		**$203.60**	**$1,018.00**	$155.69	$778.45	$214.39	$1,071.95	$890.00	$4,450.00
20	MARKING HANDICAP SYMBOL SQ 48 inches	Ennis-Flint PreMark	89230230HS	5	BX		**$185.00**	**$925.00**	$131.08	$655.40	$191.20	$956.00	$790.00	$3,950.00
21	MARKING, BIKE LN STRT ARROW 6 feet	Ennis-Flint PreMark	PM602005-5PK	5	EA		**$181.00**	**$905.00**	$128.15	$640.75	$37.38	$186.90	$150.00	$750.00
22	MARKING, BIKE W/RIDER, 6 feet	Ennis-Flint PreMark	PM602006L	2	EA		**$85.00**	**$170.00**	$299.65	$599.30	$87.41	$174.82	$580.00	$1,160.00
23	MARKING, inches ONLY inches, 8 FT	Ennis-Flint PreMark	8130102	10	PK		**$100.00**	**$1,000.00**	$98.89	$988.90	$144.25	$1,442.50	$620.00	$6,200.00
24	YIELD, SHARK TEETH, SMALL , 12 inches x 18 inches	Ennis-Flint PreMark	8232503	4	PK		**$125.00**	**$500.00**	$111.46	$445.84	$162.57	$650.28	$560.00	$2,240.00
25	YIELD, SHARK TEETH, LARGE, 16 inches x 24 inches	Ennis-Flint PreMark	8231006	4	PK		**$104.00**	**$416.00**	$74.05	$296.20	$108.01	$432.04	$390.00	$1,560.00
26	MARKING, PAVEMENT 6 feet PED SYMBOL	Ennis-Flint PreMark	PM600976	5	PK		**$77.00**	**$385.00**	$116.19	$580.95	$79.90	$399.50	$580.00	$2,900.00
27	MARKING, REV TURN ARROW 8 feet	Ennis-Flint PreMark	8330241NB	15	BX		**$150.00**	**$2,250.00**	$138.14	$2,072.10	$201.50	$3,022.50	$630.00	$9,450.00
28	MARKING REV COM TURN ARROW 13 feet	Ennis-Flint PreMark	8330142NB	5	BX		**$178.00**	**$890.00**	$124.91	$624.55	$182.19	$910.95	$550.00	$2,750.00
29	MARKING, RXR SYMBOL 20 feet X 8 feet	Ennis-Flint PreMark	PMK8130103A	2	EA		**$270.00**	**$540.00**	$189.32	$378.64	$276.14	$552.28	$780.00	$1,560.00
30	MARKING, ROUNDABOUT FISH-HOOK 20 ft X 8 ft 7 in white	Ennis-Flint PreMark	PM602004	2	PK		**$260.00**	**$520.00**	$182.12	$364.24	$265.64	$531.28	$750.00	$1,500.00
31	MARKING, SPEED HUMP, 6 feet X 6 feet	Ennis-Flint PreMark	8230126HS	5	PK		**$95.00**	**$475.00**	$60.88	$304.40	$88.80	$444.00	$380.00	$1,900.00
32	MARKING, inches YIELD inches, 8 FT	Ennis-Flint PreMark	8130127	5	PK		**$151.00**	**$755.00**	$107.29	$536.45	$156.50	$782.50	$420.00	$2,100.00
33	MARKING, STRAIGHT ARROW 8 feet	Ennis-Flint PreMark	8330240	5	PK		**$170.00**	**$850.00**	$119.12	$595.60	$173.75	$868.75	$600.00	$3,000.00
34	Paint, Traffic Red Latex-5 Gallon, Fast Dry, WB	Ennis-Flint WaterBorne	7004-5P P	5	Per Pail		**$98.20**	**$491.00**	$119.53	$597.65	$103.19	$515.95	$780.00	$3,900.00
35	Paint, Traffic Blue Latex-5 Gallon, Fast Dry, WB	Ennis-Flint WaterBorne	985205-5P	2	Per Pail		**$86.60**	**$173.20**	$119.53	$239.06	$92.14	$184.28	$790.00	$1,580.00
36	Paint, Traffic White Latex-5 Gallon, Fast Dry, WB	Ennis-Flint WaterBorne	985201-5P	15	Per Pail		**$68.25**	**$1,023.75**	$113.41	$1,701.15	$85.70	$1,285.50	$790.00	$11,850.00
37	Paint, Traffic Yellow Latex-5 Gallon, Fast Dry, WB	Ennis-Flint WaterBorne	985202-5P	15	Per Pail		**$68.25**	**$1,023.75**	$110.47	$1,657.05	$85.70	$1,285.50	$790.00	$11,850.00
38	White Traffic Paint WATERBORNE 55Gal Barrel	Ennis-Flint WaterBorne	985201-55NL	8	DR		**$687.50**	**$5,500.00**	$1,247.53	$9,980.24	$793.44	$6,347.52	$880.00	$7,040.00
39	Yellow Traffic Paint WATERBORNE 55Gal Barrel	Ennis-Flint WaterBorne	985202-55NL	8	DR		**$687.50**	**$5,500.00**	$1,215.18	$9,721.44	$793.44	$6,347.52	$1,400.00	$11,200.00
40	White Traffic Paint WATERBORNE 250 Gallon TOTE	Ennis-Flint WaterBorne	985201-250LG	1	EA		**$3,012.50**	**$3,012.50**	$4,205.88	$4,205.88	$3,967.18	$3,967.18	$6,800.00	$6,800.00
41	Yellow Traffic Paint WATERBORNE 250Gal TOTE	Ennis-Flint WaterBorne	985202-250LG	1	EA		**$3,012.50**	**$3,012.50**	$4,161.76	$4,161.76	$3,967.18	$3,967.18	$6,800.00	$6,800.00
						Total:	**$72,648.36**		$83,798.70		$84,621.79		$187,705.00	

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ENNIS-FLINT, INC. DBA ENNIS TRAFFIC SAFETY SOLUTIONS, FOR THE PURCHASE OF PAVEMENT MARKINGS FOR THE TRAFFIC DEPARTMENT TO BE STOCKED IN THE CITY OF DENTON WAREHOUSE; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 8952 – AWARDED TO ENNIS-FLINT, INC. DBA ENNIS TRAFFIC SAFETY SOLUTIONS, FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF $475,000.00).

WHEREAS, the City has solicited, received, and tabulated competitive bids for the purchase of necessary materials, equipment, supplies, or services in accordance with the procedures of state law and city ordinances; and

WHEREAS, the City Manager, or a designated employee, has reviewed and recommended that the herein described bids are the lowest responsible bids for the materials, equipment, supplies, or services as shown in the "Bid Proposals" submitted therefore; 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 following competitive bids for the materials, equipment, supplies, or services as described in the "Bid Invitations", "Bid Proposals", or plans and specifications on file in the Office of the City's Purchasing Agent filed according to the bid number assigned hereto, are hereby accepted and approved as being the lowest responsible bids:

BID NUMBER	VENDOR	AMOUNT
8952	Ennis-Flint, Inc. dba Ennis Traffic Safety Solutions	$475,000.00

SECTION 2. That by the acceptance and approval of the above competitive bids the City accepts the offer of the persons submitting the bids 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 Bid Invitations, Bid Proposals, and related documents.

SECTION 3. Should the City and the winning bidder(s) wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the bids, the City Manager, or their designated representative, is hereby authorized to execute a 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 Bid Proposal and related documents, and to extend that contract as determined to be advantageous to the City of Denton.

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 _____. The 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

IFB	8952
File Name	Pavement Markings
Purchasing Contact	Ginny Brummett
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

DS
LH

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CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND ENNIS FLINT, INC.
(Contract #8952)

THIS CONTRACT is made and entered into this date _____, by and between Ennis Flint, Inc. a North Carolina corporation , whose address 4161 Piedmont Parkway, STE 370, Greensboro, NC 27410, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or their duly authorized designee.

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

SCOPE OF SERVICES

Contractor shall provide products in accordance with the City's #8952 Pavement Markings a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's IFB 8952 (the "Solicitation") **(Exhibit "B" on file at the office of the Purchasing Agent**);
(c) City of Denton Standard Terms and Conditions **(Exhibit "C");**
(d) Certificate of Interested Parties Electronic Filing **(Exhibit "D");**
(e) Contractor's Proposal ("Contractor's Offer") **(Exhibit "E")**;
(f) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "F")**

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

Prohibition on Contracts with Companies Boycotting Israel
Contractor 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 Contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Contract.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies
Contractor acknowledges that in accordance with Chapter 2276 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

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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, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the Contract.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor 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 Contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (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 this 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.

Prohibition On Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Section 2252 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 Contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapter 2252, is not ineligible to enter into this Contract and will not become ineligible to receive payments under this Contract 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.

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 2275, 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.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

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CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY
CITY MANAGER

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Signed by: Leah Bush 2A936B08B5D7485...

CONTRACTOR

BY: Signed by: Matt Morissette 120BC4CC5A8E492...
AUTHORIZED SIGNATURE

Printed Name: Matt Morissette

Title: Global Supply Chain Director

336-477-8446
PHONE NUMBER

mmorrissette@ppg.com
EMAIL ADDRESS

____2025-1396128_____
TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

THIS CONTRACT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

DocuSigned by: Christine Taylor 2B3E02ECE3184D8...
SIGNATURE

Christine Taylor
PRINTED NAME

Assistant City Manager
TITLE

City Managers Office
DEPARTMENT

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Exhibit A
Special Terms and Conditions

1. The Quantities

The quantities indicated on Exhibit E are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

2. Product Changes During Contract Term

The Contractor shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to purchasing@cityofdenton.com, with the above file number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the contractor's expense. Products that have been installed will be replaced at the contractor's expense.

3. Authorized Distributor

The Contractor shall be the manufacturer or authorized distributor of the proposed products. The distributor shall be authorized to sell to the City of Denton and make available the manufacturer's representative as needed by the City.

4. Contract Terms

The contract term will be one (1) year, effective from date of award. The City and the Contractor shall have the option to renew this contract for an additional four (4) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Contractor's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

5. Price Escalation and De-escalation

On Contractor's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated

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eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The Contractor should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

6. Total Contract Amount

The contract total shall not exceed $475,000. Pricing shall be per Exhibit E attached.

7. Delivery Lead Time

Products or services will be delivered 4 weeks after the receipt of order from the City.

8. Performance Liquidated Damages

The Contractor shall incur contractual payment losses, as initiated by the City for performance that falls short of specified performance standards as outlined below:

- Delivery beyond contracted lead times
- Performance below contracted levels (services only)

The Contractor shall be assessed a one (1%) percent fee each month when any one of the performance standards outlined above are not met in full. The Contractor shall be assessed a two (2%) percent profit fee each month when any two (2) or more performance standards outlined above are not met in full. At the end of each month, the City will review the monthly reports and determine the percentage of penalty to be assessed to the Contractor's monthly profit margin.

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Exhibit B
City of Denton's IFB # 8952

On File at the Office of the Purchasing Agent

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Exhibit C
City of Denton
Standard Purchase Terms and Conditions

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

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

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

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

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

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

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

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

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

8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract to perform but not afterward. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

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

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

10. **WORKFORCE** This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way.

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A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not (1) while engaged in, participating, or responding to a solicitation; or (2) while in the course and scope of delivering goods or services under a City of Denton contract; or (3) on the City's property.

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

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

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

IMMIGRATION: THE CONTRACTOR REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE REQUIREMENTS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 AND 1990 REGARDING EMPLOYMENT VERIFICATION AND RETENTION OF VERIFICATION FORMS FOR ANY INDIVIDUALS HIRED ON OR AFTER NOVEMBER 6, 1986, WHO WILL PERFORM ANY LABOR OR SERVICES UNDER THE CONTRACT AND THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 ("IIRIRA) ENACTED ON SEPTEMBER 30, 1996, AND SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY ACTION ARISING RELATED THERETO.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS**: This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules, and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**

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

12. **INVOICES**:
A. The Contractor shall submit separate invoices on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
B. **Proper Invoices must include a unique invoice number, invoice date, the purchase order number, and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department**. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if

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applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

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

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

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:

A. All proper invoices need to be sent to Accounts Payable – accountspayable@cityofdenton.com. Approved invoices will be paid within thirty (30) calendar days of the invoice being received in Accounts Payable.

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

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

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

i. delivery of defective or non-conforming deliverables by the Contractor;

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

iii. failure of the Contractor to pay Subcontractors, or for labor, materials, or equipment;

iv. damage to the property of the City or the City's agents, employees, or contractors, which is not covered by insurance required to be provided by the Contractor;

v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, all required attachments, and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given to any awarded firm who is in arrears to the City for delinquent taxes of any kind or otherwise indebted to the City that the City shall be entitled to counterclaim and/or offset against any such debt, claim, demand, or account owed to the City through payment withholding until the debt is paid in full, and no assignment of such debt, claim, demand, or account after the said taxes or debt are due shall affect the right of the City to offset the said taxes or debt against same.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or

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electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
G. The Contractor acknowledges and agrees that the awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City will not incur a debt or obligation to pay Contractor any amounts the City does not have the current funds available to pay. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty or liability to the City, nor removal fees, cancellation fees, or the like charged to the City.

14. **TRAVEL EXPENSES**: All travel, lodging, and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the Contract Documents. During the term of this Contract, the Contractor shall bill and the City shall reimburse Contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the Contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. **FINAL PAYMENT AND CLOSE-OUT**:
A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the fifteenth (15^{th}) calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.
B. The making and acceptance of final payment will constitute:

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

ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. **RIGHT TO AUDIT**:
A. The Contractor agrees that the City shall, until the expiration of five (5) years after final payment under this Contract unless required to be retained for longer under applicable law, have

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electronic access to and the right to examine all books, records, and computations pertaining to this Contract. If necessary, the City shall have the right to audit and make copies of the books, records, and computations pertaining to the Contract. The Contractor shall retain such books, records, documents, and other evidence pertaining to the Contract period and five (5) years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents, and other evidence shall be available, within ten (10) business days of written request. All books and records will be made available within a fifty (50) mile radius of the City of Denton if the vendor is not able to provide electronic access. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Subcontractor, material supplier, or other payee agrees that the City shall, until the expiration of five (5) years after final payment under the subcontract unless required to be retained for longer under applicable law, have electronic access to and the right to examine all books, records, documents, and other evidence of the Subcontractor, material supplier, or other payee involving transactions relating to the subcontract. If necessary, the City maintains the right to photocopy any physical books, documents, papers, and records of the subconsultant involving transactions relating to the subcontract. All books and records will be made available within a fifty (50) mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

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

18. **SUBCONTRACTORS**:

A. If the Contractor-identified subcontractors ("Subcontractor") in a DBE/MBE/WBE agreed-to plan (the "Plan"), the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract Documents, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract

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without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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

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

19. **WARRANTY-PRICE**:

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

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

C. In the event Contractor breaches this warranty, in addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase, or in the alternative, the City may cancel this Contract without liability to Contractor for breach.

20. **WARRANTY – TITLE**: **The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests, and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.**

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

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U.S. Department of Labor under the Occupational Safety and Health Act (OSHA). In the event the product does not conform to OSHA standards, City may return the product for correction or replacement at the Contractor's expense. In the event Contractor fails to make the appropriate correction within a reasonable time, correction made by City will be at Contractor's expense.

A. Recycled deliverables shall be clearly identified as such.

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

C. Unless otherwise specified in the Contract or required by the Solicitation, the warranty period shall be at least one (1) year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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

F. Contractor shall not limit, exclude, or disclaim any implied warranties, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

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

A. The Contractor may not limit, exclude, or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one (1) year from the date of acceptance of the work. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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

24. **RIGHT TO ASSURANCE**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified (being a minimum of 5 days) after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

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

26. **DEFAULT**:
A. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely, and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 25, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
B. In the event the City terminates the awarded contract for default or any other reason, the Contractor shall not be relieved of liability to the City for damages sustained by the City by reason of any default of the contract by the Contractor or otherwise, and the City may withhold any payments to the Contractor for the purpose of an offset until such time as the amount of damages due the City from the Contractor can be determined.

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs,

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losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and/or any offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause and/or for convenience any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof, provided such payment amount is not disputed by City. The City reserves all rights, causes of action, and remedies available under law or in equity with respect to any dispute under this Contract and a termination under this provision does not waive such rights, causes of action, and remedies.

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

30. **DELAYS**:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in Paragraph 53. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

31. **TIME OF COMPLETION AND LIQUIDATED DAMAGES**: Contractor agrees and acknowledges that completing the services and/or delivering the goods described in this Contract in a timely manner is very important to the City. Contractor agrees to perform all obligations within the timeframes required. As it is impracticable and extremely difficult to fix the actual damages, if any, that may proximately result from a failure by Contractor to provide the goods or

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perform the service, should Contractor fail to timely perform its obligations, Contractor agrees to pay to City, or have withheld and offset from monies due it, the amount stated in the Contract Documents as liquidated damages for each calendar day of delay or nonperformance. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract. Execution of the Contract shall constitute agreement by the City and Contractor that said amount is the minimum value of the costs and actual damage caused by the Contractor's failure to timely perform. Adjustments to the contract times can only be made as provided in the Contract Documents and any conditions or specifications referenced therein.

32. **INDEMNITY**:

A. Definitions:

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

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

33. **LIMITATION OF LIABILITY**: This Contract does not, and shall not be interpreted to, contain an artificial limitation of liability (e.g. liability limited to contract price or liability capped at an amount actually paid in previous 3 months, etc.) or an artificial statute of limitations (e.g. any lawsuit must be commenced within one year of the event).

34. **INSURANCE**: The Contractor shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton outlined in the Insurance Exhibit attached hereto, if applicable. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton. The City of Denton reserves the right to add insurance during the contract term.

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

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Solicitation and the Insurance Exhibit.

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

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

37. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

38. **INDEMNIFICATION AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. Moreover, Contractor does not know of any valid basis for any such claims. **THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM: (I) ANY CLAIM THAT THE CITY'S EXERCISE ANYWHERE IN THE WORLD OF THE RIGHTS ASSOCIATED WITH THE CITY'S' OWNERSHIP, AND IF APPLICABLE, LICENSE RIGHTS, AND ITS USE OF THE DELIVERABLES INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; OR (II) THE CONTRACTOR'S BREACH OF ANY OF CONTRACTOR'S REPRESENTATIONS OR WARRANTIES STATED IN THIS CONTRACT. IN THE EVENT OF ANY SUCH CLAIM, THE CITY SHALL HAVE THE**

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RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF. FURTHER, CONTRACTOR AGREES THAT THE CITY'S SPECIFICATIONS REGARDING THE DELIVERABLES SHALL IN NO WAY DIMINISH CONTRACTOR'S WARRANTIES OR OBLIGATIONS UNDER THIS PARAGRAPH AND THE CITY MAKES NO WARRANTY THAT THE PRODUCTION, DEVELOPMENT, OR DELIVERY OF SUCH DELIVERABLES WILL NOT IMPACT SUCH WARRANTIES OF CONTRACTOR. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

39. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 41 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon

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delivery of such deliverables to the City or at such other time as the City may request.
C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 41 A., B., and C. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 40 above.

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

42. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, State, or local government.

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

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

45. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: The Contractor agrees to comply with the conflict of interest provisions of the City of Denon Code of Ordinances and/or State law. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that

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solicitation as defined in the City's Ethic Ordinance codified at Chapter 2, Article XI and in the City Charter Section 14.04, as amended. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire. The Contractor agrees to maintain current, updated disclosure of information on file with the Procurement Department throughout the term of this Contract.

46. **NO SUBCONTRACTING BID AFTER AWARD**: Following the award of the Contract, no subcontracting except that specifically identified in the response to the Solicitation will be permitted without the express prior written consent of the City.

47. **NO GIFT OF PUBLIC PROPERTY**: The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Contractor.

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

49. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

50. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either

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the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

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

52. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

53. **DISPUTE RESOLUTION**:

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

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

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for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
C. The parties shall not be required to submit to binding arbitration.

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

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

56. **HOLIDAYS:** The following holidays are observed by the City:

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

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

57. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract for fifteen (15) years.

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

59. **EQUAL OPPORTUNITY** Contractor agrees that during the performance of its contract it will:
A. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age, or handicap.
B. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or request. The Contractor shall be advised of any complaints filed with the City alleging that Contractor is not an Equal Opportunity Employer. The City reserves the right to consider its reports from its human relations administrator in response to such complaints in determining whether or not to terminate any portion of this contract for which purchase orders or authorities to deliver have not been included, however, the Contractor is specifically advised that no Equal Opportunity Employment complaint will be the basis for cancellation of this contract for which a purchase order has been issued or authority to deliver granted.
C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined
in the ADA.

60. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**
The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –
i. "Component" means an article, material, or supply incorporated directly into an end product.
ii. "Cost of components" means -
(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
iii. "Domestic end product" means-
(1) An unmanufactured end product mined or produced in the United States; or
(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

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iv. “End product” means those articles, materials, and supplies to be acquired under the contract for public use.
v. “Foreign end product” means an end product other than a domestic end product.
vi. “United States” means the 50 States, the District of Columbia, and outlying areas.
B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Contractor shall submit documentation with their offer demonstrating that the article is on an approved Governmental list.
D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled “Buy American Act Certificate”.

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

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

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

64. **COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The Contractor or supplier shall comply with all State, federal, and local laws and requirements. The Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; and (iii) Chapter 552 of the Texas Government Code, which outlines policy for public information. The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

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

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66. **ATTORNEY'S FEES; LEGAL COSTS:** Contractor and City agree that the City will not be required to pay Contractor's attorney's fees or legal costs under any circumstances, unless expressly required by law.

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

68. **CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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

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

72. **RECORDS RETENTION:** The Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Contractor shall grant access

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to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract. In the event the value of this Contract is One Million ($1,000,000) Dollars or greater: (i) all contracting information related to this contract will be preserved for the duration of the Contact; (ii) the Contractor shall provide any contracting information in its possession promptly upon request by the City; and (iii) at the expiration of this Contract, the Contractor will either provide all contracting information in its possession to the City or preserve same as required by the record retention requirements of the State of Texas.

73. **PROCUREMENT LAWS**: The City will not agree to any terms or conditions that cause the City to violate any federal, State, or local procurement laws, including its own Charter or Procurement Policy and any such laws included in boilerplate terms, online terms or other terms provided by the Contractor are considered null and void.

74. **AUTHORITY**: Contractor represents and warrants to the other that (a) it has company authority to execute and perform this Contract; (b) executing this Contract does not constitute a material conflict with, breach, or default under any applicable law, its respective organizational documents, or any documents, agreements, contracts or instruments which are binding upon it; and (c) this Contract creates valid, legal, and binding obligation enforceable against it, subject to applicable insolvency and bankruptcy laws. Contractor recognizes and agrees that a violation of this provision constitutes a material breach under this Contract.

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Exhibit D
Certificate of Interested Parties Electronic Filing

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

Contractor will be required to furnish a Certificate of Interest Parties before the Contract is awarded, in accordance with Government Code 2252.908.

The Contractor shall:

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

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

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Exhibit E

Line #	Description	Mfgr	Mfgno	QTY	UOM	Ennis Paint Inc, dba Ennis Traffic Safety Solutions (Ennis Paint Inc)
2	PADS, BLACK BUNDY 5 inches X 5 inches	Ennis-Flint PreMark	8430055BK	5	PK	$60.00
3	BIKE/CHEVRN MARKING 39 inchesX 111 inches	Ennis-Flint PreMark	PM600833LVG	5	PK	$200.00
4	MARKING, PAVEMENT WHITE 4 inches X 36 inches	Ennis-Flint PreMark	8432060	12	BX	$64.00
5	MARKING PAVEMENT WHITE 24 inches X 36 inches	Ennis-Flint PreMark	8430566	60	BX	$64.00
6	MARKING PAVEMENT WHITE 12 inchesX36 inches	Ennis-Flint PreMark	8431064	20	BX	$64.00
7	MARKING, PAVEMENT BLUE 4 inches X 36 inches	Ennis-Flint PreMark	8432060BHS	5	EA	$65.00
8	MARKING PAVEMENT YELLOW 4 inches X 36 inches	Ennis-Flint PreMark	PM600101	5	EA	$75.00
9	MARKING, PAVEMENT WHITE 8 inches X 36 inches	Ennis-Flint PreMark	8432062	20	EA	$109.00
10	RUMBLE BAR KIT, 2 inches X 3 feet WHITE	Ennis-Flint Stimsonite	PM602009	8	PK	$100.00
11	C80FH AY-2WAY YELLOW	Ennis-Flint Stimsonite	806132	25	BX	$96.60
12	C80FH AB-2 WAY BLUE C80 CARTONS WITH INSERTS	Ennis-Flint Stimsonite	806134	10	BX	$96.60
13	C80FH ERW-2 WAY RED/WHT	Ennis-Flint PaveMark	806141	10	BX	$96.60
14	THERMOPLASTIC-CTY/CNTY WHITE	Ennis-Flint PaveMark	884081	10	EA	$1,344.87
15	THERMOPLASTIC CTY/CNTY YELLOW	Ennis-Flint PreMark	884892	8	EA	$1,344.87
16	PADS, WHITE BUNDY 5 inches X 5 inches	Ennis-Flint PreMark	8430055	5	EA	$100.00
17	PADS, YELLOW BUNDY 5 inches X 5 inches	Ennis-Flint PreMark	8430055Y	5	EA	$100.00
18	PADS, GREY BUNDY 8 inches X 8 inches	Ennis-Flint PreMark	8434056	5	EA	$178.00
19	ENNIS-FLINT SEALER-5 GL PAIL LOW VOC	Ennis-Flint PreMark	624206-5SL-New sku # 624209-5SL	5	EA	$203.60
20	MARKING HANDICAP SYMBOL SQ 48 inches	Ennis-Flint PreMark	89230230HS	5	BX	$185.00
21	MARKING, BIKE LN STRT ARROW 6 feet	Ennis-Flint PreMark	PM602005-5PK	5	EA	$181.00
22	MARKING, BIKE W/RIDER, 6 feet (sold 5pk)	Ennis-Flint PreMark	PM602006L	2	PK	$425.00
23	MARKING, inches ONLY inches, 8 FT	Ennis-Flint PreMark	8130102	10	PK	$100.00
24	YIELD, SHARK TEETH, SMALL , 12 inches x 18 inches	Ennis-Flint PreMark	8232503	4	PK	$125.00
25	YIELD, SHARK TEETH, LARGE, 16 inches x 24 inches	Ennis-Flint PreMark	8231006	4	PK	$104.00
26	MARKING, PAVEMENT 6 feet PED SYMBOL	Ennis-Flint PreMark	PM600976	5	PK	$77.00
27	MARKING, REV TURN ARROW 8 feet	Ennis-Flint PreMark	8330241NB	15	BX	$150.00
28	MARKING REV COM TURN ARROW 13 feet	Ennis-Flint PreMark	8330142NB	5	BX	$178.00
29	MARKING, RXR SYMBOL 20 feet X 8 feet	Ennis-Flint PreMark	PMK8130103A	2	EA	$270.00
30	MARKING, ROUNDABOUT FISH-HOOK 20 feet X 8 feet 7 inches WHITE	Ennis-Flint PreMark	PM602004	2	PK	$260.00
31	MARKING, SPEED HUMP, 6 feet X 6 feet	Ennis-Flint PreMark	8230126HS	5	PK	$95.00
32	MARKING, inches YIELD inches, 8 FT	Ennis-Flint PreMark	8130127	5	PK	$151.00
33	MARKING, STRAIGHT ARROW 8 feet	Ennis-Flint PreMark	8330240	5	PK	$170.00
34	Paint, Traffic Red Latex-5 Gallon, Fast Dry, WB	Ennis-Flint WaterBorne	7004-5P P	5	Per Pail	$98.20
35	Paint, Traffic Blue Latex-5 Gallon, Fast Dry, WB	Ennis-Flint WaterBorne	985205-5P	2	Per Pail	$86.60
36	Paint, Traffic White Latex-5 Gallon, Fast Dry, WB	Ennis-Flint WaterBorne	985201-5P	15	Per Pail	$68.25
37	Paint, Traffic Yellow Latex-5 Gallon, Fast Dry, WB	Ennis-Flint WaterBorne	985202-5P	15	Per Pail	$68.25
38	White Traffic Paint WATERBORNE 55Gal Barrel	Ennis-Flint WaterBorne	985201-55NL	8	DR	$687.50
39	Yellow Traffic Paint WATERBORNE 55Gal Barrel	Ennis-Flint WaterBorne	985202-55NL	8	DR	$687.50
40	White Traffic Paint WATERBORNE 250 Gallon TOTE	Ennis-Flint WaterBorne	985201-250LG	1	EA	$3,012.50
41	Yellow Traffic Paint WATERBORNE 250Gal TOTE	Ennis-Flint WaterBorne	985202-250LG	1	EA	$3,012.50

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CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 **Name of vendor who has a business relationship with local governmental entity.**

Ennis-Flint, Inc.

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.**

N/A

Name of Officer

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

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐ Yes ☐ No

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

4 ☒ **I have no Conflict of Interest to disclose.**

5

Signature of vendor doing business with the governmental entity

11/17/2025

Date

Certificate Of Completion

Envelope Id: 1224B015-4036-4862-8614-FFD967F7A9CC
Status: Sent
Subject: Please DocuSign: City Council Contract 8952 Pavement Markings
Source Envelope:
Document Pages: 31
Signatures: 3
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Christa Christian
901B Texas Street
Denton, TX 76209
Christa.Christian@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
12/15/2025 3:15:27 PM
Holder: Christa Christian
Christa.Christian@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Christa Christian Christa.Christian@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 12/15/2025 3:20:51 PM Viewed: 12/15/2025 3:21:02 PM Signed: 12/15/2025 3:21:05 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DS  Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 12/15/2025 3:21:08 PM Viewed: 12/15/2025 4:06:42 PM Signed: 12/15/2025 4:06:50 PM
Leah Bush leah.bush@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 12/16/2025 1:58:17 PM ID: f023250b-01ec-4868-9d2d-19b46040ebaa	Signed by:  2A936B08B5D7485... Signature Adoption: Pre-selected Style Using IP Address: 63.196.246.37	Sent: 12/15/2025 4:06:53 PM Viewed: 12/16/2025 1:58:17 PM Signed: 12/16/2025 1:59:06 PM
Matt Morissette mmorrissette@ppg.com Global Supply Chain Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/5/2026 6:58:35 AM ID: 4d90f472-101c-442e-977f-86559fc7b4a6	Signed by:  120BC4CC5A8E492... Signature Adoption: Pre-selected Style Using IP Address: 165.85.173.76	Sent: 12/16/2025 1:59:09 PM Resent: 12/31/2025 8:49:13 AM Resent: 1/12/2026 11:14:29 AM Viewed: 1/14/2026 7:51:18 AM Signed: 1/14/2026 7:51:47 AM

Signer Events	Signature	Timestamp
Christine Taylor christine.taylor@cityofdenton.com Assistant City Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by: Christine Taylor 2B3E02ECE3184D8... Signature Adoption: Pre-selected Style Using IP Address: 47.186.216.95 Signed using mobile	Sent: 1/14/2026 7:51:52 AM Viewed: 1/15/2026 3:48:06 PM Signed: 1/15/2026 3:53:17 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: 1/15/2026 3:53:21 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		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

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: 12/15/2025 3:21:08 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:**	COPIED	Sent: 12/15/2025 4:06:53 PM Viewed: 12/15/2025 5:55:53 PM

Carbon Copy Events	Status	Timestamp
Not Offered via Docusign		
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: 1/15/2026 3:53:20 PM Viewed: 1/20/2026 8:24:29 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Keith Kading keith.kading@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/20/2026 7:50:41 AM ID: 665520a2-5649-4719-ae94-0f3a649688e9		
Ginny Brummett ginny.brummett@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/15/2025 3:20:51 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
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.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
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, IS 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.
By checking the 'I Agree' box, I confirm that:

- 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.

City of Denton

City Hall
215 E. McKinney St.
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Parks and Recreation

ACM: Christine Taylor, Assistant City Manager

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton granting a noise exception for the 2026 Run Different special event run series: Western Invasion, Rubiks Cube, Rose Run, Instant Classic, Run 4 Babies, Haunting Experience, and Black Friday Turkey Trot which will be held on Sunday, March 22, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, April 25, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, May 9, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, September 5, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, October 10, 2026, from 6:00 a.m. to 11:00 a.m., Friday, October 30, 2026, from 5:00 p.m. to 9:00 p.m., Friday, November 27, 2026, from 6:00 a.m. to 11:00 a.m., at North Lakes Park (2001 W. Windsor Dr.); and providing an effective date.

BACKGROUND

Run Different intends to host a series of 5K and 10K races and fun runs in Denton on a semi-monthly schedule. Event organizers anticipate around 200 participants at each special event. The events are scheduled Sunday, March 22, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, April 25, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, May 9, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, September 5, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, October 10, 2026, from 6:00 a.m. to 11:00 a.m., Friday, October 30, 2026, from 5:00 p.m. to 9:00 p.m., and Friday, November 27, 2026, from 6:00 a.m. to 11:00 a.m.

The Run Different event planners are requesting an exception to the noise ordinance with respect to sound levels from 65 dba to 70 dba and hours of operation on Sunday, March 22, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, April 25, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, May 9, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, September 5, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, October 10, 2026, from 6:00 a.m. to 11:00 a.m., Friday, October 30, 2026, from 5:00 p.m. to 9:00 p.m., Friday, November 27, 2026, from 6:00 a.m. to 11:00 a.m.

OPTIONS

Approve, amend or deny.

RECOMMENDATION

Staff recommends approval of this request.

PRIOR ACTION/REVIEW

This event organizer has completed the special event permitting process for this event series since 2024. This is the first instance of a request for noise exemption.

EXHIBITS

Exhibit 1- Agenda Information Sheet
Exhibit 2- Ordinance
Exhibit 3- Site Map

Respectfully submitted:
Allison Wing, Interim Parks and Recreation Director

Prepared by:
Meredith Jones, Special Events Coordinator

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON GRANTING A NOISE EXCEPTION FOR THE 2026 RUN DIFFERENT SPECIAL EVENT RUN SERIES: WESTERN INVASION, RUBIKS CUBE, ROSE RUN, INSTANT CLASSIC, RUN 4 BABIES, HAUNTING EXPERIENCE, AND BLACK FRIDAY TURKEY TROT WHICH WILL BE HELD ON SUNDAY, MARCH 22, 2026, FROM 6:00 A.M. TO 11:00 A.M., SATURDAY, APRIL 25, 2026, FROM 6:00 A.M. TO 11:00 A.M., SATURDAY, MAY 9, 2026, FROM 6:00 A.M. TO 11:00 A.M., SATURDAY, SEPTEMBER 5, 2026, FROM 6:00 A.M. TO 11:00 A.M., SATURDAY, OCTOBER 10, 2026, FROM 6:00 A.M. TO 11:00 A.M., FRIDAY, OCTOBER 30, 2026, FROM 5:00 P.M. TO 9:00 P.M., FRIDAY, NOVEMBER 27, 2026, FROM 6:00 A.M. TO 11:00 A.M., AT NORTH LAKES PARK (2001 W. WINDSOR DR.); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 17-20 of the Code of Ordinances of the City of Denton, the City Council may make exceptions upon application for sound levels or hours of operation when the public interest will be served thereby; and

WHEREAS, Run Different has made an application to the City Council for an exception to Section 17-20 of the Code of Ordinances regarding sound levels and hours of operation, in connection with the Run Different special event series, which will be will be held on Sunday, March 22, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, April 25, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, May 9, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, September 5, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, October 10, 2026, from 6:00 a.m. to 11:00 a.m., Friday, October 30, 2026, from 5:00 p.m. to 9:00 p.m., Friday, November 27, 2026, from 6:00 a.m. to 11:00 a.m., at North Lakes Park (2001 W. Windsor Dr.); and providing an effective date; and

WHEREAS, Run Different has agreed to responsibly operate the Run Different special event series, at amplified sound levels restricted in Section 17-20 of the Code of Ordinances of the City of Denton, within the public interest, and without materially disturbing persons of ordinary sensibilities in the immediate vicinity thereof; and

WHEREAS, the City Council of the City of Denton, finds that granting a noise exception for this event, subject to the restrictions contained herein, would serve the public interest; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Pursuant to Section 17-20 of the Code of Ordinances, Run Different is granted an exception to said section's amplified sound prohibition subject to the following restrictions:

1. This exception to the limitations imposed by Section 17-20 of the Code of Ordinances of the City of Denton, is granted only in connection with the operation of the Run Different special event series at North Lakes Park in Denton, Texas, on Sunday, March 22, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, April 25, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, May 9, 2026, from 6:00 a.m. to 11:00 a.m., Saturday, September 5, 2026, from

6:00 a.m. to 11:00 a.m., Saturday, October 10, 2026, from 6:00 a.m. to 11:00 a.m., Friday, October 30, 2026, from 5:00 p.m. to 9:00 p.m., Friday, November 27, 2026, from 6:00 a.m. to 11:00 a.m.

2. Run Different agrees to take full responsibility for ensuring that the conditions of this exception are met and to take all reasonable measures necessary to avoid disturbing persons of ordinary sensibilities in the immediate vicinity of the event.

3. Run Different agrees to cease using amplified loudspeakers on Sunday, March 22, 2026, at 11:00 a.m., Saturday, April 25, 2026, at 11:00 a.m., Saturday, May 9, 2026, at 11:00 a.m., Saturday, September 5, 2026, at 11:00 a.m., Saturday, October 10, 2026, at 11:00 a.m., Friday, October 30, 2026, at 9:00 p.m., and Friday, November 27, 2026, at 11:00 a.m.

4. Under no circumstances shall Run Different employ the use of amplified loudspeakers past 11:00 a.m. on Sunday, March 22, 2026, 11:00 a.m. on Saturday, April 25, 2026, 11:00 a.m. on Saturday, May 9, 2026, 11:00a.m. on Saturday, September 5, 2026, 11:00 a.m. on Saturday, October 10, 2026, 9:00 p.m. on Friday, October 30, 2026, 11:00 a.m. on Friday, November 27, 2026.

5. Under no circumstances shall Run Different employ the use of amplified loudspeakers that exceeds 70 dba for an outdoor event when measured from the perimeter of the source as measured by an approved measuring instrument.

6. This Ordinance confers no personal or property rights, and may be amended, modified, suspended, or revoked in whole or in part at the will of the City Council of the City of Denton, without any warning, hearing, or compensation, for any reason at all, or for no reason.

7. This Ordinance shall be strictly construed as an exception granted pursuant to Section 17-20 of the Code of Ordinances of the City of Denton. The City of Denton expressly reserves unto itself and all other persons any and all legal remedies, both civil and criminal, relating to excessive noise in correction with this annual event, and hereby disclaims any promissory, or equitable estoppel which might in any way impede the pursuit of such remedies by any person.

SECTION 2. This Ordinance shall be effective immediately upon its passage and approval and shall expire upon the completion of the Run Different special event on Sunday, March 22, 2026, at 11:00 a.m., Saturday, April 25, 2026, at 11:00 a.m., Saturday, May 9, 2026, at 11:00 a.m., Saturday, September 5, 2026, at 11:00 a.m., Saturday, October 10, 2026, at 11:00 a.m., Friday, October 30, 2026, at 9:00 p.m., Friday, November 27, 2026, at 11:00 a.m., unless sooner repealed, modified, or rescinded.

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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____



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City Hall
215 E. McKinney St.
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AGENDA INFORMATION SHEET

DEPARTMENT: Parks and Recreation

ACM: Christine Taylor, Assistant City Manager

DATE: February 17, 2026

SUBJECT
Consider the adoption of an ordinance of the City of Denton granting The Greater Denton Arts Council, a noise exception for the Video Art Night event on Friday, March 6, 2026, from 6:00 p.m. to 10:00 p.m. at Quakertown Park; and providing an effective date.

BACKGROUND
The first-time event, Video Art Night features a live band and ten LED screens arranged throughout Quakertown Park showcasing various digital artworks.

RECOMMENDATION

Staff recommends approval.

ESTIMATED SCHEDULE OF PROJECT
N/A

PRIOR ACTION/REVIEW (Council, Boards, Commissions)
N/A

FISCAL INFORMATION
N/A

BID INFORMATION
N/A

EXHIBITS
Exhibit 1- Agenda Information Sheet
Exhibit 2- Ordinance

Respectfully submitted:
Allison Wing, Interim Parks and Recreation Director

Prepared by:
Barry Feldner, Parks and Recreation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON GRANTING THE GREATER DENTON ARTS COUNCIL A NOISE EXCEPTION FOR THE VIDEO ART NIGHT EVENT ON FRIDAY, MARCH 6, 2026, FROM 6:00 P.M. TO 10:00 P.M. AT QUAKERTOWN PARK; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 17-20 of the Code of Ordinances of the City of Denton, the City Council may make exceptions upon application for sound levels or hours of operation when the public interest will be served thereby; and

WHEREAS, The Video Art Night has made an application to the City Council for an exception to Section 17-20 of the Code of Ordinances regarding sound levels and hours of operation, in connection with the Video Art Night, which will be held on Friday, March 6, 2026, from 6 p.m. to 10:00 p.m., at Quakertown Park in Denton, Texas; and

WHEREAS, Video Art Night will showcase ten LED screens with various digital artworks and a live band; and

WHEREAS, the City Council of the City of Denton finds that granting a noise exception for this event, subject to the restrictions contained herein, would serve the public interest; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Pursuant to Section 17-20 of the Code of Ordinances, Video Art Night is hereby granted an exception to said section's amplified sound prohibition subject to the following restrictions:

1. This exception to the limitations imposed by Section 17-20 of the Code of Ordinances of the City of Denton, is granted only in connection with the operation of the Video Art Night event in Denton, Texas, on Friday, March 6, 2026, from 6 p.m. to 10:00 p.m.

2. Video Art Night agrees to take full responsibility for ensuring that the conditions of this exception are met and to take all reasonable measures necessary to avoid disturbing persons of ordinary sensibilities in the immediate vicinity of the event.

3. Video Art Night agrees to cease using amplified loudspeakers on Friday, March 6, 2026, at 10:00 p.m.

4. Under no circumstances shall Video Art Night employ the use of amplified loudspeakers past 10:00 p.m. on Friday, March 6, 2026.

5. The Director of Parks and Recreation may approve modifications to the dates and times of the events.

6. Under no circumstances shall Video Art Night employ the use of amplified loudspeakers that exceeds 75 dba for an outdoor event when measured from the perimeter of the source as measured by an approved measuring instrument.

7. This Ordinance confers no personal or property rights, and may be amended, modified, suspended, or revoked in whole or in part at the will of the City Council of the City of Denton, without any warning, hearing, or compensation, for any reason at all, or for no reason.

8. This Ordinance shall be strictly construed as an exception granted pursuant to Section 17- 20 of the Code of Ordinances of the City of Denton. The City of Denton expressly reserves unto itself and all other persons any and all legal remedies, both civil and criminal, relating to excessive noise in correction with this annual event, and hereby disclaims any promissory, or equitable estoppel which might in any way impede the pursuit of such remedies by any person.

SECTION 2. This Ordinance shall be effective immediately upon its passage and approval and shall expire upon the completion of the Video Art Night on Friday, March 6, 2026, at 10:00 p.m.

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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Discover Denton

CM: Sara Hensley

DATE: February 17, 2026

SUBJECT

Consider approval of a resolution of the City of Denton, Texas authorizing the filing of a Certificate of Formation for the creation of Denton Destination Management and Marketing Organization as a Texas Nonprofit Corporation; approving the initial bylaws of the corporation; and providing an effective date.

BACKGROUND

August 2, 2024, the City Council of Denton approved that Discover Denton would transition from being a line of business of the Denton Chamber of Commerce to an independent Destination Marketing Organization (DMO), beginning with a temporary move under City management. As a result, the Discover Denton Advisory Board met on October 29, 2025, and approved the bylaws and voted to appoint an interim executive board. Proposed Bylaws have been prepared and approved by City Council on February 3, 2026. At that time, directions were provided to staff to move forward with preparing Articles of Formation to be filed with the State of Texas for the Denon Destination Management and Marketing Organization to become an independent 501(c)(6) organization.

EXHIBITS

Exhibit 1 - Agenda Information Sheet
Exhibit 2 – Resolution with Exhibits

Respectfully submitted:
Kristi Franz
Executive Director

Prepared by:
Sarah Burton
Administrative Assistant

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF DENTON AUTHORIZING THE FILING OF A CERTIFICATE OF FORMATION FOR THE CREATION OF DENTON DESTINATION MANAGEMENT AND MARKETING ORGANIZATION AS A TEXAS NONPROFIT CORPORATION; APPROVING THE INITIAL BYLAWS OF THE CORPORATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 16, 2024, the City Council of the City of Denton directed City Staff to begin the process of acquiring the Discover Denton from the Denton Chamber of Commerce in order to transition the City's tourism marketing and management functions to a separate, independent nonprofit corporation; and

WHEREAS, on December 17, 2024, pursuant to Ordinance No. 24-2486, the City contracted with the Denton Chamber of Commerce for the acquisition of the assets of Discover Denton, as well as the assumption of certain leases and other agreements necessary for the City's continued operation of Discover Denton for the purpose of temporarily housing the City's tourism marketing and management functions in-house during the transition of said functions to the separate, independent nonprofit corporation; and

WHEREAS, on October 29, 2025, the Discover Denton Advisory Board reviewed and recommended the adoption of Bylaws for the proposed Denton Destination Management and Marketing Organization (the "Denton DMMO") in the form attached hereto and incorporated herein by reference as Exhibit "A" (the "Bylaws") and recommended the appointment of the individuals listed as Initial Directors on the Certificate of Formation attached hereto and incorporated herein by reference as Exhibit "B" (the "Certificate of Formation"); and

WHEREAS, the filing of the Certificate of Formation for the creation of the Denton DMMO is in the interest of the City and benefits the public by creating an entity dedicated to increasing and strengthening the economic growth of the City of Denton through promotion, marketing, subsidization, event hosting, and development related to tourism; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. The recitals and findings contained in the preamble of this Resolution are incorporated herein by reference as true and as if fully set forth in the body of this Resolution.

SECTION 2. The Certificate of Formation for the Denton DMMO, attached hereto as Exhibit "B", is approved and shall be filed with the Secretary of State of the State of Texas.

SECTION 3. The form of the Bylaws, attached hereto as Exhibit "A", are approved to be adopted as the bylaws of the Denton DMMO.

SECTION 4. That the City Manager or the Director of Discover Denton, or their respective designees, are hereby authorized and directed to take such further action necessary or proper in furtherance of the creation of the Denton DMMO and the adoption of the Bylaws,

including filing the Certificate of Formation with the Texas Secretary of State and calling an organizational meeting of the initial directors of the Denton DMMO, as the City Manager, the Director of Discover Denton, or the City Attorney shall deem to be necessary or desirable.

SECTION 5. This resolution is effective immediately upon its date of approval and passage by City Council.

The motion to approve this resolution was made by _and seconded by _____, the resolution 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Scott Bray Scott Bray
Deputy City Attorney

Exhibit A

BYLAWS

OF

DENTON DESTINATION MANAGEMENT AND MARKETING ORGANIZATION

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ARTICLE I
NAME

The name of the Corporation shall be Denton Destination Management and Marketing Organization.

ARTICLE II
OBJECTS AND PURPOSES

Section 2.1 Object and Purpose

This Corporation is a nonprofit corporation organized under Texas State Law. The Corporation's object and purpose are set forth in the Certificate of Formation. The Corporation is formed and organized and shall be operated exclusively for non-profit trade or business development purposes within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, and as set forth in the Certificate of Formation. Within the scope of the foregoing purposes, and not by way of limitation, the Corporation is formed and organized to serve as the official Destination Management and Marketing Organization (DMMO) for the City of Denton. The purpose of the Corporation is to increase and strengthen the City by advancing economic growth and vitality through tourism-related development, events, marketing, overnight stays, and visitor contribution to the local economy.

Section 2.2 Principal Place of Business

The Corporation shall maintain its initial principal office at 401 N. Elm Street, Denton, Texas 76201, which may change from time to time provided that it remains in the City of Denton.

Section 2.3 Corporate Powers

Subject to the Certificate of Formation and these Bylaws, the Corporation shall possess and may exercise all the powers permitted under Title 2, Chapter 22 of the Texas Business Organizations Code to be exercised by a nonprofit corporation. Moreover, the Corporation has all implied powers necessary and proper to carry out its express powers. The corporate powers, business and affairs of the Corporation shall be exercised, conducted, and controlled by a Board of Directors (the "Board") which shall be made up of representatives of Stakeholders as set forth in Article III herein.

Section 2.4 Limitations

The Corporation shall not exercise any powers or conduct any activities not permitted under Texas Title 2, Chapter 22 of the Texas Business Organizations Code.

Section 2.5 Anti-Trust

Neither this Corporation nor its members of its Board ("Directors") or any employees shall discuss, engage in, facilitate, or condone activities that restrain competition in violation of state or federal laws or otherwise.

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ARTICLE III
BOARD OF DIRECTORS

Section 3.1 Powers of the Board

The Board shall have the power to:

- Manage the activities, property, and affairs of the Corporation as permitted by statute, by the Certificate of Formation, or by these bylaws. Such direction shall include but are not limited to; completion of an annual performance review of the Executive Director/CEO of the organization, budget review and approval, assistance in establishing policies, and advocating for the Corporation as appropriate.

Section 3.2 Number and Composition: Initial Board

The initial Board shall consist of thirteen (11) voting Directors (the "Voting Directors") and four (4) ex officio non-voting Directors (the "Ex Officios"). Each Director will be elected to a three (3) year term commencing at the meeting when elected and shall continue until a successor is elected and qualified at the annual meeting held at the end of the Director's term. Directors are elected to serve three-year terms and shall serve staggered terms, with one-third (1/3) of the elected Directors to be elected each year for a term of three years. The initial board shall have one third (1/3) of the voting directors who will serve one additional year each, as set forth in Exhibit A.

A Director may not serve more than two consecutive full terms without the affirmative vote of not less than two-thirds (2/3) of the Directors then in office and qualified to vote. A Director who has served two consecutive full terms, plus extensions, if applicable, is eligible to be elected again following a two-year absence from the Board.

The Discover Denton Board seats shall be allocated as follows:

Eleven (11) voting seats shall be filled by representatives of Stakeholders:

- Four (4) hotels; One (1) from the Denton Public Improvement Board, One (1) from the Denton Convention Center/Embassy Suites, and Two (2) hotels located in the City of Denton, Tx.
- Two (2) from Attractions/Events/Venues
- One (1) City of Denton
- One (1) Representative from the Leadership of the Denton Chamber of Commerce
- One (1) Dining and Drinking Establishment
- One (1) Denton Main Street
- One (1) Greater Denton Arts Council

Four (4) ex officio non-voting seats shall be filled by the following officials:

- Two (2) representatives At-Large
- One (1) representative from Denton City Council
- One (1) representative from the City Staff of Denton

DRAFT

In nominating individuals to serve as Directors, the Nominating Committee shall also strive to ensure that the Board represents the diverse community of Stakeholders. The initial Board shall consist of the individuals set forth in Exhibit A, attached hereto and incorporated herein by reference.

Section 3.3 Election and Term of Office

The term for each Voting Director shall be three (3) fiscal years. The term for an individual serving as an Ex Officio shall continue for the time period that such individual serves in the position associated with his or her Directorship.

Except for the initial Board, Voting Directors shall be elected each election year at the last Board meeting of the fiscal year from the Nominating Committee's (defined below) list of candidates. Voting Directors shall be elected by a majority vote of the Voting Directors present at the Board meeting at which an election is held. If a vacant Voting Director seat is not filled at an election held during the last Board meeting of the fiscal year as described above, such vacancy may be filled by an election at a special meeting of the Board. Each Voting Director, including those elected to fill a vacancy, shall remain a Director until expiration of the term and until a successor is elected and qualified. There is a two (2) term limit on the number of terms that a Director may serve unless an exception is approved by the voting margin required under these bylaws.

Section 3.4 Removal

Directors are expected to attend all regularly scheduled Board meetings. Any Voting Director may be removed by majority vote of the Voting Directors present at a regular or special meeting if the Director fails to attend at least fifty percent (50%) of the Board meetings in any twelve-month period without the Board's consent.

The Board shall remove any Voting Director who ceases to meet any of the applicable qualifications set forth in these Bylaws. Voting Directors may also be removed with or without cause at any time by a majority vote of the Voting Directors present at a regular or special meeting.

Section 3.5 Voting Director Vacancies

A Voting Director seat shall be deemed vacant in the case of the death, resignation, removal, or disqualification of such Voting Director. Such vacancies shall be filled through an election by a majority vote of the remaining Voting Directors present at any regular or special meeting. A Voting Director so elected shall serve for the balance of the unexpired term for which he or she was elected and until his or her successor is duly elected and qualified. If one or more Voting Director(s) give notice of resignation from the Board effective at a future date, the Board shall have the power to immediately consider the position vacant or fill such seat at any time up to the proposed resignation date.

Section 3.6 Compensation

Directors shall not receive any compensation for their services, except for the reasonable reimbursement of expenses incurred on the Corporation's behalf if pre-approved by the Chairman (defined below) and ratified by the Board.

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Section 3.7 Meetings

The Board's annual meeting shall be held on a date designated by the Board each fiscal year for the purposes of organization, election of officers, and transaction of other business that may properly come before the Board. Other regular Board meetings shall be held monthly at such time and place as may be designated at a time determined by Board resolution. The Chairperson, the Secretary (defined below), or any two Directors may call for a special meeting of the Board at any time and place as specified by such person(s) calling the meeting. Any meeting, regular or special, may be held as provided under state law without the physical presence of some or all of the Directors, by conference telephone, video screen communication, or other communications equipment, as long as all Directors participating in the meeting can hear one another and all Directors consent to the holding of the meeting by this format and are provided the means of participating in all matters before the Board, including the capacity to propose, or to interpose an objection to a specific action to be taken by the Corporation.

Notice of the time and place of all meetings shall be given to each Director by electronic transmission, including electronic mail, either directly to the Director or to a person designated by the Director who would reasonably be expected to communicate the notice promptly to the Director. All such electronic mail notices shall be sent to each Director's electronic mail address as shown in the Corporation's records.

Notices given by electronic transmission shall be sent at least 72 hours before the time set for the meetings. The notice shall state the date, time, and location of the meeting. The business to be transacted at the meeting need not be specified in the notice (or waiver of notice) of such meeting, but an agenda for the meeting must be provided to each Director in advance of each meeting.

If there is an urgent decision that must be made, an action may be taken without a meeting and without the required advance notice. In such cases, a written consent stating the action taken must be signed by a majority of the number of Voting Directors. The consent must also state the date of each Voting Director's signature. The Board may vote on an item by electronic mail or other electronic means if the issue is urgent or if the Board authorizes an electronic mail or electronic vote on that issue at a prior Board meeting.

The transaction of any meeting of the Board that may have some notice defect, shall be valid if a quorum was/is present and if, either before or after the meeting, each of the Voting Directors not present signs a written waiver of notice or a written consent to holding the meeting or consents to having held the meeting or an approval of the minutes of the meeting. The waiver of notice or consent should specify the purpose and actions taken during the meeting. All such waivers, consents and approvals shall be filed with the minutes of the meeting.

Notice of a meeting shall also be deemed duly given to any Director who attends the meeting without protesting, before or at the commencement of the meeting, the lack of notice to that Director. Each Director shall register his or her name and address and any names and addresses of designees capable of receiving notice on such Director's behalf with the Secretary of the Corporation and notices of meetings given to such Director at such address shall be valid notices thereof.

Every act or decision done or made by a majority of the Voting Directors present at a meeting duly held at which a quorum is present is the act of the Board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Voting Directors if any action taken is approved by at least a majority vote of the required quorum of the meeting.

If a quorum for a meeting cannot be obtained within an hour of the stated start time for the meeting, a majority of the Voting Directors present, whether or not a quorum, may adjourn the meeting to another time and place. Notice of the adjournment shall be given at least two hours before the time of the rescheduled meeting to the Directors who were not present at the time of the adjournment.

DRAFT

The Chairperson shall preside over all Board meetings. In his or her absence, or if unable to serve for any reason, the Vice Chair/Treasurer shall preside.

Section 3.8 Attendance at Meetings. A director shall be deemed to have been resigned from office if the Director has unexcused absences from 25% or more regular meetings within any consecutive twelve (12) month period. Absences from or attendance at special or emergency meetings shall not be used in determining compliance with the attendance requirements. Attendance shall be reflected in the minutes of all meetings. If a Director has accrued 25% unexcused absences during any consecutive twelve (12) month period, the Chairperson will send written notice to the Director of the attendance requirement.

Section 3.9 Quorum

At any Board meeting, fifty percent (50%) of the Voting Directors shall constitute a quorum. Attendance must be in person or by pre-arranged means as permitted in these Bylaws.

Section 3.10 Conflicts of Interests of Directors

If a Director has any material financial interest in any contract or other transaction with this corporation or if a Director serves as an officer or director of any other corporation, firm, association, or other entity that is or shall be directly interested in any contract or other transaction with this Corporation, (a) the material facts as to the transaction and such Director's interest must be fully disclosed or known to the Board and such contract or transaction must be approved by the Board in good faith, with such interested Director not being entitled to vote thereon, regardless of whether the disinterested Directors constitute a quorum; and (b) the material facts regarding such Director's common Directorship, officer status, and/or financial interest in such entity contracting/transacting with the Corporation must be fully disclosed, in good faith, noted in the minutes, and be made known to all Directors present at the meeting before consideration by the Board of such contract or transaction. Such a contract or transaction must also have been authorized in good faith by a majority of the Board by a vote sufficient for the purpose without counting the vote of the interested Director, regardless of whether the disinterested Directors constitute a quorum.

However, if a majority of the Directors are composed of persons who have a conflict of interest, each such Director with a conflict must file an affidavit noting their conflict. Once the affidavits are filed, each Director may discuss and vote on the issue if the contract or transaction is fair and beneficial to the Corporation when the Board authorizes the contract or transaction, and a majority of the Board authorizes the involved action.

ARTICLE IV
OFFICERS/EXECUTIVE COMMITTEE AND DUTIES

Section 4.1 Officers/Executive Committee

The Corporation's officers/executive committee shall consist of the Chairperson, Vice-Chair/Treasurer and Secretary, and such other officers as may be elected to offices created by the Board. Officers shall have primary responsibility for the day-to-day activities of the Corporation and shall have powers and duties as specified herein and as may be additionally prescribed by the Board. With the exception of the Chairperson and Secretary, one person may hold two or more offices concurrently. No officer shall

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execute, acknowledge, or verify any instrument in more than one capacity, if such instrument is required to be executed, acknowledged, or verified by two or more officers.

Officers shall receive no compensation for their services except for the reasonable reimbursement of expenses incurred on behalf of the Corporation.

Other than the initial year's appointment of Directors, the officers of the Corporation shall be elected at the annual meeting of the Board of Directors. Each officer shall hold office for a term of two years and shall serve until their successor shall have been elected and shall have qualified or until their death or resignation. Each elected officer shall be a member of the Board of Directors.

Section 4.2 Chairperson

The duties of the Chairperson shall be: to preside at all meetings of the Board of Directors and the Executive Committee; to appoint advisory committees, unless otherwise directed; to call special meetings whenever the Chairperson deems it necessary; and to carry out such other duties as usually pertain to this office.

Section 4.3 Vice-Chair/Treasurer

In the absence of the Chair, or in the event of his or her inability or refusal to act, the Vice-Chair shall perform all duties of the Chair, and when so acting shall have all the powers of and be subject to all the restrictions of the Chair. The Vice-Chair shall have other powers and perform such other duties as may be prescribed by law, by the Certificate of Formation of the Corporation, or by these Bylaws, or as may be prescribed by the Board. Subject to the provisions of Article IX of these Bylaws, the Vice-Chair/Treasurer shall have the following responsibilities:

- Cause to be exhibited at all reasonable times the books of account and financial records to any Director of the Corporation, or to his or her agent or attorney, on request thereof.
- Render or arrange the rendering to the Chair and Directors, whenever requested, an account of any or all of organizational transactions and of the financial condition of the Corporation.
- Oversee the contract agency's preparation and certification of all financial statements to be included in any required reports.
- In general, perform all duties incident to the office of the Treasurer and such other duties as may be required by law, by the Certificate of Formation of the Corporation, or by these Bylaws, or which may be assigned to him or her by the Board.

Section 4.4 Secretary

The Secretary shall be a Director appointed by the Board from a list compiled by the Nominating Committee. The Secretary shall serve a term of two years. The Secretary shall have the following responsibilities:

- Certify and keep at the principal office of the Corporation the original, or a copy, of these Bylaws as amended or otherwise altered to date.
- Keep at the principal office of the Corporation or at such other place as the Board may determine, a book of minutes of all Board meetings, and, if applicable, meetings of Committees of Directors, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.

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- Work with the Discover Denton staff to ensure that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.
- Act as custodian of the records as authorized by law or by these Bylaws.
- Exhibit at all reasonable times to any Director of the Corporation, or to his or her agent or attorney, on request thereof, the Bylaws, and the minutes of the proceedings of the Directors of the Corporation.
- In general, work with Discover Denton staff to perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Certificate of Formation of the Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board.

Section 4.4 CEO/Executive Director

The Board of Directors shall employ a CEO/Executive Director to manage the day-to-day operations of the Corporation. The CEO/Executive Director is responsible for implementing the policies and projects established by the Board and for carrying out any additional duties as directed by the Board of Directors. The Officers/Executive Committee of the Board shall serve as the direct supervisor of the CEO/Executive Director. The Board of Directors shall determine compensation for the CEO/Executive Director.

Section 4.5 Removal and Resignation

The Board may remove any officer, with or without cause, at any time. Any officer may resign at any time by giving written notice to the Board or to the Chairperson or Secretary of the Corporation. Any such resignation shall take effect at the Board's discretion, being either the date of the receipt of such notice or at any later date specified therein if acceptable to the Board. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.6 Vacancies

In the event of a vacancy in any office other than that of the Chairperson, such vacancy may be filled temporarily by action of the Chairperson until such time as the Board shall fill the vacancy, thereafter, the Board shall appoint an individual to serve in such vacant office subject to the limitations set forth herein.

ARTICLE V
COMMITTEES

Section 5.1 Creation and Powers

The Executive Committee may create one or more committees (each a "Committee") with Board authority, each consisting of two or more Directors and persons who are not Directors, to serve at the Board's pleasure. Any such Committee, to the extent provided in these Bylaws or a Board resolution, shall have the full authority of the Board, except that no Committee, regardless of Board resolution, may:

- Finally fill vacancies on the Board or on any Committee;
- Amend or repeal any of these Bylaws or adopt new bylaws;
- Amend or repeal any resolution of the Board that by its express terms is not set out to be amended or repealed by that Committee;

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- Finally remove or appoint any other Committees of the Board or their members;
- Approve any contract or transaction to which the Corporation is a party;
- Amend or repeal any of the Corporation's policies or finally adopt new policies;
- Adopt an annual budget for the Corporation; or
- Amend, adopt, or repeal any Board resolutions.

Section 5.2 Executive Committee

There shall be an Executive Committee consisting of the Chairman, Vice-Chair/Treasurer, the Secretary, and the CEO/Executive Director of Discover Denton and any other officer so appointed. The Executive Committee, unless limited in a resolution of the Board shall have and may exercise all the authority of the Board in the management of the business and affairs of the Corporation between Board meetings including, but not limited to, approval of contracts in excess of a pre-determined threshold amount (to be determined by the Executive Committee); subject to the limitations set forth in Article IV, Section 1 of these Bylaws.

The Executive Committee shall inform the Board of all of its decisions made at the Board's next scheduled meeting and/or by timely distribution to the Board of the minutes of the Executive Committee's meeting.

Section 5.3 Nominating Committee

There shall be a Nominating Committee, consisting of at least three (3) Voting Directors, one of whom shall serve as its chair. The Nominating Committee shall identify and nominate qualified candidates for (a) Board seats and (b) officers other than Chairperson of the term next due or overdue for election. A person may not be nominated without his or her prior consent. The Nominating Committee shall be appointed at least thirty (30) calendar days before the date of the applicable election. The Nominating Committee shall make its report to the Secretary of the Corporation at least ten (10) calendar days before the date of election, and the Secretary shall forward to each then serving Director a list of all candidates nominated by the Nominating Committee.

Section 5.4 Meetings and Action

Meetings and action of Committees shall be governed by, noticed, held and taken in accordance with the provisions of these Bylaws concerning meetings of the Board, with such changes in the context of such Bylaw provisions as are necessary to substitute the Committee and its members for the Board and the Directors, except that the time for regular meetings of Committees and the calling of special meetings of Committees may be set either by Board resolution or, if none, by Committee resolution. The Chairperson retains the discretion to appoint and / or terminate ad hoc committees and taskforces.

ARTICLE VI
EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

Section 6.1 Execution of Instruments

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The Board, except as otherwise provided in these Bylaws, will authorize the CEO/Executive Director of Discover Denton to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

Section 6.2 Checks and Deposits

All processing of checks and deposits will be in accordance with the policies, procedures, and internal controls of the City for Accounts Receivable, Accounts Payable, Revenue and Expense transactions of the Corporation.

The Board, by Board Resolution, will appoint the CEO/Executive Director of Discover Denton or another designee with the authority to endorse and sign checks, notes and other obligations on behalf of the Corporation without obtaining the endorsement or signature of an officer or additional Board approval.

ARTICLE VII
CORPORATE RECORDS AND REPORTS

Section 7.1 Maintenance of Corporate Records

The Corporation shall maintain the following records at its principal office:

- All Board or Committee meetings indicating the time and place holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- Adequate and correct books and records of accounts, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains, and losses; and
- A copy of the Certificate of Formation and these Bylaws, as amended to date.

Section 7.2 Directors' Inspection Rights

Every Director shall have the right at any reasonable time to inspect and copy any of the Corporation's books, records, and documents.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 Indebtedness

The Corporation shall not incur obligations or indebtedness for the current or any future fiscal year in excess of its anticipated revenues that will be available by the time of the fiscal year in which the obligation will become due.

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Section 8.2 Maintenance and Inspection of Records

A copy of the Corporation's Certificate of Formation and Bylaws, as amended to date and all other documentation required by Texas law, shall be maintained at the principal office of the Corporation and shall be open to inspection by any officer or Director at all reasonable times during office hours.

Section 8.3 Required Filing with the Secretary of State

The Secretary, or such other officer or contracted entity as the Board may designate, shall file a required statement of officers and agent for service of process with the Secretary of State in accordance with the Texas Business Organizations Code. The required statement shall be on the form prescribed by the Secretary of State.

Section 8.4 Fiscal Year

The fiscal year of the Corporation will end on December 31st of each calendar year unless the Board adopts an alternative fiscal year.

ARTICLE IX
AMENDMENTS

Section 9.1 Amendment to Bylaws

New bylaws may be adopted, or these Bylaws may be amended or repealed by approval of a majority vote of the Directors present at a regular or specially called Board meeting. A copy of the proposed amendment or new bylaws shall be included in the notice of the meeting given to each Director at which the amendment(s) are to be considered.

Section 9.2 Amendment to Certificate of Formation

The Certificate of Formation may be amended or repealed by approval of a two-thirds vote of the Board members present at a regular or specially called Board meeting. A copy of the proposed amendment shall be included in the notice of meeting given to each Director at which the amendment(s) are to be considered.

ARTICLE X
DUTIES, NON-LIABILITY AND INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHERS ACTING ON BEHALF OF THE CORPORATION

Section 10.1 Duties and Non-Liability

Each Director shall perform the duties of a Director, including duties as a member of any Committee on which the Director may serve, in good faith, in a manner such Director believes to be in the best

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interests of the Corporation, and with such care including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

In performing the duties of a Director, he/she shall be able to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by one or more officers or agents of the Corporation whom the Director believes to be reliable and competent in the matters presented, legal counsel, independent accountants, other persons as to matters which the Director believes to be within such person's professional or expert competence; or

A Committee on which the Director does not serve, as to matters within its designated authority, which Committee the Director believes to merit confidence, so long as in any such case, the Director acts in good faith, after reasonable inquiry when necessitated by the circumstances, and without knowledge that would cause such reliance to be unwarranted.

A person who performs the duties of Director in accordance with this Section shall have no liability based on any alleged failure to discharge the person's obligations as Director.

Section 10.2 Indemnification

To the fullest extent permitted by law, the Corporation shall indemnify its Directors, officers, employees, contracted agent, and other persons described in the Texas Business Organizations Code, including persons formerly occupying any such position, against all expenses, judgment, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding" as that term is used in that section and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person described in that section.

On written request to the Board by any person seeking indemnification, the Board shall promptly determine whether the applicable standard of conduct set forth in these Bylaws has been met and, if so, the Board shall authorize indemnification. If a majority of the Directors are composed of persons who are seeking indemnification, each requesting Director must file an affidavit noting their interest in this vote. Once affidavits are filed, each Director may vote on the issue if the item is fair to the Corporation when authorized, and a two-thirds vote of the Board present at a regular or specially called Board meeting authorizes indemnification.

To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under these Bylaws in defending any proceedings covered by this section shall be advanced by the Corporation before final disposition of the proceeding. The advance will be repaid by the person unless it is determined that the person is entitled to be indemnified by the Corporation for those expenses.

Section 10.3 Insurance

This Corporation, subject to the review and approval of the Executive Committee, shall have the right to directly or through its contracted agent purchase and maintain insurance to the full extent required by law on behalf of its officers, Directors, employees, and other agents, to cover any liability asserted against or incurred by any officer, Director, employee, or agent in such capacity or arising from the officer's, Director's, employee's or agent's status as such. The Executive Committee shall oversee the procurement of such insurance.

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EXHIBIT A
INITIAL DIRECTORS AND TERMS
(RECOMMENDATIONS ONLY, NOT APPROVED)

Name of Director and Category	**Terms Expire (date)**
Hotels (4)	
Denton Tourism Public Improvement District Chair	12/31/2029
Denton Convention Center/Embassy Suites General Manager or Designee	12/31/2029
Hilton Garden Inn	12/31/2028
Best Western Premier	12/31/2028
Attractions/Events/Venues (2)	
North Texas Hotel and Rodeo	12/31/2029
Denton Black Film Festival	12/31/2028
City of Denton (1)	
Representative of the Denton City Council	12/31/2029
Denton Chamber of Commerce (1)	12/31/2028
Leadership of the Denton Chamber of Commerce	
Dining and Drinking Establishments (1)	
Denton County Brewing Company	12/31/2029
Denton Main Street (1)	
Denton Main Street Leadership Representative	12/31/2029
Greater Denton Arts Council (1)	
Executive Director or Designee	12/31/2028
Ex Officio (4)	
Two (2) Representatives Ex-Officio	
One (1) Representative from Denton City Council	
One (1) Representative from City Staff of Denton	

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CERTIFICATE OF SECRETARY

I, _____, hereby certify:

(1) That I am the duly elected and acting Secretary of DISCOVER DENTON, a Texas nonprofit corporation; and

(2) That the foregoing Bylaws constitute the Bylaws of the Corporation, as duly adopted by the Directors effective as of _____ ____, 2026.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2026.

_____

Secretary, 2026 Discover Denton Board of Directors

_____

(SIGNATURE)

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Exhibit B

Form 202 **(Revised 12/21)** Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 **Filing Fee: $25**	**Certificate of Formation** **Nonprofit Corporation**	This space reserved for office use.

Article 1 – Entity Name and Type

The filing entity being formed is a nonprofit corporation. The name of the entity is:

Denton Destination Management and Marketing Organization

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

☐ A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

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

Kristina	K	Criswell	
First Name	*M.I.*	*Last Name*	*Suffix*

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

401 N. Elm Street	Denton	TX	76201
Street Address	*City*	*State*	*Zip Code*

Article 3 – Management

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

A minimum of three directors is required.

Director 1					
Glenn	T	Carlton			
First Name	*M.I.*	*Last Name*			*Suffix*
13217 Cash Mills Road	Sanger		TX	76266	USA
Street or Mailing Address	*City*		*State*	*Zip Code*	*Country*

Director 2					
Seth	A	Morgan			
First Name	*M.I.*	*Last Name*			*Suffix*
812 W Shady Shores Rd.	Denton		TX	76208	USA
Street or Mailing Address	*City*		*State*	*Zip Code*	*Country*

Director 3					
Emily	F	Wright			
First Name	*M.I.*	*Last Name*			*Suffix*
2113 Fairmount Park Dr	Denton		TX	76210	
Street or Mailing Address	*City*		*State*	*Zip Code*	*Country*

OR

☐ The management of the affairs of the corporation is to be vested in the nonprofit corporation's members.

Article 4 – Membership

(See instructions. Do not select statement B if the corporation is to be managed by its members.)

☐ A. The nonprofit corporation shall have members.

☒ B. The nonprofit corporation will have no members.

Article 5 – Purpose

(See instructions. This form does not contain language needed to obtain a tax-exempt status on the state or federal level.)

The nonprofit corporation is organized for the following purpose or purposes:

To increase and strengthen the economic growth of the City of Denton through activities relating to tourism and visitor contributions to the local economy including, without limitation, promotion, marketing, subsidization, event hosting, and development relating to tourism

The following text area may be used to include any additional language or provisions that may be needed to obtain tax-exempt status.

The corporation shall be operated exclusively for non-profit trade or business development purposes consistent with Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, to perform the functions necessary and convenient to the corporation's achievement of its foregoing purpose.

Initial Mailing Address

(Provide the mailing address to which state franchise tax correspondence should be sent.)

401 N. Elm Street	Denton	TX	76201	USA
Mailing Address	*City*	*State*	*Zip Code*	*Country*

Supplemental Provisions/Information

(See instructions.)

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

No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation. The Corporation shall not participate or intervene in any political or electoral campaign.

Organizer

The name and address of the organizer:

Kristina K. Criswell

Name

410 N. Elm St.	Denton	TX	76201
Street or Mailing Address	*City*	*State*	*Zip Code*

Effectiveness of Filing (Select either A, B, or C.)

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

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

C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned also affirms that, to the best knowledge of the undersigned, the name provided as the name of the filing entity does not falsely imply an affiliation with a governmental entity. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: _____

_____

Signature of organizer

Kristina K. Criswell

Printed or typed name of organizer

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, Texas, regarding a Municipal Services Agreement, pursuant to Tex. Loc. Govt. Code Sec. 43.0672, between the City of Denton and Victor and Leticia Lopez for the provision of city services to approximately 2.00 acres of land, approximately located 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road; approving a schedule of annexation; authorizing the City Manager to execute the agreement; and providing an effective date. (A25-0005, 5811 Mills Rd Annexation, Angie Manglaris)

BACKGROUND

The owners, Victor and Leticia Lopez, (hereafter referred to as "Owner"), had a non-annexation agreement (ordinance 2012-263), which expired on August 1, 2020. Pursuant to Council direction, the City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded. By operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of approximately 2.00 acres approximately located 300.77 feet north of Mills Road and approximately 1,453 feet west of South Trinity Road (hereafter referred to as "Subject Property").

In accordance with State Law, non-annexation agreements (NAAs) were initially offered to property owners between 2010 and 2016 when the City was in the process of annexing land area within the Extra-Territorial Jurisdiction (ETJ). Texas Local Government Code Section 43.016 requires municipalities to offer NAA agreements to property owners of land area the City is interested in annexing if that land area is appraised for tax purposes as having agricultural, wildlife management, or timber use. In addition, the City also offered NAAs to properties used as single-family residences. NAAs entered into during this initial time period had an original expiration date of August 2020. In 2020, City Council directed staff to offer extensions of the NAAs to August 2040. In accordance with State Law, the total duration of the NAA shall not exceed 45 years.

The general requirements of the NAAS are as follows:

- The property may only be used for single-family residential, agricultural, wildlife, timber, or related uses.
- City of Denton regulations apply to proposed development.
- Development applications and building permits must be submitted and approved through the City of Denton.
- Land may be subdivided into smaller parcels via plating, provided the minimum lot size is at least 5 acres.
- Notification must be provided to the City if the property is sold.

- Properties with agriculture, wildlife management, or timberland exemptions are required to provide notice to the City if there is a change in exemption status.
- If the property owner does not abide by these requirements, or if the NAA expires, the City may proceed with annexation of the property.

Following Council direction in 2020, staff began engaging with property owners with expired NAAs in an effort to enter into new agreements with 2040 expiration dates. Between 2020 and 2021 a majority of property owners with expired NAAs entered into new agreements; however, 18 NAAs remained expired.

In 2024, staff revisited the topic of expired NAAs with City Council. Direction was given to contact the property owners of the 18 expired agreements to extend the NAAs and pursue annexation for any remaining expired NAAs. Initial letters offering NAA extensions were mailed in May 2024 with follow-up letters in June prior to the initial response deadline of June 21, 2024. Additional letters were mailed in September 2024, and a final letter was sent to the property owner on December 11, 2025. Currently, 7 of the 18 property owners with expired NAAs have entered into new agreements with the City. 11 NAAs remain expired and the City has begun the process of annexing these areas. Given the number of expired NAAs, staff will bring forward the annexation cases in groups based on parcel size, beginning with the smallest parcels.

If the Municipal Services Agreement is approved, staff will reach out to the applicant a final time to offer the extension of the non-annexation agreement.

Approval of this Municipal Services Agreement is the first of several steps required for a voluntary annexation based upon the requirements of TXLGC Sec. 43.0672 and the City's Charter as outlined below:

1. **Approval of a Municipal Services Agreement**
2. Annexation Public Hearing
3. First Reading of Annexation Ordinance
4. Publication of Annexation Ordinance
5. Second Reading and Adoption of Annexation Ordinance

The first three of these items are on this agenda, with this being the first required step in the process. Following the first reading of the annexation ordinance, the ordinance must be published in the newspaper, and the second reading is required to occur at least 30 days following ordinance publication.

Due to annexation law, under Subchapter C-3 (TXLGC Sec. 43.0672), a municipality that elects to annex an area upon request of owners must first negotiate and enter into a written Service Agreement with the owners of the land in the area for the provision of services in the area. The attached Municipal Services Agreement contains the City's standard Service Plan for annexations regarding streets, water, wastewater, police and fire protection, and park services.

The subject property is situated approximately 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road. The property to the south of the subject property is situated within the City of Denton's Extraterritorial Jurisdiction (ETJ) and is under the same ownership as the subject property. This property also has an expired non-annexation agreement. The property to the east is situated within the City's ETJ. The property to the west and north of the Subject Property is situated within the City limits and zoned Rural Residential (RR). Mills Road, south of the Subject Property, is a two-lane roadway, classified as a Secondary Arterial per the 2022 Mobility Plan and Thoroughfare Map.

The Future Land Use designation for the subject property is Low Residential. The description for this Future Land Use category is provided below:

This category includes the city's predominantly single-family neighborhoods, with lot sizes ranging from one acre or more in rural fringe areas up to five units per acre gross density throughout many of the city's suburban subdivisions. Dwellings in this land use district are generally one to two stories with private driveways and open space, consisting of privately maintained tree canopy and front, back and side yards. Building and driveway orientation, the locations of private garages, building material, and the presence of sidewalks vary by neighborhood and the era of neighborhood development. Generally, these types of single-family neighborhoods are developed as distinct subdivisions that are linked by internal circulation systems with limited access to local and connector roads. This category may also include land uses that support residential neighborhoods, such as appropriately scaled commercial at arterial and collector street corners, and appropriately scaled public and quasi-public uses, such as religious and educational institutions.

The Subject Property is not currently being served with City water or sewer.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)
The previously approved NAA (Ordinance 2012-363) expired on August 1, 2020.

Recommendation:
Staff recommends approval of the Municipal Services Agreement and annexation schedule.

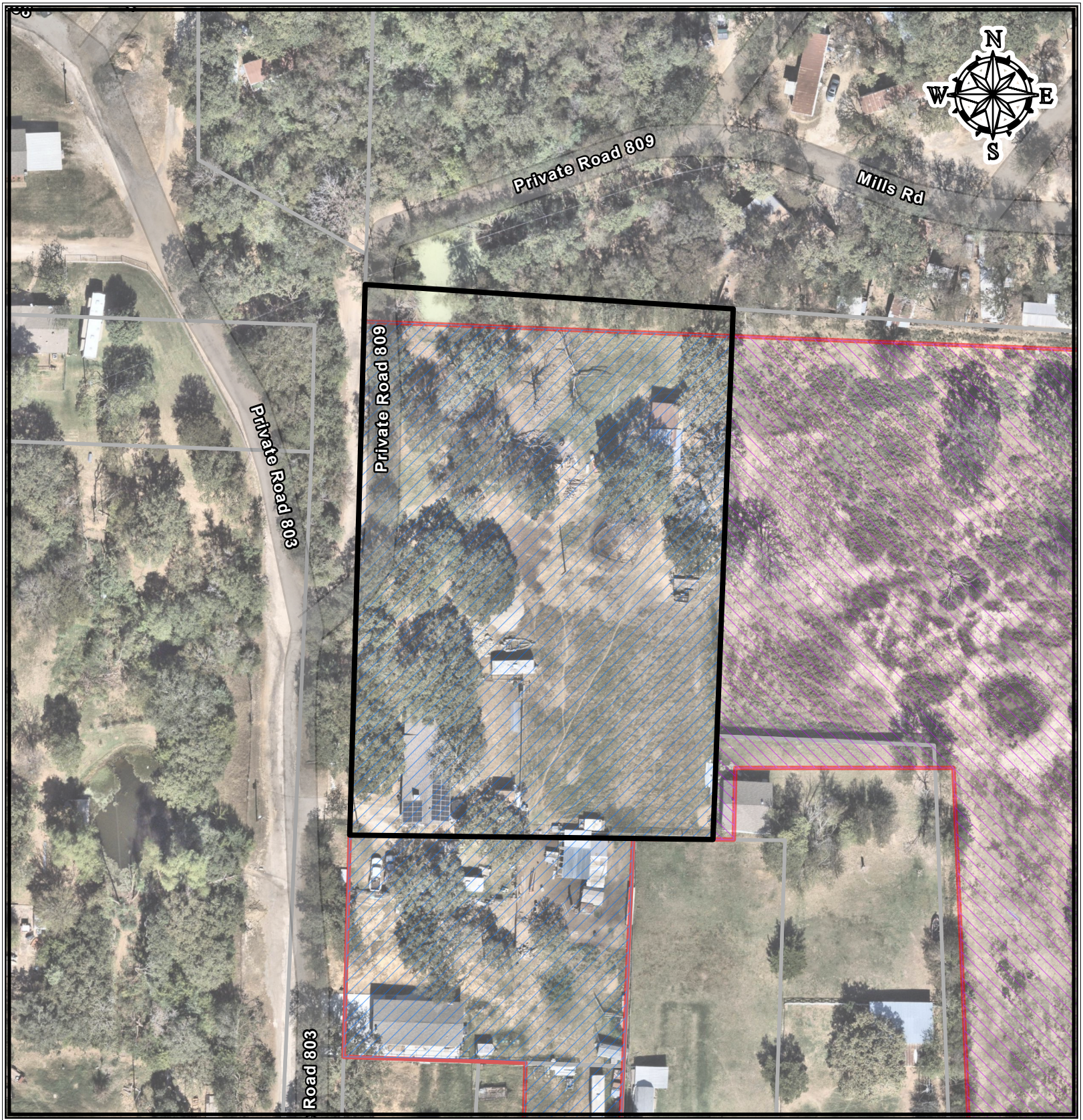
OPTIONS
1. Approve
2. Deny
3. Postpone Item

EXHIBITS
Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Draft Municipal Services Agreement and Annexation Schedule Ordinance
Exhibit 4 - Presentation

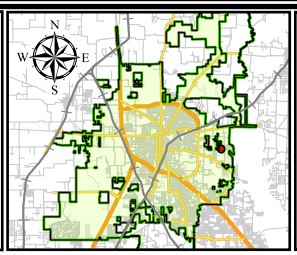
Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Angie Manglaris, AICP
Assistant Planning Director

A25-0005
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40



0 25 50 100 Feet

CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, REGARDING A MUNICIPAL SERVICES AGREEMENT, PURSUANT TO TEX. LOC. GOVT. CODE SEC. 43.0672, BETWEEN THE CITY OF DENTON AND VICTOR & LETICIA LOPEZ FOR THE PROVISION OF CITY SERVICES TO APPROXIMATELY 2.00 ACRES OF LAND, APPROXIMATELY LOCATED 300.77 FEET NORTH OF MILLS ROAD, APPROXIMATELY 1,453 FEET WEST OF SOUTH TRINITY ROAD; APPROVING A SCHEDULE OF ANNEXATION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. (A25-0005)

WHEREAS, the property owner, Victor & Leticia Lopez (hereafter referred to as "Owner"), has submitted a petition for voluntary annexation of approximately 2.00 acres of land in Denton County, Texas, as described in **Exhibit A** attached hereto and incorporated herein ("Property"); and

WHEREAS, the Owner had a non-annexation agreement, ordinance 2012-363, which expired on August 1, 2020, and said non-annexation agreement provides that upon expiration of the agreement, the Property will be annexed; and

WHEREAS, pursuant to Council direction, City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded; and

WHEREAS, by operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of the Property; and

WHEREAS, the City of Denton must first negotiate a written Municipal Services Agreement with the Owner of the real property subject to a petition for voluntary annexation, pursuant to Tex. Loc. Govt. Code Sec. 43.0672, that contains (1) the services that the City of Denton will provide on the effective date of the annexation and (2) a schedule that includes the period within which the City of Denton will provide each service that is not provided on the effective date of the annexation; and

WHEREAS, the City of Denton and the Owner have come to an agreement about the provision of full services to the Property following the annexation of the Property; and

WHEREAS, the City Council of the City of Denton finds it to be in the best interest of the citizens of Denton to enter into a Municipal Services Agreement with the Owner; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The Municipal Services Agreement ("Agreement"), made in accordance with applicable provisions of state law pertaining to annexation, is approved and attached hereto as **Exhibit B** and is made a part hereof for all intents and purposes.

SECTION 3. The City Manager, or designee, is hereby authorized to execute the Agreement and to carry out the duties and responsibilities of the City of Denton under the Agreement.

SECTION 4. The schedule of annexation attached hereto as **Exhibit C** is approved and adopted for this annexation.

SECTION 5. Should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 6. This Ordinance shall be effective immediately upon its passage and approval.

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

	Aye	Nay	Abstain	Absent
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Hilary McMahon

EXHIBIT A
LEGAL DESCRIPTION

Being a 2.0 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed with Vendor's Lien dated December 4, 1971, from B.B. Mills, et al, to Jimmie D. Brown and wife, Reba Brown, filed for record on December 9, 1971, and recorded in Volume 634, Page 579, of the Real Property Records of Denton County, Texas. Said 2.0 acre tract of land is commonly known as DCAD Property ID 37223.

EXHIBIT B
MUNICIPAL SERVICES AGREEMENT

MUNICIPAL SERVICES AGREEMENT

This Municipal Service Agreement ("Agreement") is entered into this 17th day of February 2026, by and between the City of Denton, a Texas home-rule municipality ("City"), and the property owner, Victor and Leticia Lopez (hereafter referred to as "Owner").

RECITALS:

WHEREAS, Section 43.0671 of the TLGC permits the City to annex an area if each owner of land in an area requests the annexation;

WHEREAS, where the City elects to annex such an area, the City is required to enter into a written agreement with the property owner(s) that sets forth the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, the Owner owns the tract of land, totaling approximately 1.03 acres of land located in the City's extraterritorial jurisdiction, as described in Exhibit A and depicted in Exhibit B, incorporated herein by reference ("the Property"); and

WHEREAS, the Owner has filed a written petition with the City for voluntary annexation of the Property, identified as Annexation Case No. A25-0005 ("Annexation Case"); and

WHEREAS, the City and Owner desire to set out the City services to be provided for the Property on or after the effective date of annexation; and

WHEREAS, the Annexation Case and execution of this Agreement are subject to approval by the Denton City Council.

NOW THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, City and Owner agree as follows:

1. **PROPERTY.** This Agreement is only applicable to the Property, which is the subject of the Annexation Case.

2. **INTENT.** It is the intent of the City that this Agreement provide for the delivery of full, available municipal services to the Property in accordance with state law, which may be accomplished through any means permitted by law.

3. **MUNICIPAL SERVICES.** Commencing on the effective date of annexation, City will provide the municipal services set forth below. As used in this Agreement, "providing services" includes having services available by any method or means by which the City makes such municipal services available to any other area of the City, including per the City's infrastructure extension policies, ordinances, and developer or property owner participation in accordance with applicable city ordinances, rules, regulations, and policies.

A. Police

Police protection from City's Police Department shall be provided to the Property at a level consistent with current methods and procedures presently provided to areas with similar topography, land use, and population density, on the effective date of the ordinance. Some of these services include:

1. Normal patrols and responses;
2. Handling of complaints and incident reports;
3. Special units, such as traffic enforcement, investigations and special weapons; and
4. Coordination with other public safety support agencies.

As development commences on the Property, sufficient police protection, including personnel and equipment will be provided to furnish these areas with the level of police services consistent with other areas in the City having similar characteristics of topography, land use, and population density.

Upon ultimate development, police protection will be provided at a level consistent with other areas within the city limits having similar characteristics of topography, land use, and population density.

B. Fire Protection

The Denton Fire Department (DFD) will provide emergency and fire prevention services to the Property. These services include:

1. Fire suppression and rescue;
2. Pre-hospital medical services including triage, treatment and transport by Advanced Life Support (ALS) fire engines, trucks and ambulances;
3. Hazardous materials response and mitigation;
4. Emergency prevention and public education efforts;
5. Technical rescue response; and
6. Construction Plan Review and required inspections.

Fire protection from the City of Denton shall be provided to the Property at a level consistent with current methods and procedures presently provided to areas of the City of Denton having similar characteristics of topography, land use, and population density, on the effective date of the ordinance.

As development commences in the Property, sufficient fire protection, including personnel and equipment will be provided to furnish these areas with the level of services consistent with other areas having similar characteristics of topography, land use, and population density. It is anticipated that fire stations planned to serve areas currently within the City of Denton will be sufficient to serve the Property.

Upon ultimate development, fire protection will be provided at a level consistent with other areas within the city limits having similar characteristics of topography, land use, and population density.

C. Emergency Medical Service

The Denton Fire Department (DFD) will provide the following emergency and safety services to the Property. These services include:

1. Emergency medical dispatch and pre-arrival First Aid instructions;
2. Pre-hospital emergency Advanced Life Support (ALS) response; and transport;
3. Medical rescue services.

Emergency Medical Services (EMS) from the City of Denton shall be provided to the Property at a level consistent with current methods and procedures presently provided to areas of the City of Denton having similar characteristics of topography, land use, and population density, on the effective date of the ordinance.

As development commences on the Property, sufficient EMS, including personnel and equipment will be provided to furnish these areas with the level of services consistent with other areas of the City having similar characteristics of topography, land use, and population density.

Upon ultimate development, EMS will be provided at a level consistent with other within the city limits having similar characteristics of topography, land use, and population density.

D. Solid Waste

The City of Denton is the sole provider and hauler for solid waste collection and disposal services within the city limits, including but not limited to, preconstruction activities, construction activities, and ultimately residential, multi-family, or commercial activities, and recycling services. Solid waste and recycling collection services will be provided to the Property immediately upon the effective date of the annexation at a level consistent with current methods and procedures presently provided to areas within the city having similar characteristics of topography, land use, and population density. Customers receiving their existing services from private solid waste collection service providers operating on the Property immediately prior to annexation may continue to utilize their existing service for up to 2 years in accordance with Texas Local Government Code. Should that private service end prior to the expiration of the two (2) year term, the customer must initiate solid waste and recycling services with the City of Denton, pursuant to Chapter 24 of the Code of Ordinances.

E. Wastewater Facilities

The Property is located within the City of Denton Sewer Service Area as defined by Certificate of Convenience and Necessity (CCN) Number 20072, as issued by the Public Utility Commission (PUC).

Connections to existing City of Denton wastewater distribution mains for wastewater service will be provided in accordance with the Denton Development Code, associated Water/Wastewater Criteria Manual, and existing City ordinances and policies. Upon connection to existing distribution mains, wastewater service will be provided at rates established by city ordinance. Owner will provide all on-site public utility easements that are necessary to protect, install, safely operate and maintain the wastewater infrastructure, on a form acceptable to the City, and at no cost to the City.

As development commences on the Property, sanitary sewer mains will be extended in accordance with the provisions of the Denton Development Code, Design Criteria Manual, ordinances and regulations. If required, City participation in the costs of these extensions shall be in accordance with applicable City ordinances and regulations. Capacity shall be provided consistent with other areas having similar characteristics of topography, land use, and population density. The sanitary sewer infrastructure shall be compatible and consistent with the City's wastewater master plan.

Upon annexation, sanitary sewer mains and lift stations which are located within dedicated utility easements, public rights-of-way, or any other acceptable locations approved by the Director of Water Utilities, shall be maintained by the City on the effective date of this ordinance, if installed or improved to City standards within the annexed areas.

Operation and maintenance of wastewater facilities and infrastructure lying within the service area of another water utility will be the responsibility of that utility. Similarly, operation and maintenance of private wastewater facilities will be maintained to City standards at the expense of the private property owner.

F. Water Facilities

The Property is located within the City of Denton Water Service Area as defined by Certificate of Convenience and Necessity (CCN) Number 10195 as issued by the Public Utility Commission (PUC).

Connections to existing City of Denton water distribution mains for water service will be provided in accordance with the Denton Development Code, associated Design Criteria Manual, and existing City ordinances and policies. Upon connection to existing distribution mains, water service will be provided at rates established by city ordinance.

As new development occurs within the Property, cost participation for extensions of water distribution mains - if required - shall be in accordance with the Denton Development Code, Design Criteria Manual, and with existing City ordinances and policies. Water service capacity shall be provided consistent with service to areas of the City having similar characteristics of topography, land use and population density. The water infrastructure shall be compatible and consistent with the City's water master plan.

Operation and maintenance of water facilities and infrastructure that lie within the service area of another water utility will be the responsibility of that utility.

Existing developments, businesses or homes that are on individual water wells or private water systems will be allowed to remain on those systems until a request for water service is made to the City. These requests for service will be handled in accordance with the applicable utility service line extension and connection policies currently in place at the time the request for service is received. Owner will provide all on-site public utility easements that are necessary to protect, install, safely operate and maintain the water infrastructure, on a form acceptable to the City, and at no cost to the City.

G. Roads and Streets

Emergency street maintenance, defined as repairs necessary to prevent imminent damage or injury to the health or safety of the public or any person, as determined by the Director of Public Works, shall be provided within the Property upon the effective date of the annexation ordinance. Routine maintenance will be provided within the Property and will be scheduled as part of the City's annual program, in accordance with the current policies and procedures defined by ordinance, or otherwise established by the City Council.

Any construction or reconstruction will be considered within the Property on a Citywide basis and within the context of the City's Capital Improvement Plan and/or yearly fiscal budgetary allotments by the City Council.

Roadway signage and associated posts will be replaced in priority of importance starting with regulatory signs, then warning signs, then informational signs, in conformance with fiscal allotments by the City Council. If an existing sign remains, it will be reviewed and placed on the City's inventory listing for routine replacement, based upon an engineering study. New signs will be installed when necessary, based upon an engineering study.

Routine maintenance of road/street markings will be evaluated and scheduled within the yearly budgetary allotments by the City Council.

H. Drainage

Connections to existing City of Denton drainage facilities will be provided in accordance with the Denton Development Code, associated Design Criteria Manual, and with existing City ordinances and policies, but only to the extent existing on-site drainage facilities are not compliant with the Denton Development Code. Drainage fees will be assessed at the rates established by city ordinance and will be charged on the utility bill after annexation. All runoff, whether directly tied into the system or not, impacts the system and will be charged.

As new development occurs within the Property, drainage facilities will be extended or improved by the developer as required to remain compliant with the Denton Development Code. Any cost participation shall be in accordance with the Denton Development Code, Design Criteria Manual, and with existing City ordinances and policies. Drainage facilities extended by the City will have to be a Capital Improvement Project (CIP) project and bonds

will need to be sold. Drainage capacity shall be provided consistent with other areas of the City having similar characteristics of topography, land use and population density.

Existing developments, businesses or homes that are on existing drainage systems will be allowed to continue to remain on these systems until a request for drainage facilities is made to the City. Any requests for City improvements to existing drainage facilities will be handled in accordance with the applicable extension and connection policies currently in place at the time the request for improved drainage facilities is received by the City. Owner will provide all on-site public utility easements that are necessary to protect, install, safely operate and maintain the drainage infrastructure, on a form acceptable to the City, and at no cost to the City. These will be ranked in the CIP project matrix, in accordance with the City Drainage Plan.

I. Electric

The Property will be served with electricity distribution service in the most cost-effective manner; provided, however, that before Owner may enter into a contract with an electricity distribution service provider, (i) Owner shall provide the City with any and all bona fide offers that Owner has received from electricity distribution service providers that can legally serve the Property and (ii) the City shall have 30 business days to provide to Owner Denton Municipal Electric's ("DME") offer to provide distribution electricity service to the Property; and provided further, that if DME's offer is substantially similar to the most cost-effective offer from another distribution electricity service provider that can legally serve the Property, then Owner will obtain electricity distribution service from DME. The term "substantially similar" means that the terms of the offers provide the approximately the same level of service at approximately the same start-up cost to Owner. Electric rates applicable to customers within the Property will be pursuant to the then applicable DME rates as approved by the Denton City Council.

Such electricity service offers will be based upon the following terms:

1. The electricity distribution service provider will extend electric distribution facilities as necessary to serve full development of the Property. The electricity distribution service provider will evaluate the cost associated with service extension through the undeveloped area to determine if Aid-in-Construction is required. The electricity distribution service provider is responsible for installation of all primary-voltage electrical cables, transformers, switchgear, streetlight poles and LED streetlight fixtures, streetlight cables, single-family residential services, and other necessary electric distribution and transmission system equipment in compliance with Electric Service Standards and Line Extension Policies currently in place at the time of development, whether onsite or offsite as necessary to provide adequate and reliable electric service to the Property.

2. Owner will provide all on-site public utility easements to the electricity distribution provider that are necessary to protect, install, safely operate and maintain the electric infrastructure, at no cost to the City. PUEs will be 8

feet in width adjacent to street rights-of-way in single family residential areas, and 15 feet in width adjacent to Primary and Secondary Arterial rights-of-way (20 feet where duct banks are required). Easements will be conveyed through the platting process unless the electricity distribution service provider requests an easement be transferred by separate instrument. The provider agrees to joint trench installation of other franchised utilities such as telephone, cable tv, fiber optic cables, or other non-gas utilities within the designated public utility easements as long as those utilities are on an edge shelf of the trench and not placed directly above the electric facilities.

3. Existing overhead electric distribution lines, which are located in the public rights-of-way, will be relocated by the electricity distribution service provider at no cost to the Owner when development adjacent to the existing electric line requires the line to be relocated in order to accommodate the adjacent development as long as the relocation is also to an overhead position. If Owner requests the relocation be placed underground, then Owner shall be responsible for the difference in cost between the overhead relocation and the underground relocation as reasonably determined and demonstrated by the electricity distribution service provider. Existing overhead electric distribution lines not owned by the electricity distribution service provider will be relocated underground by the owner of the lines if so required to comply with the Denton Development Code.

4. Owner will comply with those City approved policies within the DME Electric Service Standards (ESS), as amended, that are available on the City website and uniformly applied within the City, including the specifications for street lighting.

5. All new distribution electric service within the Property shall be placed underground except for necessary above ground appurtenances such as streetlights, switchgear and transformers. The City shall have the right to inspect the electric facilities prior to placing such facilities into use.

J. **Parks, Playgrounds, Swimming Pools**

Residents of the Property may utilize all existing park and recreation facilities as a resident of the effective date of this ordinance. The park dedication and development ordinance shall apply to the Property for residential development.

In addition, park and recreation facilities shall be constructed based on park policies defined in the Parks, Recreation and Trails System Master Plan and other existing City ordinances and policies.

K. **Publicly Owned Facilities.** Any publicly owned facility, , or service located within the Property, and not otherwise owned or maintained by another governmental entity, shall be maintained by the City of Denton on the effective date of the annexation ordinance.

L. **Permitting and Inspections.** Permitting and Inspections shall be obtained through the City of Denton, as outlined in the Code of Ordinances.

M. **Other Services.** Other services that may be provided by the City of Denton, such as municipal and general administration, will be made available as of the effective date of the annexation. The City of Denton shall provide a level of services, infrastructure, and infrastructure maintenance that is comparable to the level of services, infrastructure, and infrastructure maintenance available in other parts of the City of Denton having similar topography, land use, and population density similar to those reasonably contemplated or projected in the area.

4. UNIFORM LEVEL OF SERVICES IS NOT REQUIRED

Nothing in this Agreement shall require City to provide a uniform level of full municipal services to each area of the City, including the Property, if different characteristics of topography, land use, and population density justify different levels of service.

5. AUTHORITY

City and Owner represent that they have full power, authority and legal right to execute, deliver and perform their obligations pursuant to this Agreement. Owner acknowledges that approval of the Annexation Case is within the sole jurisdiction of the City Council. Nothing in this Agreement guarantees favorable decisions by the City Council.

6. EFFECTIVE DATE; TERM

The effective date of this Agreement is the date of the annexation of the Property. This Agreement shall be valid for a term of ten (10) years from the Effective Date.

7. VENUE AND GOVERNING LAW

Venue shall be in the state courts located in Denton County, Texas or the United States District Court for the Eastern District of Texas. This Agreement shall be governed and construed in accordance with the laws and court decisions of the State of Texas.

8. GOVERNMENTAL POWERS. It is understood that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

9. SEVERABILITY

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

11. CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

12. SUCCESSORS AND ASSIGNS

The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties to this Agreement and stand as obligations running with the land until satisfied in full, regardless of how the Property is developed.

13. ENTIRE AGREEMENT; AMENDMENT.

This Agreement constitutes the complete agreement of the parties to this Agreement and supersedes all prior written agreements between the parties. This Agreement shall not be amended unless executed in writing by both parties. The Parties stipulate that this Agreement does not constitute a permit for development under Chapter 245 of the Texas Local Government Code.

The parties have executed this Agreement on the date first above written.

OWNER

_____
By: Victor and Leticia Lopez

CITY OF DENTON

By: _____
City Manager, Deputy City Manager, or
Assistant City Manager

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED

as to financial and operational
obligations and business terms.

Charlie Rosendahl
Digitally signed by Charlie Rosendahl
DN: C=US, E=Charlie.Rosendahl@cityofdenton.com, O=City of Denton, CN=Charlie Rosendahl
Date: 2026.02.09 12:18:31 -06'00'

Signature

Interim Director
Title

Development Services
Department

Date Signed: 2/9/26

APPROVED AS TO LEGAL FORM:

Mack Reinwand, City Attorney
By: Hilary McMahon

EXHIBIT C
ANNEXATION SCHEDULE

Annexation

01/19/2026 **Petition for Annexation submitted**

01/27/2026 Deadline to submit notice to Denton Record Chronicle and City Website for publication before the 16th day before the public hearing on February 17, 2026 *(published on Sunday, February 1, 2026)*

02/05/2026 Deadline to submit backup for posting of City Council Agenda for Meeting on February 17, 2026

02/17/2026 Annexation **Municipal Service Agreement** – IC (*Required prior to annexation per 43.0672),*
Annexation **Public Hearing** – PH (*Only one public hearing is required per 43.0673),*
AND
First Reading of annexation ordinance – IC (*per City Charter*)

02/22/2026 Publish Ordinance in the newspaper (*Charter Sec. 1.03; cannot be acted on for 30 days*)

03/24/2026 CC by 4/5ths vote takes final action – IC *(Regular meeting)*
Second Reading of annexation ordinance.
Adoption of annexation ordinance *(30 days+ post publication per Charter Sec. 1.03)*

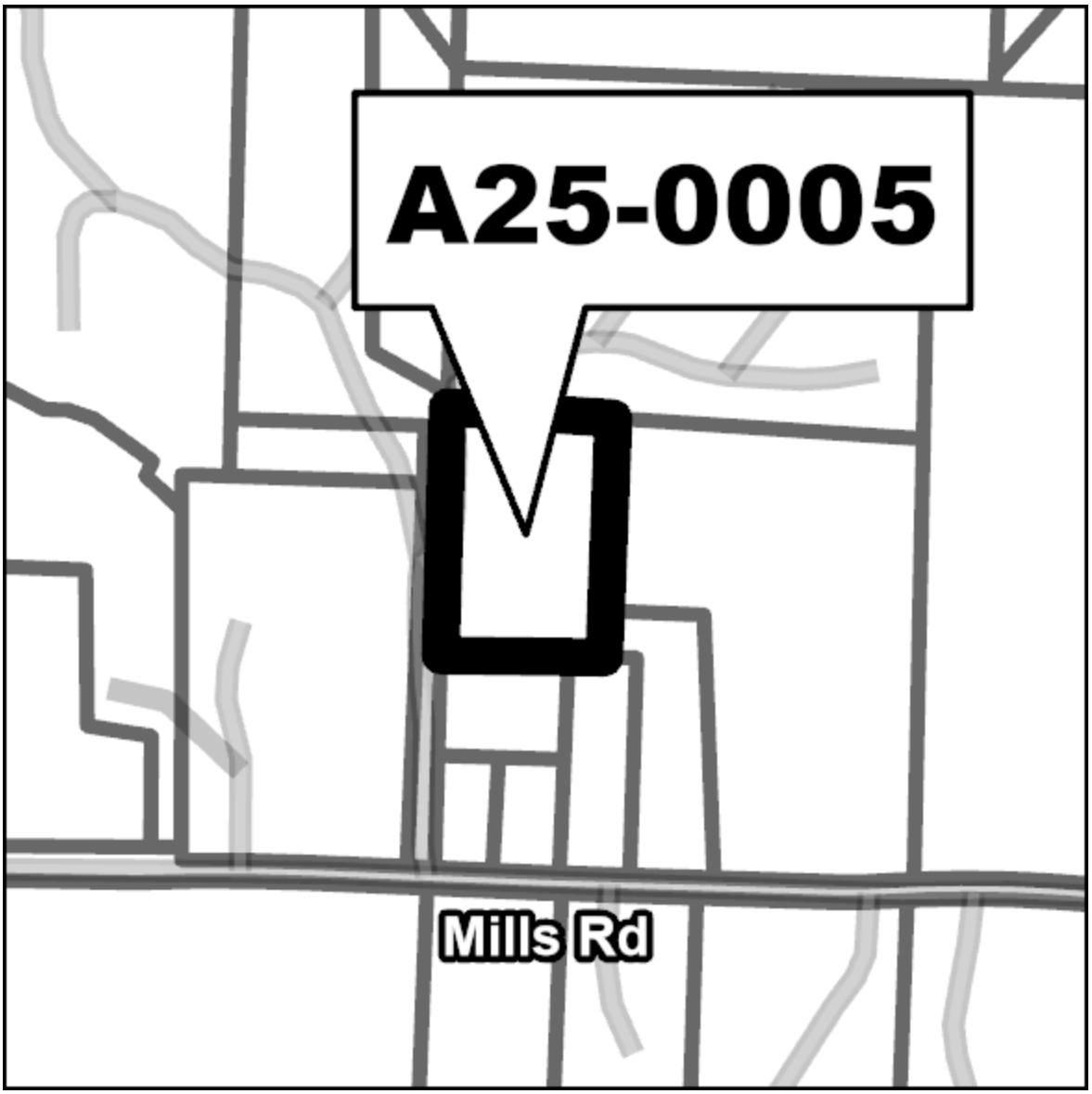
Post-Annexation Adoption Procedures:

1. Notification to Comptroller
2. Notification to DOJ
3. File certified copy of ordinances with the Denton County Clerk
4. File certified copy of ordinances with the Denton CAD
5. Revise City Map
6. Notify Utilities (Customer Service) utilitybilling@cityofdenton.com

EXHIBIT A
LEGAL DESCRIPTION

Being a 2.0 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed with Vendor's Lien dated December 4, 1971, from B.B. Mills, et al, to Jimmie D. Brown and wife, Reba Brown, filed for record on December 9, 1971, and recorded in Volume 634, Page 579, of the Real Property Records of Denton County, Texas. Said 2.0 acre tract of land is commonly known as DCAD Property ID 37223.

EXHIBIT B
LOCATION MAP



A25-0005
5811 Mills Road Annexation Municipal Services Agreement

Angie Manglaris, AICP

Assistant Planning Director

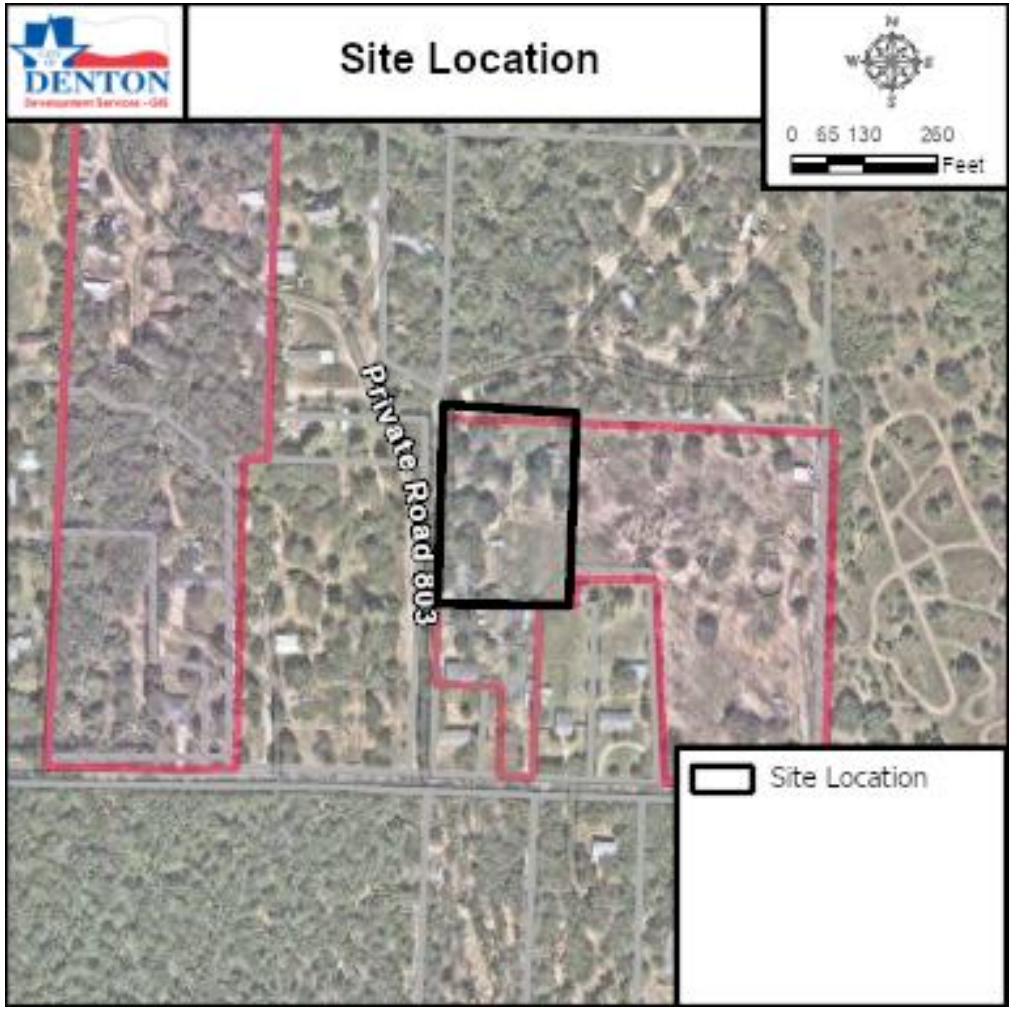
February 17, 2026



Request

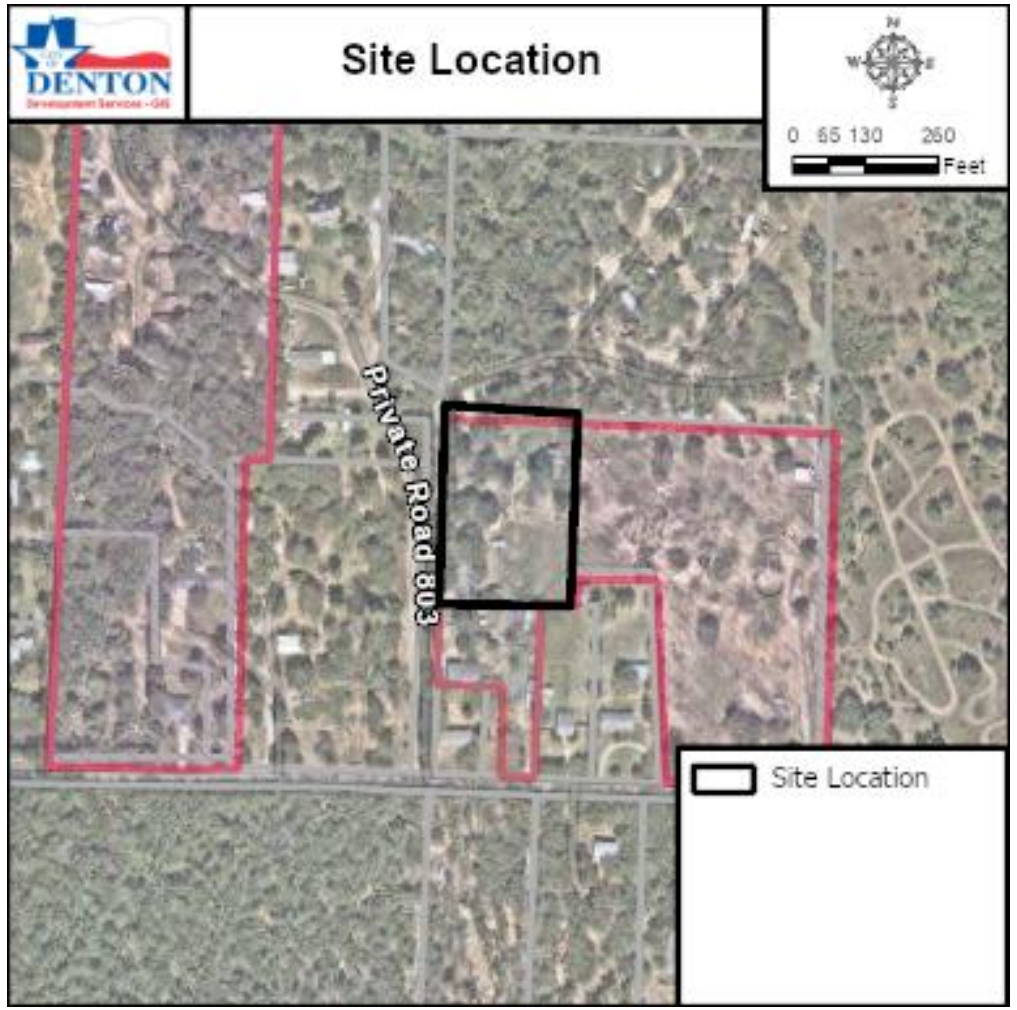
- Consider adoption of an ordinance approving a **Municipal Services Agreement** for approximately **2.00 acres of land** located approximately 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road

- Approving a **Schedule of Annexation**



Background

- Property owner had a non-annexation agreement that expired in August of 2020
- A new non-annexation agreement has not been signed
- Development includes a single-family home and accessory structures



Municipal Services Agreement

- ✓ Police
- ✓ Fire Protection
- ✓ Emergency Medical Service
- ✓ Solid Waste
- ✓ Wastewater Facilities
- ✓ Water Facilities
- ✓ Roads and Streets
- ✓ Drainage
- ✓ Parks, Playgrounds, Swimming Pools
- ✓ Publicly Owned Facilities
- ✓ Permitting and Inspections
- ✓ Other Services

2/17/2026

Annexation Schedule

- **February 17, 2026**
  - Municipal Services Agreement – Action Required
  - Public Hearing – No Action
  - First Reading of the Annexation Ordinance – No Action

- **February 22, 2026**
  - Publication of Annexation Ordinance

- **March 24, 2026**
  - Second Reading and Adoption of the Annexation Ordinance – Action Required

QUESTIONS?

Angie Manglaris, AICP
Assistant Planning Director
Development Services

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, Texas, regarding a Municipal Services Agreement, pursuant to Tex. Loc. Govt. Code Sec. 43.0672, between the City of Denton and Victor Lopez for the provision of city services to approximately 1.03 acres of land, generally located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road; approving a schedule of annexation; authorizing the City Manager to execute the agreement; and providing an effective date. (A25-0003, Mills Rd Annexation, Ashley Ekstedt)

BACKGROUND

The owner, Victor Lopez, (hereafter referred to as "Owner"), had a non-annexation agreement (ordinance 2012-363), which expired on August 1, 2020. Pursuant to Council direction, the City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded. By operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of approximately 1.03 acres generally located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road (hereafter referred to as "Subject Property").

In accordance with State Law, non-annexation agreements (NAAs) were initially offered to property owners between 2010 and 2016 when the City was in the process of annexing land area within the Extra-Territorial Jurisdiction (ETJ). Texas Local Government Code Section 43.016 requires municipalities to offer NAA agreements to property owners of land area the City is interested in annexing if that land area is appraised for tax purposes as having agricultural, wildlife management, or timber use. In addition, the City also offered NAAs to properties used as single-family residences. NAAs entered into during this initial time period had an original expiration date of August 2020. In 2020, City Council directed staff to offer extensions of the NAAs to August 2040. In accordance with State Law, the total duration of the NAA shall not exceed 45 years.

The general requirements of the NAAS are as follows:

- The property may only be used for single-family residential, agricultural, wildlife, timber, or related uses.
- City of Denton regulations apply to proposed development.
- Development applications and building permits must be submitted and approved through the City of Denton.
- Land may be subdivided into smaller parcels via plating, provided the minimum lot size is at least 5 acres.
- Notification must be provided to the City if the property is sold.

- Properties with agriculture, wildlife management, or timberland exemptions are required to provide notice to the City if there is a change in exemption status.
- If the property owner does not abide by these requirements, or if the NAA expires, the City may proceed with annexation of the property.

Following Council direction in 2020, staff began engaging with property owners with expired NAAs in an effort to enter into new agreements with 2040 expiration dates. Between 2020 and 2021 a majority of property owners with expired NAAs entered into new agreements; however, 18 NAAs remained expired.

In 2024, staff revisited the topic of expired NAAs with City Council. Direction was given to contact the property owners of the 18 expired agreements to extend the NAAs and pursue annexation for any remaining expired NAAs. Initial letters offering NAA extensions were mailed in May 2024 with follow-up letters in June prior to the initial response deadline of June 21, 2024. Additional letters were mailed in September 2024, and a final letter was sent to the property owner on December 11, 2025. Currently, 7 of the 18 property owners with expired NAAs have entered into new agreements with the City. 11 NAAs remain expired and the City has begun the process of annexing these areas. Given the number of expired NAAs, staff will bring forward the annexation cases in groups based on parcel size, beginning with the smallest parcels.

If the Municipal Services Agreement is approved, staff will reach out to the applicant a final time to offer the extension of the non-annexation agreement.

Approval of this Municipal Services Agreement is the first of several steps required for a voluntary annexation based upon the requirements of TXLGC Sec. 43.0672 and the City's Charter as outlined below:

1. **Approval of a Municipal Services Agreement**
2. Annexation Public Hearing
3. First Reading of Annexation Ordinance
4. Publication of Annexation Ordinance
5. Second Reading and Adoption of Annexation Ordinance

The first three of these items are on this agenda, with this being the first required step in the process. Following the first reading of the annexation ordinance, the ordinance must be published in the newspaper, and the second reading is required to occur at least 30 days following ordinance publication.

Due to annexation law, under Subchapter C-3 (TXLGC Sec. 43.0672), a municipality that elects to annex an area upon request of owners must first negotiate and enter into a written Service Agreement with the owners of the land in the area for the provision of services in the area. The attached Municipal Services Agreement contains the City's standard Service Plan for annexations regarding streets, water, wastewater, police and fire protection, and park services.

The subject property is situated on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road. The property to the north of the subject property is situated within the City of Denton's Extraterritorial Jurisdiction (ETJ) and is under the same ownership as the subject property. This property also has an expired non-annexation agreement. The property to the east, west, and south of the Subject Property is situated within the City limits and zoned Rural Residential (RR). Mills Road, abutting the Subject Property to the south, is a two-lane roadway, classified as a Secondary Arterial per the 2022 Mobility Plan and Thoroughfare Map.

The Future Land Use designation for the subject property is Low Residential. The description for this Future Land Use category is provided below:

This category includes the city's predominantly single-family neighborhoods, with lot sizes ranging from one acre or more in rural fringe areas up to five units per acre gross density throughout many of the city's suburban subdivisions. Dwellings in this land use district are generally one to two stories with private driveways and open space, consisting of privately maintained tree canopy and front, back and side yards. Building and driveway orientation, the locations of private garages, building material, and the presence of sidewalks vary by neighborhood and the era of neighborhood development. Generally, these types of single-family neighborhoods are developed as distinct subdivisions that are linked by internal circulation systems with limited access to local and connector roads. This category may also include land uses that support residential neighborhoods, such as appropriately scaled commercial at arterial and collector street corners, and appropriately scaled public and quasi-public uses, such as religious and educational institutions.

The Subject Property is not currently being served with City water or sewer.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

December 18, 2012	City Council	Non-Annexation Agreement	Approved

Recommendation:
Staff recommends approval of the Municipal Services Agreement and annexation schedule.

OPTIONS

1. Approve
2. Deny
3. Postpone Item

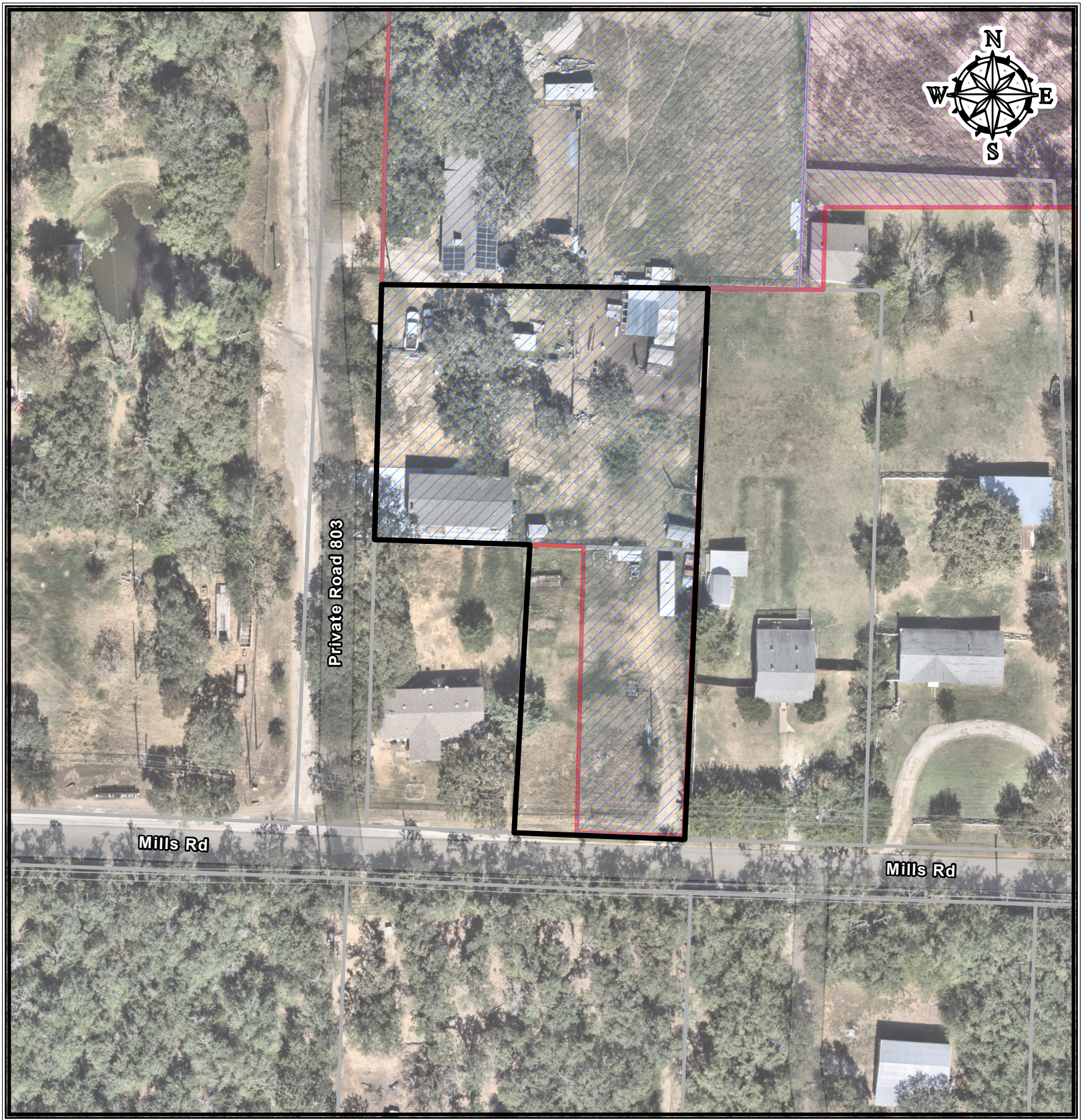
EXHIBITS

Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Draft Municipal Services Agreement and Annexation Schedule Ordinance
Exhibit 4 - Presentation

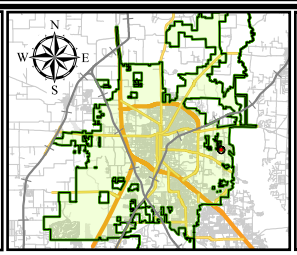
Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Ashley Ekstedt, AICP
Associate Planner

A25-0003
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40



0 20 40 80 Feet

CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, REGARDING A MUNICIPAL SERVICES AGREEMENT, PURSUANT TO TEX. LOC. GOVT. CODE SEC. 43.0672, BETWEEN THE CITY OF DENTON AND VICTOR LOPEZ FOR THE PROVISION OF CITY SERVICES TO APPROXIMATELY 1.03 ACRES OF LAND, GENERALLY LOCATED ON THE NORTH SIDE OF MILLS ROAD, APPROXIMATELY 1,453 FEET WEST OF SOUTH TRINITY ROAD; APPROVING A SCHEDULE OF ANNEXATION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. (A25-0003)

WHEREAS, Victor Lopez (hereafter referred to as "Owner"), owns approximately 1.03 acres of land in Denton County, Texas as described in **Exhibit A** attached hereto and incorporated herein ("Property"); and

WHEREAS, the Owner had a non-annexation agreement, ordinance 2012-363, which expired on August 1, 2020, and said non-annexation agreement provides that upon expiration of the agreement, the Property will be annexed; and

WHEREAS, pursuant to Council direction, City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded; and

WHEREAS, by operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of the Property; and

WHEREAS, the City of Denton must first negotiate a written Municipal Services Agreement with the Owner of the real property subject to a petition for voluntary annexation, pursuant to Tex. Loc. Govt. Code Sec. 43.0672, that contains (1) the services that the City of Denton will provide on the effective date of the annexation and (2) a schedule that includes the period within which the City of Denton will provide each service that is not provided on the effective date of the annexation; and

WHEREAS, the City of Denton and the Owner have come to an agreement about the provision of full services to the Property following the annexation of the Property; and

WHEREAS, the City Council of the City of Denton finds it to be in the best interest of the citizens of Denton to enter into a Municipal Services Agreement with the Owner; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The Municipal Services Agreement ("Agreement"), made in accordance with applicable provisions of state law pertaining to annexation, is approved and attached hereto as **Exhibit B** and is made a part hereof for all intents and purposes.

SECTION 3. The City Manager, or designee, is hereby authorized to execute the Agreement and to carry out the duties and responsibilities of the City of Denton under the Agreement.

SECTION 4. The schedule of annexation attached hereto as **Exhibit C** is approved and adopted for this annexation.

SECTION 5. Should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 6. This Ordinance shall be effective immediately upon its passage and approval.

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

	Aye	Nay	Abstain	Absent
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Hilary McMahon

EXHIBIT A
LEGAL DESCRIPTION

Being a 2.0 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated September 20, 1973, from H.L. Harris to Jimmie D. Brown and wife, Reba E. Brown, filed for record on September 20, 1973, and recorded in Volume 686, Page 82, of the Real Property Records of Denton County, Texas, SAVE and EXCEPT the following three (3) tracts of land: A 0.344 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated February 21, 1985, from Jimmie D. Brown and wife, Reba E. Brown, to Jimmie D. Brown, Jr. and wife, Brenda Danielle Brown, filed for record on March 5, 1985, and recorded in Volume 1534, Page 805, of the Real Property Records of Denton County, Texas. Said 0.344 acre tract of land is commonly known as DCAD Property ID 161515. A 0.344 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated May 9, 1986, from Jimmie D. Brown and wife, Reba E. Brown, to Jeffery G. Brown, filed for record on May 12, 1986, and recorded in Volume 1882, Page 499, of the Real Property Records of Denton County, Texas. Said 0.344 acre tract of land is commonly known as DCAD Property ID 121712. A called 0.688 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated May 9, 1986, from Jimmie D. Brown and wife, Reba E. Brown, to John C. Brown and wife, Shelia M. Brown, filed for record on May 12, 1986, and recorded in Volume 1882, Page 503, of the Real Property Records of Denton County, Texas. Said 0.688 acre tract of land is commonly known as DCAD Property ID 131805.

Leaving a called 0.69 acre tract of land that is commonly known as DCAD Property ID 37221.

TOGETHER WITH

Being a 0.344 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated January 27, 1998, from John C. Brown and wife, Shelia M. Brown, to Jeffery G. Brown and wife, Gina C. Brown, filed for record on March 23, 1998, and recorded in Volume 4055, Page 284, of the Real Property Records of Denton County, Texas. Said 0.344 acre tract of land is commonly known as DCAD Property ID 121712.

EXHIBIT B
MUNICIPAL SERVICES AGREEMENT

MUNICIPAL SERVICES AGREEMENT

This Municipal Service Agreement ("Agreement") is entered into this 17th day of February 2026, by and between the City of Denton, a Texas home-rule municipality (“City”), and the property owner, Victor Lopez (hereafter referred to as “Owner”).

RECITALS:

WHEREAS, Section 43.0671 of the TLGC permits the City to annex an area if each owner of land in an area requests the annexation;

WHEREAS, where the City elects to annex such an area, the City is required to enter into a written agreement with the property owner(s) that sets forth the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, the Owner owns the tract of land, totaling approximately 1.03 acres of land located in the City’s extraterritorial jurisdiction, as described in Exhibit A and depicted in Exhibit B, incorporated herein by reference (“the Property”); and

WHEREAS, the Owner had a non-annexation agreement, ordinance 2012-363, which expired on August 1, 2020; and said non-annexation agreement provides that upon expiration of the agreement, the Property will be annexed; and

WHEREAS, pursuant to Council direction, City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded; and

WHEREAS, by operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of the Property, identified as Annexation Case No. A25-0003 (“Annexation Case”); and

WHEREAS, the City and Owner desire to set out the City services to be provided for the Property on or after the effective date of annexation; and

WHEREAS, the Annexation Case and execution of this Agreement are subject to approval by the Denton City Council.

NOW THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, City and Owner agree as follows:

1. PROPERTY. This Agreement is only applicable to the Property, which is the subject of the Annexation Case.

2. **INTENT.** It is the intent of the City that this Agreement provide for the delivery of full, available municipal services to the Property in accordance with state law, which may be accomplished through any means permitted by law.

3. **MUNICIPAL SERVICES.** Commencing on the effective date of annexation, City will provide the municipal services set forth below. As used in this Agreement, "providing services" includes having services available by any method or means by which the City makes such municipal services available to any other area of the City, including per the City's infrastructure extension policies, ordinances, and developer or property owner participation in accordance with applicable city ordinances, rules, regulations, and policies.

A. **Police**

Police protection from City's Police Department shall be provided to the Property at a level consistent with current methods and procedures presently provided to areas with similar topography, land use, and population density, on the effective date of the ordinance. Some of these services include:

1. Normal patrols and responses;
2. Handling of complaints and incident reports;
3. Special units, such as traffic enforcement, investigations and special weapons; and
4. Coordination with other public safety support agencies.

As development commences on the Property, sufficient police protection, including personnel and equipment will be provided to furnish these areas with the level of police services consistent with other areas in the City having similar characteristics of topography, land use, and population density.

Upon ultimate development, police protection will be provided at a level consistent with other areas within the city limits having similar characteristics of topography, land use, and population density.

B. **Fire Protection**

The Denton Fire Department (DFD) will provide emergency and fire prevention services to the Property. These services include:

1. Fire suppression and rescue;
2. Pre-hospital medical services including triage, treatment and transport by Advanced Life Support (ALS) fire engines, trucks and ambulances;
3. Hazardous materials response and mitigation;
4. Emergency prevention and public education efforts;
5. Technical rescue response; and
6. Construction Plan Review and required inspections.

Fire protection from the City of Denton shall be provided to the Property at a level consistent with current methods and procedures presently provided to areas of the City of Denton having similar characteristics of topography, land use, and population density, on the effective date of the ordinance.

As development commences in the Property, sufficient fire protection, including personnel and equipment will be provided to furnish these areas with the level of services consistent with other areas having similar characteristics of topography, land use, and population density. It is anticipated that fire stations planned to serve areas currently within the City of Denton will be sufficient to serve the Property.

Upon ultimate development, fire protection will be provided at a level consistent with other areas within the city limits having similar characteristics of topography, land use, and population density.

C. Emergency Medical Service

The Denton Fire Department (DFD) will provide the following emergency and safety services to the Property. These services include:

1. Emergency medical dispatch and pre-arrival First Aid instructions;
2. Pre-hospital emergency Advanced Life Support (ALS) response; and transport;
3. Medical rescue services.

Emergency Medical Services (EMS) from the City of Denton shall be provided to the Property at a level consistent with current methods and procedures presently provided to areas of the City of Denton having similar characteristics of topography, land use, and population density, on the effective date of the ordinance.

As development commences on the Property, sufficient EMS, including personnel and equipment will be provided to furnish these areas with the level of services consistent with other areas of the City having similar characteristics of topography, land use, and population density.

Upon ultimate development, EMS will be provided at a level consistent with other within the city limits having similar characteristics of topography, land use, and population density.

D. Solid Waste

The City of Denton is the sole provider and hauler for solid waste collection and disposal services within the city limits, including but not limited to, preconstruction activities, construction activities, and ultimately residential, multi-family, or commercial activities, and recycling services. Solid waste and recycling collection services will be provided to the Property immediately upon the effective date of the annexation at a level consistent with current methods and procedures presently provided to areas within the city having similar characteristics of topography, land use, and population density. Customers

receiving their existing services from private solid waste collection service providers operating on the Property immediately prior to annexation may continue to utilize their existing service for up to 2 years in accordance with Texas Local Government Code. Should that private service end prior to the expiration of the two (2) year term, the customer must initiate solid waste and recycling services with the City of Denton, pursuant to Chapter 24 of the Code of Ordinances.

E. Wastewater Facilities

The Property is located within the City of Denton Sewer Service Area as defined by Certificate of Convenience and Necessity (CCN) Number 20072, as issued by the Public Utility Commission (PUC).

Connections to existing City of Denton wastewater distribution mains for wastewater service will be provided in accordance with the Denton Development Code, associated Water/Wastewater Criteria Manual, and existing City ordinances and policies. Upon connection to existing distribution mains, wastewater service will be provided at rates established by city ordinance. Owner will provide all on-site public utility easements by plat or on a form acceptable to the City, and at no additional cost to the City, that are necessary to protect, install, safely operate and maintain the wastewater infrastructure, on a form acceptable to the City, and at no cost to the City.

As development commences on the Property, sanitary sewer mains will be extended in accordance with the provisions of the Denton Development Code, Water/Wastewater Criteria Manual, ordinances and regulations. If required, City participation in the costs of these extensions shall be in accordance with applicable City ordinances and regulations. Capacity shall be provided consistent with other areas having similar characteristics of topography, land use, and population density. The sanitary sewer infrastructure shall be compatible and consistent with the City's wastewater master plan.

Upon annexation, sanitary sewer mains and lift stations which are located within dedicated utility easements, public rights-of-way, or any other acceptable locations approved by the Director of Water Utilities, shall be maintained by the City on the effective date of this ordinance, if installed or improved to City standards within the annexed areas.

Operation and maintenance of wastewater facilities and infrastructure lying within the service area of another water utility will be the responsibility of that utility. Similarly, operation and maintenance of private wastewater facilities will be maintained to City standards at the expense of the private property owner.

F. Water Facilities

The Property is located within the City of Denton Water Service Area as defined by Certificate of Convenience and Necessity (CCN) Number 10195 as issued by the Public Utility Commission (PUC).

Connections to existing City of Denton water distribution mains for water service will be provided in accordance with the Denton Development Code, associated Water/Waste

Water Criteria Manual, and existing City ordinances and policies. Upon connection to existing distribution mains, water service will be provided at rates established by city ordinance.

Connections to existing City of Denton water distribution mains for water service will be provided in accordance with the Denton Development Code, associated Water/Waste Water Criteria Manual, and existing City ordinances and policies. Upon connection to existing distribution mains, water service will be provided at rates established by city ordinance.

As new development occurs within the Property, cost participation for extensions of water distribution mains - if required - shall be in accordance with the Denton Development Code, Water/Wastewater Criteria Manual, and with existing City ordinances and policies. Water service capacity shall be provided consistent with service to areas of the City having similar characteristics of topography, land use and population density. The water infrastructure shall be compatible and consistent with the City's water master plan.

Operation and maintenance of water facilities and infrastructure that lie within the service area of another water utility will be the responsibility of that utility.

Existing developments, businesses or homes that are on individual water wells or private water systems will be allowed to remain on those systems until a request for water service is made to the City. These requests for service will be handled in accordance with the applicable utility service line extension and connection policies currently in place at the time the request for service is received. Owner will provide all on-site public utility easements that are necessary to protect, install, safely operate and maintain the water infrastructure, on a form acceptable to the City, and at no cost to the City.

G. <u>Roads and Streets</u>

Emergency street maintenance, defined as repairs necessary to prevent imminent damage or injury to the health or safety of the public or any person, as determined by the Director of Public Works, shall be provided within the Property upon the effective date of the annexation ordinance. Routine maintenance will be provided within the Property and will be scheduled as part of the City's annual program, in accordance with the current policies and procedures defined by ordinance, or otherwise established by the City Council.

Any construction or reconstruction will be considered within the Property on a Citywide basis and within the context of the City's Capital Improvement Plan and/or yearly fiscal budgetary allotments by the City Council.

Roadway signage and associated posts will be replaced in priority of importance starting with regulatory signs, then warning signs, then informational signs, in conformance with fiscal allotments by the City Council. If an existing sign remains, it will be reviewed and placed on the City's inventory listing for routine replacement, based upon an engineering study. New signs will be installed when necessary, based upon an engineering study.

Routine maintenance of road/street markings will be evaluated and scheduled within the yearly budgetary allotments by the City Council.

H. Drainage

Connections to existing City of Denton drainage facilities will be provided in accordance with the Denton Development Code, associated Design Criteria Manual, and with existing City ordinances and policies, but only to the extent existing on-site drainage facilities are not compliant with the Denton Development Code. Drainage fees will be assessed at the rates established by city ordinance and will be charged on the utility bill after annexation. All runoff, whether directly tied into the system or not, impacts the system and will be charged.

As new development occurs within the Property, drainage facilities will be extended or improved by the developer as required to remain compliant with the Denton Development Code. Any cost participation shall be in accordance with the Denton Development Code, Design Criteria Manual, and with existing City ordinances and policies. Drainage facilities extended by the City will have to be a Capital Improvement Project (CIP) project and bonds will need to be sold. Drainage capacity shall be provided consistent with other areas of the City having similar characteristics of topography, land use and population density.

Existing developments, businesses or homes that are on existing drainage systems will be allowed to continue to remain on these systems until a request for drainage facilities is made to the City. Any requests for City improvements to existing drainage facilities will be handled in accordance with the applicable extension and connection policies currently in place at the time the request for improved drainage facilities is received by the City. Owner will provide all on-site public utility easements that are necessary to protect, install, safely operate and maintain the drainage infrastructure, on a form acceptable to the City, and at no cost to the City. These will be ranked in the CIP project matrix, in accordance with the City Drainage Plan.

I. Electric

The Property will be served with electricity distribution service in the most cost-effective manner; provided, however, that before Owner may enter into a contract with an electricity distribution service provider, (i) Owner shall provide the City with any and all bona fide offers that Owner has received from electricity distribution service providers that can legally serve the Property and (ii) the City shall have 30 business days to provide to Owner Denton Municipal Electric's ("DME") offer to provide distribution electricity service to the Property; and provided further, that if DME's offer is substantially similar to the most cost-effective offer from another distribution electricity service provider that can legally serve the Property, then Owner will obtain electricity distribution service from DME. The term "substantially similar" means that the terms of the offers provide the approximately the same level of service at approximately the same start-up cost to Owner. Electric rates applicable to customers within the Property will be pursuant to the then applicable DME rates as approved by the Denton City Council.

Such electricity service offers will be based upon the following terms:

1. The electricity distribution service provider will extend electric distribution facilities as necessary to serve full development of the Property. The electricity distribution service provider will evaluate the cost associated with service extension through the undeveloped area to determine if Aid-in-Construction is required. The electricity distribution service provider is responsible for installation of all primary-voltage electrical cables, transformers, switchgear, streetlight poles and LED streetlight fixtures, streetlight cables, single-family residential services, and other necessary electric distribution and transmission system equipment in compliance with Electric Service Standards and Line Extension Policies currently in place at the time of development, whether onsite or offsite as necessary to provide adequate and reliable electric service to the Property.

2. Owner will provide all on-site public utility easements to the electricity distribution provider that are necessary to protect, install, safely operate and maintain the electric infrastructure, at no cost to the City. PUEs will be 8 feet in width adjacent to street rights-of-way in single family residential areas, and 15 feet in width adjacent to Primary and Secondary Arterial rights-of-way (20 feet where duct banks are required). Easements will be conveyed through the platting process unless the electricity distribution service provider requests an easement be transferred by separate instrument. The provider agrees to joint trench installation of other franchised utilities such as telephone, cable tv, fiber optic cables, or other non-gas utilities within the designated public utility easements as long as those utilities are on an edge shelf of the trench and not placed directly above the electric facilities.

3. Existing overhead electric distribution lines, which are located in the public rights-of-way, will be relocated by the electricity distribution service provider at no cost to the Owner when development adjacent to the existing electric line requires the line to be relocated in order to accommodate the adjacent development as long as the relocation is also to an overhead position. If Owner requests the relocation be placed underground, then Owner shall be responsible for the difference in cost between the overhead relocation and the underground relocation as reasonably determined and demonstrated by the electricity distribution service provider. Existing overhead electric distribution lines not owned by the electricity distribution service provider will be relocated underground by the owner of the lines if so required to comply with the Denton Development Code.

4. Owner will comply with those City approved policies within the DME Electric Service Standards (ESS), as amended, that are available on the City website and uniformly applied within the City, including the specifications for street lighting.

5. All new distribution electric service within the Property shall be placed underground except for necessary above ground appurtenances such as streetlights, switchgear and transformers. The City shall have the right to inspect the electric facilities prior to placing such facilities into use.

J. **Parks, Playgrounds, Swimming Pools**

Residents of the Property may utilize all existing park and recreation facilities as a resident of the effective date of this ordinance. The park dedication and development ordinance shall apply to the Property for residential development.

In addition, park and recreation facilities shall be constructed based on park policies defined in the Parks, Recreation and Trails System Master Plan and other existing City ordinances and policies.

K. **Publicly Owned Facilities.** Any publicly owned facility, building, or service located within the Property, and not otherwise owned or maintained by another governmental entity, shall be maintained by the City of Denton on the effective date of the annexation ordinance.

L. **Permitting and Inspections.** Permitting and Inspections shall be obtained through the City of Denton, as outlined in the Code of Ordinances.

M. **Other Services.** Other services that may be provided by the City of Denton, such as municipal and general administration, will be made available as of the effective date of the annexation. The City of Denton shall provide a level of services, infrastructure, and infrastructure maintenance that is comparable to the level of services, infrastructure, and infrastructure maintenance available in other parts of the City of Denton having similar topography, land use, and population density similar to those reasonably contemplated or projected in the area.

4. UNIFORM LEVEL OF SERVICES IS NOT REQUIRED

Nothing in this Agreement shall require City to provide a uniform level of full municipal services to each area of the City, including the Property, if different characteristics of topography, land use, and population density justify different levels of service.

5. AUTHORITY

City and Owner represent that they have full power, authority and legal right to execute, deliver and perform their obligations pursuant to this Agreement. Owner acknowledges that approval of the Annexation Case is within the sole jurisdiction of the City Council. Nothing in this Agreement guarantees favorable decisions by the City Council.

6. EFFECTIVE DATE; TERM

The effective date of this Agreement is the date of the annexation of the Property. This Agreement shall be valid for a term of ten (10) years from the Effective Date.

7. VENUE AND GOVERNING LAW

Venue shall be in the state courts located in Denton County, Texas or the United States District Court for the Eastern District of Texas. This Agreement shall be governed and construed in accordance with the laws and court decisions of the State of Texas.

8. GOVERNMENTAL POWERS. It is understood that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

9. SEVERABILITY

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

11. CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

12. SUCCESSORS AND ASSIGNS

The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties to this Agreement and stand as obligations running with the land until satisfied in full, regardless of how the Property is developed.

13. ENTIRE AGREEMENT; AMENDMENT.

This Agreement constitutes the complete agreement of the parties to this Agreement and supersedes all prior written agreements between the parties. This Agreement shall not be amended unless executed in writing by both parties. The Parties stipulate that this Agreement does not constitute a permit for development under Chapter 245 of the Texas Local Government Code.

The parties have executed this Agreement on the date first above written.

OWNER

_____

By: Victor Lopez

CITY OF DENTON, TEXAS

By: _____

City Manager, Deputy City Manager, or Assistant City Manager

THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED

as to financial and operational obligations and business terms.

Charlie Rosendahl Digitally signed by Charlie Rosendahl DN: C=US, E=Charlie.Rosendahl@cityofdenton.com, O=City of Denton, CN=Charlie Rosendahl Date: 2026.01.29 11:02:14-06'00'

Signature

Interim Director

Title

Development Services

Department

Date Signed: 1/29/2026

APPROVED AS TO LEGAL FORM:

Mack Reinwand, City Attorney

By: Hilary McMahon

EXHIBIT A
LEGAL DESCRIPTION

Being a 2.0 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated September 20, 1973, from H.L. Harris to Jimmie D. Brown and wife, Reba E. Brown, filed for record on September 20, 1973, and recorded in Volume 686, Page 82, of the Real Property Records of Denton County, Texas, SAVE and EXCEPT the following three (3) tracts of land: A 0.344 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated February 21, 1985, from Jimmie D. Brown and wife, Reba E. Brown, to Jimmie D. Brown, Jr. and wife, Brenda Danielle Brown, filed for record on March 5, 1985, and recorded in Volume 1534, Page 805, of the Real Property Records of Denton County, Texas. Said 0.344 acre tract of land is commonly known as DCAD Property ID 161515. A 0.344 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated May 9, 1986, from Jimmie D. Brown and wife, Reba E. Brown, to Jeffery G. Brown, filed for record on May 12, 1986, and recorded in Volume 1882, Page 499, of the Real Property Records of Denton County, Texas. Said 0.344 acre tract of land is commonly known as DCAD Property ID 121712. A called 0.688 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated May 9, 1986, from Jimmie D. Brown and wife, Reba E. Brown, to John C. Brown and wife, Shelia M. Brown, filed for record on May 12, 1986, and recorded in Volume 1882, Page 503, of the Real Property Records of Denton County, Texas. Said 0.688 acre tract of land is commonly known as DCAD Property ID 131805.

Leaving a called 0.69 acre tract of land that is commonly known as DCAD Property ID 37221.

TOGETHER WITH

Being a 0.344 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated January 27, 1998, from John C. Brown and wife, Shelia M. Brown, to Jeffery G. Brown and wife, Gina C. Brown, filed for record on March 23, 1998, and recorded in Volume 4055, Page 284, of the Real Property Records of Denton County, Texas. Said 0.344 acre tract of land is commonly known as DCAD Property ID 121712.

EXHIBIT B
LOCATION MAP

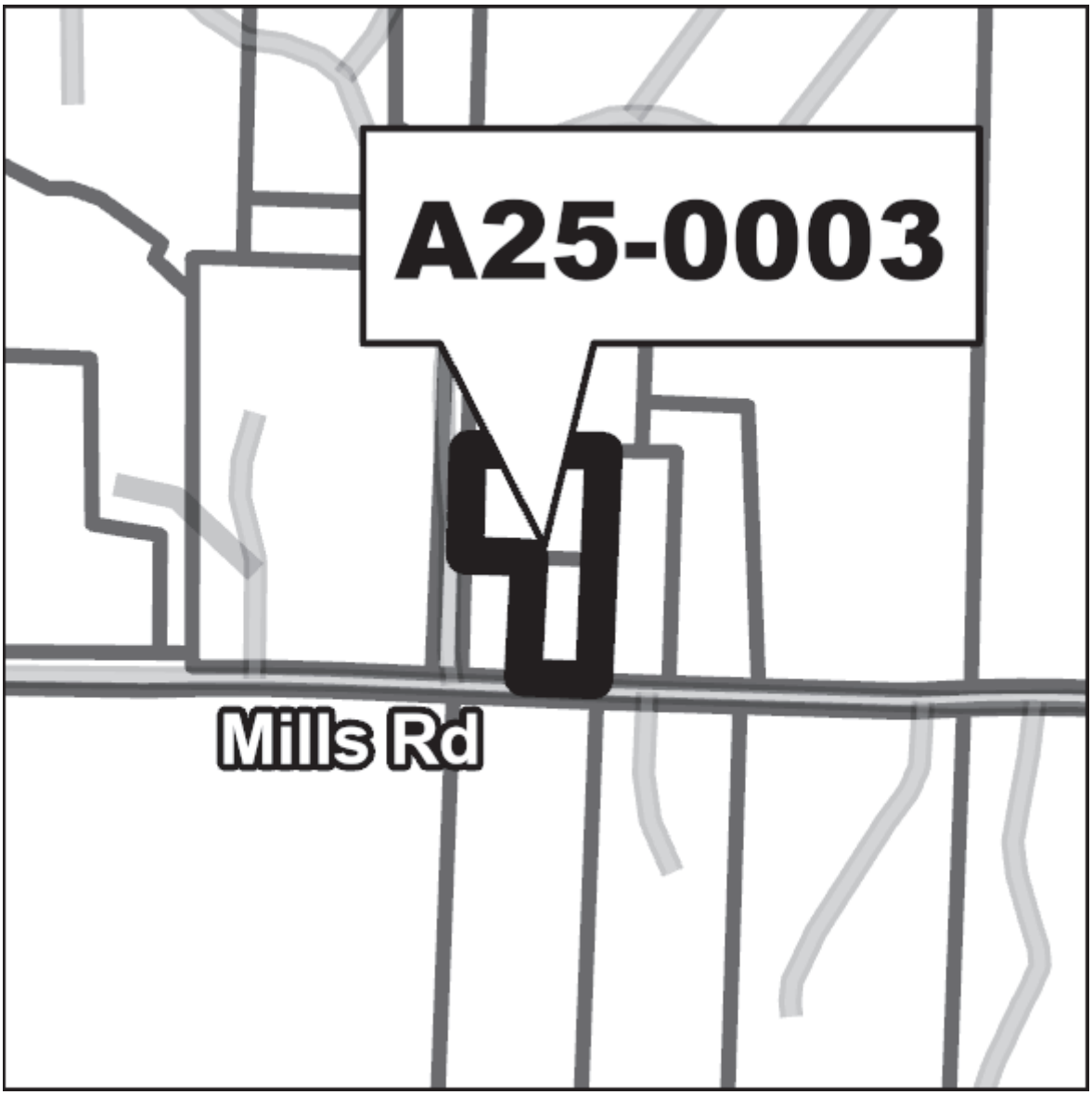


EXHIBIT C
ANNEXATION SCHEDULE

Annexation

01/19/2026 **Petition for Annexation submitted**

01/27/2026 Deadline to submit notice to Denton Record Chronicle and City Website for publication before the 16th day before the public hearing on February 17, 2026 *(published on Sunday, February 1, 2026)*

02/05/2026 Deadline to submit backup for posting of City Council Agenda for Meeting on February 17, 2026

02/17/2026 Annexation **Municipal Service Agreement** – IC (*Required prior to annexation per 43.0672),*
Annexation **Public Hearing** – PH (*Only one public hearing is required per 43.0673),*
AND
First Reading of annexation ordinance – IC (*per City Charter*)

02/22/2026 Publish Ordinance in the newspaper (*Charter Sec. 1.03; cannot be acted on for 30 days*)

03/24/2026 CC by 4/5ths vote takes final action – IC *(Regular meeting)*
Second Reading of annexation ordinance.
Adoption of annexation ordinance *(30 days+ post publication per Charter Sec. 1.03)*

Post-Annexation Adoption Procedures:

1. Notification to Comptroller
2. Notification to DOJ
3. File certified copy of ordinances with the Denton County Clerk
4. File certified copy of ordinances with the Denton CAD
5. Revise City Map
6. Notify Utilities (Customer Service) utilitybilling@cityofdenton.com

A25-0003
Mills Road Annexation Municipal Services Agreement

Ashley Ekstedt, AICP

Associate Planner

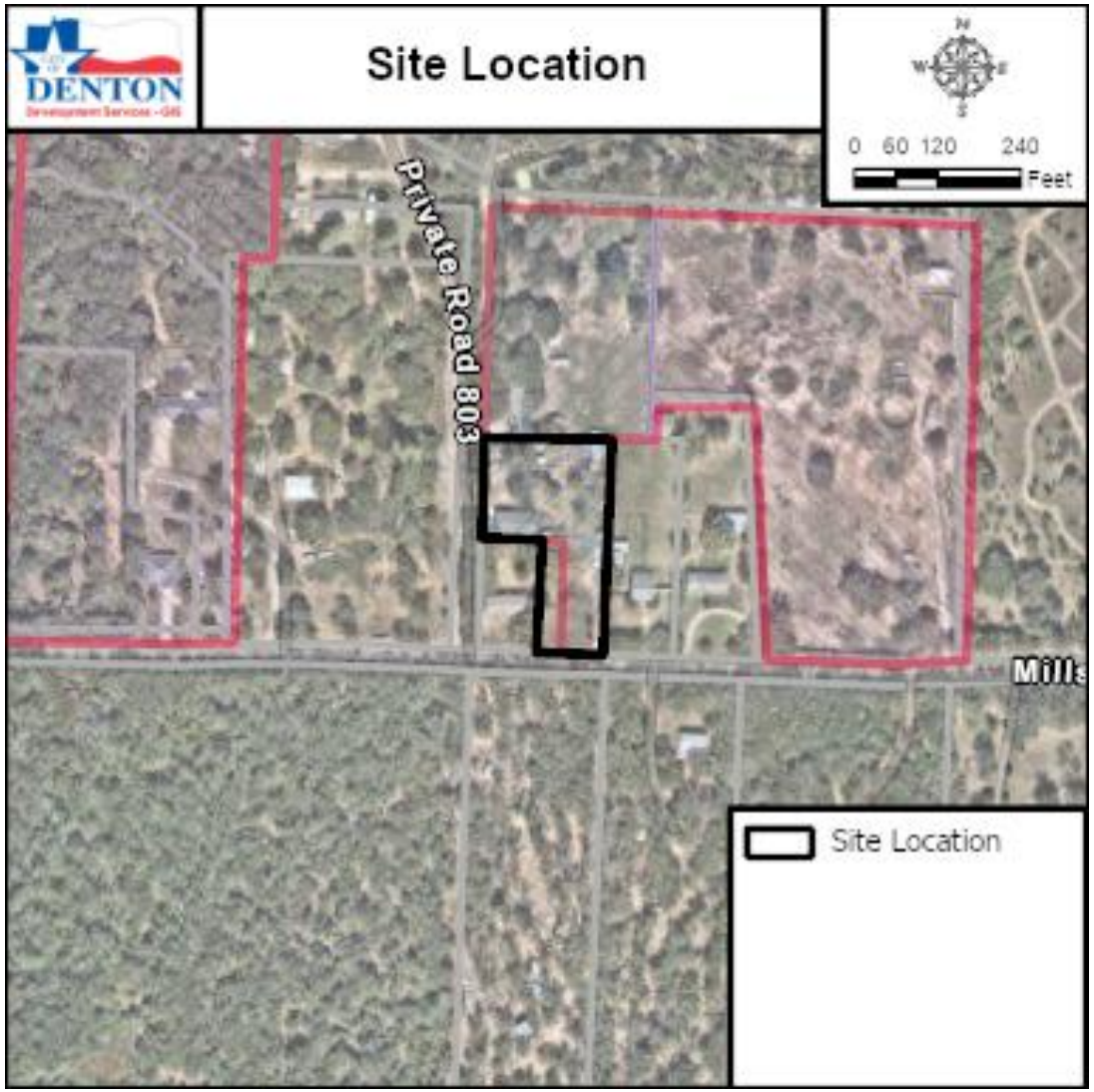
February 17, 2026

CITY OF DENTON

Request

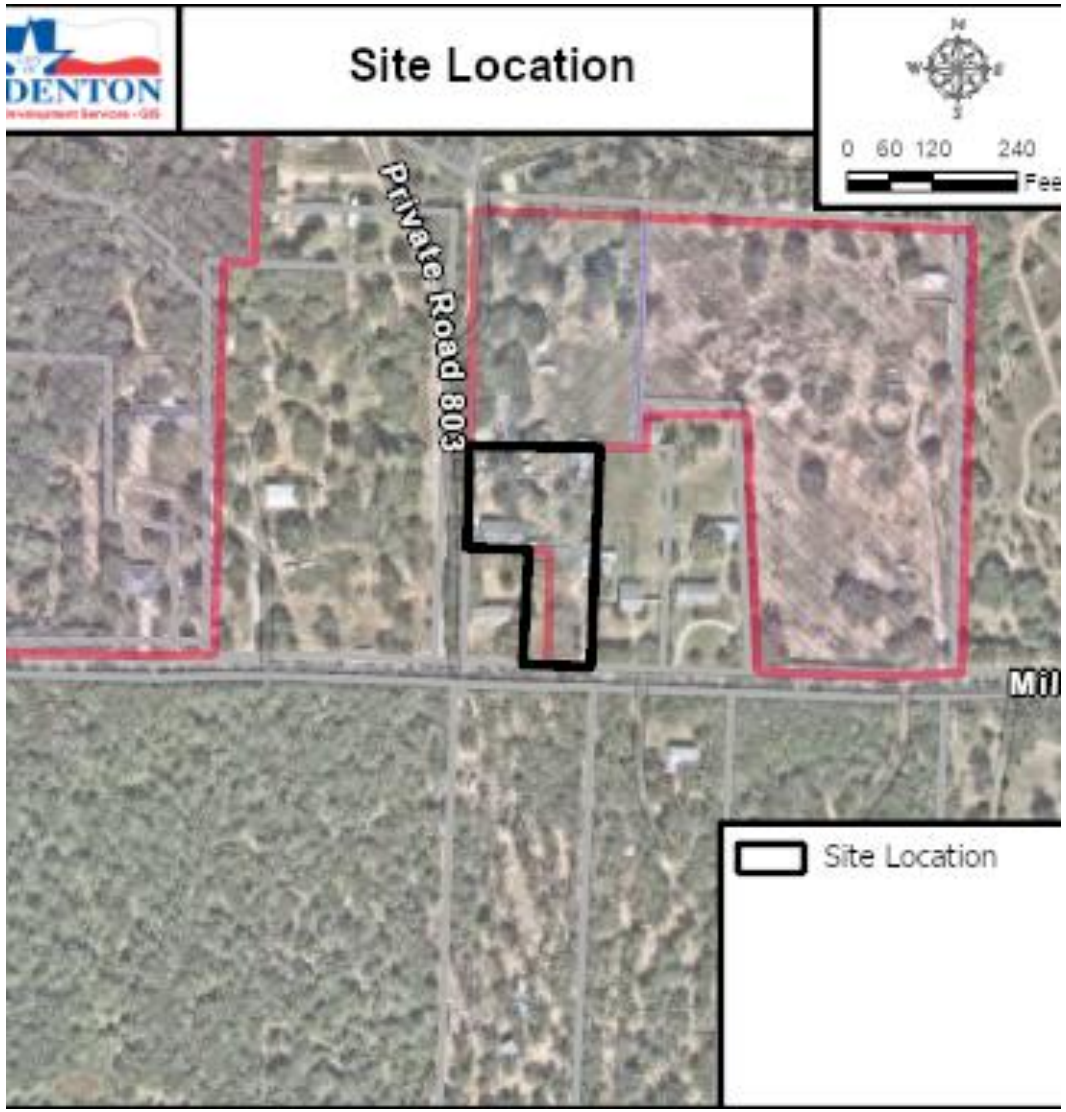
- Consider adoption of an ordinance approving a **Municipal Services Agreement** for approximately **1.03 acres of land** located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road

- Approving a **Schedule of Annexation**



Background

- Property owner had a non-annexation agreement that expired in August of 2020
- A new non-annexation agreement has not been signed
- Development includes a single-family home and outbuildings



Municipal Services Agreement

- ✓ Police
- ✓ Fire Protection
- ✓ Emergency Medical Service
- ✓ Solid Waste
- ✓ Wastewater Facilities
- ✓ Water Facilities
- ✓ Roads and Streets
- ✓ Drainage
- ✓ Parks, Playgrounds, Swimming Pools
- ✓ Publicly Owned Facilities
- ✓ Permitting and Inspections
- ✓ Other Services

Annexation Schedule

- **February 17, 2026**
  - Municipal Services Agreement – Action Required
  - Public Hearing – No Action
  - First Reading of the Annexation Ordinance – No Action

- **February 22, 2026**
  - Publication of Annexation Ordinance

- **March 24, 2026**
  - Second Reading and Adoption of the Annexation Ordinance – Action Required

QUESTIONS?

Ashley Ekstedt, AICP
Associate Planner
Development Services

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2026

SUBJECT

Consider adoption of an ordinance of the City of Denton, Texas, regarding a Municipal Services Agreement, pursuant to Tex. Loc. Govt. Code Sec. 43.0672, between the City of Denton and J. Doss Phillips for the provision of city services to approximately 1.09 acres of land, generally located 740 feet south of Edwards Road and 290 feet west of Swisher Road; approving a schedule of annexation; authorizing the City Manager to execute the agreement; and providing an effective date. (A25-0004, Swisher Road Annexation, Bryce Van Arsdale)

BACKGROUND

The owner, J. Doss Phillips, (hereafter referred to as "Owner"), had a non-annexation agreement (ordinance 2012-362), which expired on August 1, 2020. Pursuant to Council direction, the City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded. By operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of approximately 1.09 acres of land, generally located 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road (hereafter referred to as "Subject Property").

In accordance with State Law, Non-Annexation Agreements (NAAs) were initially offered to property owners between 2010 and 2016 when the City was in the process of annexing land area within the Extra-Territorial Jurisdiction (ETJ). Texas Local Government Code Section 43.016 requires municipalities to offer NAA agreements to property owners of land area the City is interested in annexing if that land area is appraised for tax purposes as having agricultural, wildlife management, or timber use. In addition, the City also offered NAAs to properties used as single-family residences. NAAs entered into during this initial time period had an original expiration date of August 2020. In 2020, City Council directed staff to offer extensions of the NAAs to August 2040. In accordance with State Law, the total duration of the NAA shall not exceed 45 years.

The general requirements of the NAAs are as follows:

- The property may only be used for single-family residential, agricultural, wildlife, timber, or related uses.
- City of Denton regulations apply to proposed development.
- Development applications and building permits must be submitted and approved through the City of Denton.
- Land may be subdivided into smaller parcels via plating, provided the minimum lot size is at least 5 acres.
- Notification must be provided to the City if the property is sold.

- Properties with agriculture, wildlife management, or timberland exemptions are required to provide notice to the City if there is a change in exemption status.
- If the property owner does not abide by these requirements, or if the NAA expires, the City may proceed with annexation of the property.

Following Council direction in 2020, staff began engaging with property owners with expired NAAs in an effort to enter into new agreements with 2040 expiration dates. Between 2020 and 2021 a majority of property owners with expired NAAs entered into new agreements; however, 18 NAAs remained expired.

In 2024, staff revisited the topic of expired NAAs with City Council. Direction was given to contact the property owners of the 18 expired agreements to extend the NAAs and pursue annexation for any remaining expired NAAs. Initial letters offering NAA extensions were mailed in May 2024 with follow-up letters in June prior to the initial response deadline of June 21, 2024. Additional letters were mailed in September 2024, and a final letter was sent to the property owner on December 11, 2025. Currently, 7 of the 18 property owners with expired NAAs have entered into new agreements with the City. 11 NAAs remain expired and the City has begun the process of annexing these areas. Given the number of expired NAAs, staff will bring forward the annexation cases in groups based on parcel size, beginning with the smallest parcels.

Approval of this Municipal Services Agreement is the first of several steps required for an annexation based upon the requirements of TXLGC Sec. 43.0672 and the City's Charter as outlined below:

1. **Approval of a Municipal Services Agreement**
2. Annexation Public Hearing
3. First Reading of Annexation Ordinance
4. Publication of Annexation Ordinance
5. Second Reading and Adoption of Annexation Ordinance

The first three of these items are on this agenda, with this being the first required step in the process. Following the first reading of the annexation ordinance, the ordinance must be published in the newspaper, and the second reading is required to occur at least 30 days following ordinance publication.

Due to annexation law, under Subchapter C-3 (TXLGC Sec. 43.0672), a municipality that elects to annex an area upon request of owners must first negotiate and enter into a written Service Agreement with the owners of the land in the area for the provision of services in the area. The attached Municipal Services Agreement contains the City's standard Service Plan for annexations regarding streets, water, wastewater, police and fire protection, and park services.

The subject property is situated 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road. Swisher Road, the nearest right-of-way, is classified as a Proposed Secondary Arterial according to the 2022 Mobility Plan. The properties to the south and east of the subject property are situated within the City of Denton City Limits and classified under the Rural Residential (RR) zoning district. The property to the north of the subject property is within City Limits and zoned as Public Facilities (PF) zoning district; this property is maintained by the City as Villages of Carmel Park. The properties to the west of the subject property are within city limits and zoned as Residential 6 (R6) zoning district.

The Future Land Use designation for the subject property is Moderate Residential within the Denton 2040 Comprehensive Plan. The description for this Future Land Use category is provided below:

> This category accommodates single-family detached housing on small lots, typical of Denton's more compact, established single-family neighborhoods and low-rise multi-family dwellings and townhomes. This land use applies to areas within the central areas of Denton

and transition areas between established single-family neighborhoods and mixed-use or commercial areas that can accommodate greater density, or adjacent to key corridors. Dwellings in this future land use category vary in scale and style and may contain a great deal of diversity by each street and block. Most areas are characterized by rectilinear lots with modest front yards. Most streets are lined by sidewalks, but this is not prevailing throughout. Development is linked by local streets and is most commonly accessed by multiple intersections and points of access. While the land use primarily includes single-family dwellings, multi-family dwellings, and townhomes may be located in this land use as well. While the quality of multi-family dwellings and townhomes currently varies, in the case of future infill development, they should maintain a scale, style, and building orientation in order to complement the prevailing character of its surroundings. This category may also include land uses that support residential neighborhoods, such as neighborhood scaled commercial at arterial and collector street corners, and appropriately scaled public and quasi-public uses, such as religious and educational institutions

The Subject Property is not currently being served with City water or sewer.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)
On December 18, 2012, City Council approved the Non-Annexation Agreement (Ordinance 2012-362). An agreement which expired on August 1, 2020.

Recommendation:
Staff recommends approval of the Municipal Services Agreement and annexation schedule.

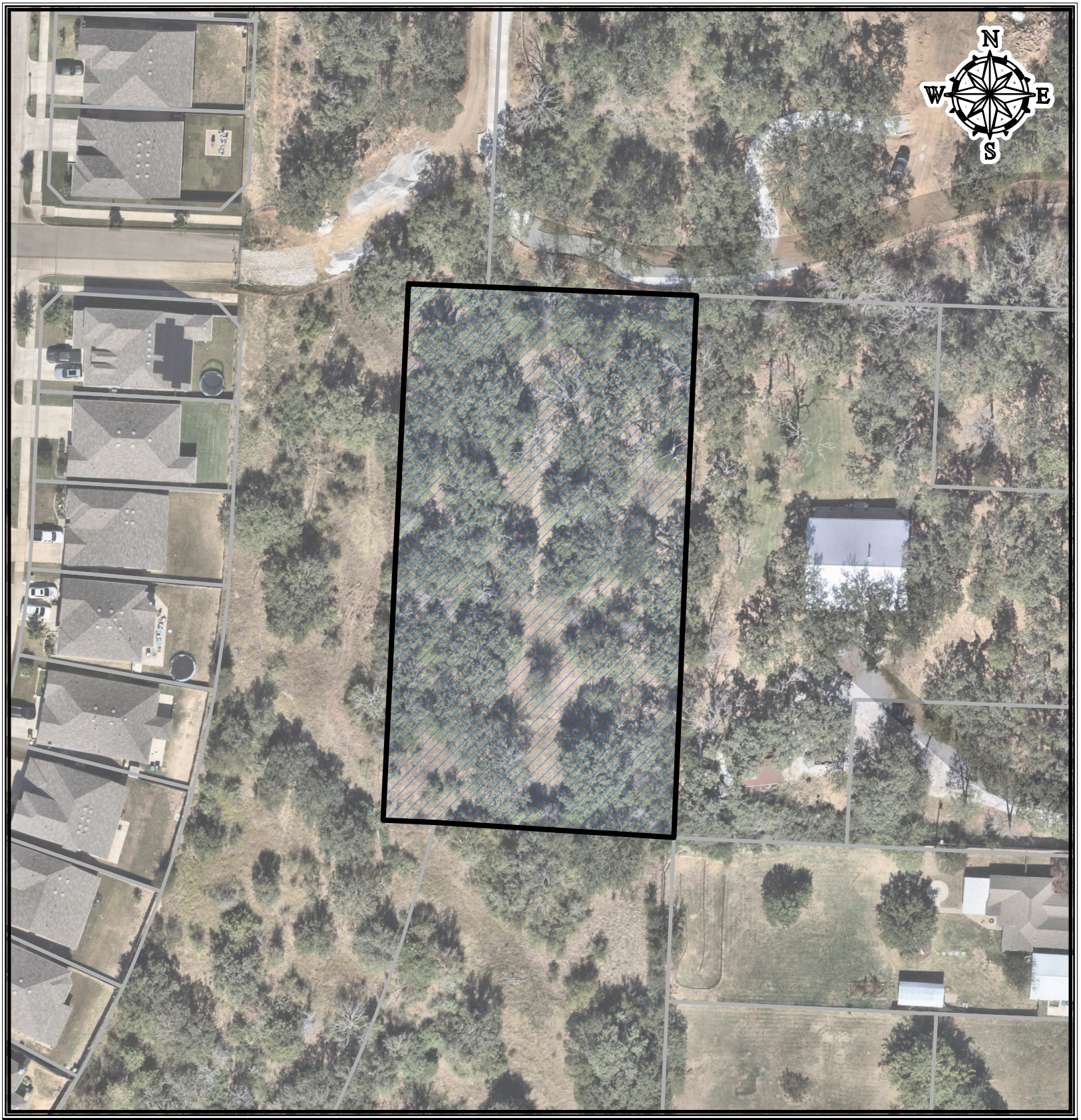
OPTIONS
1. Approve
2. Deny
3. Postpone Item

EXHIBITS
Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Draft Municipal Services Agreement and Annexation Schedule Ordinance
Exhibit 4 - Presentation

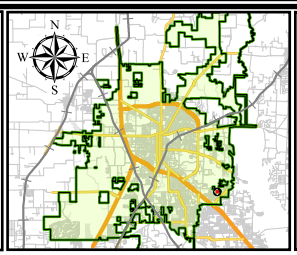
Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Bryce Van Arsdale
Assistant Planner

A25-0004
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40



0 20 40 80 Feet

CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, REGARDING A MUNICIPAL SERVICES AGREEMENT, PURSUANT TO TEX. LOC. GOVT. CODE SEC. 43.0672, BETWEEN THE CITY OF DENTON AND J. DOSS PHILLIPS FOR THE PROVISION OF CITY SERVICES TO APPROXIMATELY 1.09 ACRES OF LAND, GENERALLY LOCATED 740 FEET SOUTH OF EDWARDS ROAD AND 290 FEET WEST OF SWISHER ROAD; APPROVING A SCHEDULE OF ANNEXATION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. (A25-0004)

WHEREAS, the property owner, J. Doss Phillips (hereafter referred to as "Owner"), owns approximately 1.09 acres of land in Denton County, Texas as described in Exhibit A attached hereto and incorporated herein ("Property"); and

WHEREAS, the Owner had a non-annexation agreement, Ordinance 2012-362, which expired on August 1, 2020; and said non-annexation agreement provides that upon expiration of the agreement, the Property will be annexed; and

WHEREAS, pursuant to Council direction, City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded; and

WHEREAS, by operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of the Property; and

WHEREAS, the City of Denton must first negotiate a written Municipal Services Agreement with the Owner of the real property subject to a petition for voluntary annexation, pursuant to Tex. Loc. Govt. Code Sec. 43.0672, that contains (1) the services that the City of Denton will provide on the effective date of the annexation and (2) a schedule that includes the period within which the City of Denton will provide each service that is not provided on the effective date of the annexation; and

WHEREAS, the City of Denton and the Owner have come to an agreement about the provision of full services to the Property following the annexation of the Property; and

WHEREAS, the City Council of the City of Denton finds it to be in the best interest of the citizens of Denton to enter into a Municipal Services Agreement with the Owner; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The Municipal Services Agreement ("Agreement"), made in accordance with applicable provisions of state law pertaining to annexation, is approved and attached hereto as **Exhibit B** and is made a part hereof for all intents and purposes.

SECTION 3. The City Manager, or designee, is hereby authorized to execute the Agreement and to carry out the duties and responsibilities of the City of Denton under the Agreement.

SECTION 4. The schedule of annexation attached hereto as **Exhibit C** is approved and adopted for this annexation.

SECTION 5. Should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 6. This Ordinance shall be effective immediately upon its passage and approval.

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

	Aye	Nay	Abstain	Absent
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Hilary McMahon

EXHIBIT A
LEGAL DESCRIPTION

Being a 1.0959 acre tract of land, more or less, situated in the Gideon Walker Survey, Abstract No. 1330, Denton County, Texas, and being more fully described in that certain Warranty Deed dated December 31, 1996 from David W. Mason to J. Doss Phillips and wife, Glynnis Phillips, filed for record on January 2, 1997 and recorded in Instrument No. 97-R0000117 of the Real Property Records of Denton County, Texas. Said 1.0959 acre tract is commonly known as DCAD Property ID 189728.

EXHIBIT B
MUNICIPAL SERVICES AGREEMENT

MUNICIPAL SERVICES AGREEMENT

This Municipal Service Agreement ("Agreement") is entered into this 17th day of February 2026, by and between the City of Denton, a Texas home-rule municipality (“City”), and the property owner, J. Doss Phillips (hereafter referred to as “Owner”).

RECITALS:

WHEREAS, Section 43.0671 of the TLGC permits the City to annex an area if each owner of land in an area requests the annexation;

WHEREAS, where the City elects to annex such an area, the City is required to enter into a written agreement with the property owner(s) that sets forth the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, the Owner owns the tract of land, totaling approximately 1.09 acres of land located in the City’s extraterritorial jurisdiction, as described in Exhibit A and depicted in Exhibit B, incorporated herein by reference (“the Property”); and

WHEREAS, the Owner had a non-annexation agreement, Ordinance 2012-362, which expired on August 1, 2020; and said non-annexation agreement provides that upon expiration of the agreement, the Property will be annexed; and

WHEREAS, pursuant to Council direction, City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded; and

WHEREAS, by operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of the Property, identified as Annexation Case No. A25-0004 (“Annexation Case”); and

WHEREAS, the City and Owner desire to set out the City services to be provided for the Property on or after the effective date of annexation; and

WHEREAS, the Annexation Case and execution of this Agreement are subject to approval by the Denton City Council.

NOW THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, City and Owner agree as follows:

1. **PROPERTY.** This Agreement is only applicable to the Property, which is the subject of the Annexation Case.

2. **INTENT.** It is the intent of the City that this Agreement provide for the delivery of full, available municipal services to the Property in accordance with state law, which may be accomplished through any means permitted by law.

3. **MUNICIPAL SERVICES.** Commencing on the effective date of annexation, City will provide the municipal services set forth below. As used in this Agreement, "providing services" includes having services available by any method or means by which the City makes such municipal services available to any other area of the City, including per the City's infrastructure extension policies, ordinances, and developer or property owner participation in accordance with applicable city ordinances, rules, regulations, and policies.

A. **Police**

Police protection from City's Police Department shall be provided to the Property at a level consistent with current methods and procedures presently provided to areas with similar topography, land use, and population density, on the effective date of the ordinance. Some of these services include:

1. Normal patrols and responses;
2. Handling of complaints and incident reports;
3. Special units, such as traffic enforcement, investigations and special weapons; and
4. Coordination with other public safety support agencies.

As development commences on the Property, sufficient police protection, including personnel and equipment will be provided to furnish these areas with the level of police services consistent with other areas in the City having similar characteristics of topography, land use, and population density.

Upon ultimate development, police protection will be provided at a level consistent with other areas within the city limits having similar characteristics of topography, land use, and population density.

B. **Fire Protection**

The Denton Fire Department (DFD) will provide emergency and fire prevention services to the Property. These services include:

1. Fire suppression and rescue;
2. Pre-hospital medical services including triage, treatment and transport by Advanced Life Support (ALS) fire engines, trucks and ambulances;
3. Hazardous materials response and mitigation;
4. Emergency prevention and public education efforts;
5. Technical rescue response; and
6. Construction Plan Review and required inspections.

Fire protection from the City of Denton shall be provided to the Property at a level consistent with current methods and procedures presently provided to areas of the City of Denton having similar characteristics of topography, land use, and population density, on the effective date of the ordinance.

As development commences in the Property, sufficient fire protection, including personnel and equipment will be provided to furnish these areas with the level of services consistent with other areas having similar characteristics of topography, land use, and population density. It is anticipated that fire stations planned to serve areas currently within the City of Denton will be sufficient to serve the Property.

Upon ultimate development, fire protection will be provided at a level consistent with other areas within the city limits having similar characteristics of topography, land use, and population density.

C. Emergency Medical Service

The Denton Fire Department (DFD) will provide the following emergency and safety services to the Property. These services include:

1. Emergency medical dispatch and pre-arrival First Aid instructions;
2. Pre-hospital emergency Advanced Life Support (ALS) response; and transport;
3. Medical rescue services.

Emergency Medical Services (EMS) from the City of Denton shall be provided to the Property at a level consistent with current methods and procedures presently provided to areas of the City of Denton having similar characteristics of topography, land use, and population density, on the effective date of the ordinance.

As development commences on the Property, sufficient EMS, including personnel and equipment will be provided to furnish these areas with the level of services consistent with other areas of the City having similar characteristics of topography, land use, and population density.

Upon ultimate development, EMS will be provided at a level consistent with other within the city limits having similar characteristics of topography, land use, and population density.

D. Solid Waste

The City of Denton is the sole provider and hauler for solid waste collection and disposal services within the city limits, including but not limited to, preconstruction activities, construction activities, and ultimately residential, multi-family, or commercial activities, and recycling services. Solid waste and recycling collection services will be provided to the Property immediately upon the effective date of the annexation at a level consistent with current methods and procedures presently provided to areas within the city having similar characteristics of topography, land use, and population density. Customers

receiving their existing services from private solid waste collection service providers operating on the Property immediately prior to annexation may continue to utilize their existing service for up to 2 years in accordance with Texas Local Government Code. Should that private service end prior to the expiration of the two (2) year term, the customer must initiate solid waste and recycling services with the City of Denton, pursuant to Chapter 24 of the Code of Ordinances.

E. Wastewater Facilities

The Property is located within the City of Denton Sewer Service Area as defined by Certificate of Convenience and Necessity (CCN) Number 20072, as issued by the Public Utility Commission (PUC).

Connections to existing City of Denton wastewater distribution mains for wastewater service will be provided in accordance with the Denton Development Code, associated Water/Wastewater Criteria Manual, and existing City ordinances and policies. Upon connection to existing distribution mains, wastewater service will be provided at rates established by city ordinance. Owner will provide all on-site public utility easements by plat or on a form acceptable to the City, and at no additional cost to the City, that are necessary to protect, install, safely operate and maintain the wastewater infrastructure, on a form acceptable to the City, and at no cost to the City.

As development commences on the Property, sanitary sewer mains will be extended in accordance with the provisions of the Denton Development Code, Water/Wastewater Criteria Manual, ordinances and regulations. If required, City participation in the costs of these extensions shall be in accordance with applicable City ordinances and regulations. Capacity shall be provided consistent with other areas having similar characteristics of topography, land use, and population density. The sanitary sewer infrastructure shall be compatible and consistent with the City's wastewater master plan.

Upon annexation, sanitary sewer mains and lift stations which are located within dedicated utility easements, public rights-of-way, or any other acceptable locations approved by the Director of Water Utilities, shall be maintained by the City on the effective date of this ordinance, if installed or improved to City standards within the annexed areas.

Operation and maintenance of wastewater facilities and infrastructure lying within the service area of another water utility will be the responsibility of that utility. Similarly, operation and maintenance of private wastewater facilities will be maintained to City standards at the expense of the private property owner.

F. Water Facilities

The Property is located within the City of Denton Water Service Area as defined by Certificate of Convenience and Necessity (CCN) Number 10195 as issued by the Public Utility Commission (PUC).

Connections to existing City of Denton water distribution mains for water service will be provided in accordance with the Denton Development Code, associated Water/Waste

Water Criteria Manual, and existing City ordinances and policies. Upon connection to existing distribution mains, water service will be provided at rates established by city ordinance.

Connections to existing City of Denton water distribution mains for water service will be provided in accordance with the Denton Development Code, associated Water/Waste Water Criteria Manual, and existing City ordinances and policies. Upon connection to existing distribution mains, water service will be provided at rates established by city ordinance.

As new development occurs within the Property, cost participation for extensions of water distribution mains - if required - shall be in accordance with the Denton Development Code, Water/Wastewater Criteria Manual, and with existing City ordinances and policies. Water service capacity shall be provided consistent with service to areas of the City having similar characteristics of topography, land use and population density. The water infrastructure shall be compatible and consistent with the City's water master plan.

Operation and maintenance of water facilities and infrastructure that lie within the service area of another water utility will be the responsibility of that utility.

Existing developments, businesses or homes that are on individual water wells or private water systems will be allowed to remain on those systems until a request for water service is made to the City. These requests for service will be handled in accordance with the applicable utility service line extension and connection policies currently in place at the time the request for service is received. Owner will provide all on-site public utility easements that are necessary to protect, install, safely operate and maintain the water infrastructure, on a form acceptable to the City, and at no cost to the City.

G. <u>Roads and Streets</u>

Emergency street maintenance, defined as repairs necessary to prevent imminent damage or injury to the health or safety of the public or any person, as determined by the Director of Public Works, shall be provided within the Property upon the effective date of the annexation ordinance. Routine maintenance will be provided within the Property and will be scheduled as part of the City's annual program, in accordance with the current policies and procedures defined by ordinance, or otherwise established by the City Council.

Any construction or reconstruction will be considered within the Property on a Citywide basis and within the context of the City's Capital Improvement Plan and/or yearly fiscal budgetary allotments by the City Council.

Roadway signage and associated posts will be replaced in priority of importance starting with regulatory signs, then warning signs, then informational signs, in conformance with fiscal allotments by the City Council. If an existing sign remains, it will be reviewed and placed on the City's inventory listing for routine replacement, based upon an engineering study. New signs will be installed when necessary, based upon an engineering study.

Routine maintenance of road/street markings will be evaluated and scheduled within the yearly budgetary allotments by the City Council.

H. Drainage

Connections to existing City of Denton drainage facilities will be provided in accordance with the Denton Development Code, associated Design Criteria Manual, and with existing City ordinances and policies, but only to the extent existing on-site drainage facilities are not compliant with the Denton Development Code. Drainage fees will be assessed at the rates established by city ordinance and will be charged on the utility bill after annexation. All runoff, whether directly tied into the system or not, impacts the system and will be charged.

As new development occurs within the Property, drainage facilities will be extended or improved by the developer as required to remain compliant with the Denton Development Code. Any cost participation shall be in accordance with the Denton Development Code, Design Criteria Manual, and with existing City ordinances and policies. Drainage facilities extended by the City will have to be a Capital Improvement Project (CIP) project and bonds will need to be sold. Drainage capacity shall be provided consistent with other areas of the City having similar characteristics of topography, land use and population density.

Existing developments, businesses or homes that are on existing drainage systems will be allowed to continue to remain on these systems until a request for drainage facilities is made to the City. Any requests for City improvements to existing drainage facilities will be handled in accordance with the applicable extension and connection policies currently in place at the time the request for improved drainage facilities is received by the City. Owner will provide all on-site public utility easements that are necessary to protect, install, safely operate and maintain the drainage infrastructure, on a form acceptable to the City, and at no cost to the City. These will be ranked in the CIP project matrix, in accordance with the City Drainage Plan.

I. Electric

The Property will be served with electricity distribution service in the most cost-effective manner; provided, however, that before Owner may enter into a contract with an electricity distribution service provider, (i) Owner shall provide the City with any and all bona fide offers that Owner has received from electricity distribution service providers that can legally serve the Property and (ii) the City shall have 30 business days to provide to Owner Denton Municipal Electric's ("DME") offer to provide distribution electricity service to the Property; and provided further, that if DME's offer is substantially similar to the most cost-effective offer from another distribution electricity service provider that can legally serve the Property, then Owner will obtain electricity distribution service from DME. The term "substantially similar" means that the terms of the offers provide the approximately the same level of service at approximately the same start-up cost to Owner. Electric rates applicable to customers within the Property will be pursuant to the then applicable DME rates as approved by the Denton City Council.

Such electricity service offers will be based upon the following terms:

1. The electricity distribution service provider will extend electric distribution facilities as necessary to serve full development of the Property. The electricity distribution service provider will evaluate the cost associated with service extension through the undeveloped area to determine if Aid-in-Construction is required. The electricity distribution service provider is responsible for installation of all primary-voltage electrical cables, transformers, switchgear, streetlight poles and LED streetlight fixtures, streetlight cables, single-family residential services, and other necessary electric distribution and transmission system equipment in compliance with Electric Service Standards and Line Extension Policies currently in place at the time of development, whether onsite or offsite as necessary to provide adequate and reliable electric service to the Property.

2. Owner will provide all on-site public utility easements to the electricity distribution provider that are necessary to protect, install, safely operate and maintain the electric infrastructure, at no cost to the City. PUEs will be 8 feet in width adjacent to street rights-of-way in single family residential areas, and 15 feet in width adjacent to Primary and Secondary Arterial rights-of-way (20 feet where duct banks are required). Easements will be conveyed through the platting process unless the electricity distribution service provider requests an easement be transferred by separate instrument. The provider agrees to joint trench installation of other franchised utilities such as telephone, cable tv, fiber optic cables, or other non-gas utilities within the designated public utility easements as long as those utilities are on an edge shelf of the trench and not placed directly above the electric facilities.

3. Existing overhead electric distribution lines, which are located in the public rights-of-way, will be relocated by the electricity distribution service provider at no cost to the Owner when development adjacent to the existing electric line requires the line to be relocated in order to accommodate the adjacent development as long as the relocation is also to an overhead position. If Owner requests the relocation be placed underground, then Owner shall be responsible for the difference in cost between the overhead relocation and the underground relocation as reasonably determined and demonstrated by the electricity distribution service provider. Existing overhead electric distribution lines not owned by the electricity distribution service provider will be relocated underground by the owner of the lines if so required to comply with the Denton Development Code.

4. Owner will comply with those City approved policies within the DME Electric Service Standards (ESS), as amended, that are available on the City website and uniformly applied within the City, including the specifications for street lighting.

5. All new distribution electric service within the Property shall be placed underground except for necessary above ground appurtenances such as streetlights, switchgear and transformers. The City shall have the right to inspect the electric facilities prior to placing such facilities into use.

J. **Parks, Playgrounds, Swimming Pools**

Residents of the Property may utilize all existing park and recreation facilities as a resident of the effective date of this ordinance. The park dedication and development ordinance shall apply to the Property for residential development.

In addition, park and recreation facilities shall be constructed based on park policies defined in the Parks, Recreation and Trails System Master Plan and other existing City ordinances and policies.

K. **Publicly Owned Facilities.** Any publicly owned facility, building, or service located within the Property, and not otherwise owned or maintained by another governmental entity, shall be maintained by the City of Denton on the effective date of the annexation ordinance.

L. **Permitting and Inspections.** Permitting and Inspections shall be obtained through the City of Denton, as outlined in the Code of Ordinances.

M. **Other Services.** Other services that may be provided by the City of Denton, such as municipal and general administration, will be made available as of the effective date of the annexation. The City of Denton shall provide a level of services, infrastructure, and infrastructure maintenance that is comparable to the level of services, infrastructure, and infrastructure maintenance available in other parts of the City of Denton having similar topography, land use, and population density similar to those reasonably contemplated or projected in the area.

4. UNIFORM LEVEL OF SERVICES IS NOT REQUIRED

Nothing in this Agreement shall require City to provide a uniform level of full municipal services to each area of the City, including the Property, if different characteristics of topography, land use, and population density justify different levels of service.

5. AUTHORITY

City and Owner represent that they have full power, authority and legal right to execute, deliver and perform their obligations pursuant to this Agreement. Owner acknowledges that approval of the Annexation Case is within the sole jurisdiction of the City Council. Nothing in this Agreement guarantees favorable decisions by the City Council.

6. EFFECTIVE DATE; TERM

The effective date of this Agreement is the date of the annexation of the Property. This Agreement shall be valid for a term of ten (10) years from the Effective Date.

7. VENUE AND GOVERNING LAW

Venue shall be in the state courts located in Denton County, Texas or the United States District Court for the Eastern District of Texas. This Agreement shall be governed and construed in accordance with the laws and court decisions of the State of Texas.

8. GOVERNMENTAL POWERS. It is understood that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

9. SEVERABILITY

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

11. CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

12. SUCCESSORS AND ASSIGNS

The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties to this Agreement and stand as obligations running with the land until satisfied in full, regardless of how the Property is developed.

13. ENTIRE AGREEMENT; AMENDMENT.

This Agreement constitutes the complete agreement of the parties to this Agreement and supersedes all prior written agreements between the parties. This Agreement shall not be amended unless executed in writing by both parties. The Parties stipulate that this Agreement does not constitute a permit for development under Chapter 245 of the Texas Local Government Code.

The parties have executed this Agreement on the date first above written.

OWNER

_____
By: J. Doss Phillips

CITY OF DENTON, TEXAS

By: _____
City Manager, Deputy City Manager, or
Assistant City Manager

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED

as to financial and operational
obligations and business terms.

Charlie Rosendahl Digitally signed by Charlie Rosendahl
DN: C=US, E=Charlie.Rosendahl@cityofdenton.com, O=City of Denton, CN=Charlie Rosendahl
Date: 2026.01.29 11:03:25-06'00'

_____
Signature

Interim Director
Title

Development Services
Department

Date Signed: 1/29/2026

APPROVED AS TO LEGAL FORM:

Mack Reinwand, City Attorney
By: Hilary McMahon
_____

EXHIBIT C
ANNEXATION SCHEDULE

Annexation

12/15/2025 **Final Non-Annexation Agreement letter sent to property owner**

01/27/2026 Deadline to submit notice to Denton Record Chronicle and City Website for publication before the 16th day before the public hearing on February 17, 2026 *(published on Sunday, February 1, 2026)*

02/05/2026 Deadline to submit backup for posting of City Council Agenda for Meeting on February 17, 2026

02/17/2026 Annexation **Municipal Service Agreement** – IC (*Required prior to annexation per 43.0672),*
Annexation **Public Hearing** – PH (*Only one public hearing is required per 43.0673),*
AND
First Reading of annexation ordinance – IC (*per City Charter*)

02/22/2026 Publish Ordinance in the newspaper (*Charter Sec. 1.03; cannot be acted on for 30 days*)

03/24/2026 CC by 4/5ths vote takes final action – IC *(Regular meeting)*
Second Reading of annexation ordinance.
Adoption of annexation ordinance *(30 days+ post publication per Charter Sec. 1.03)*

Post-Annexation Adoption Procedures:

1. Notification to Comptroller
2. Notification to DOJ
3. File certified copy of ordinances with the Denton County Clerk
4. File certified copy of ordinances with the Denton CAD
5. Revise City Map
6. Notify Utilities (Customer Service)
utilitybilling@cityofdenton.com

EXHIBIT A
LEGAL DESCRIPTION

Being a 1.0959 acre tract of land, more or less, situated in the Gideon Walker Survey, Abstract No. 1330, Denton County, Texas, and being more fully described in that certain Warranty Deed dated December 31, 1996 from David W. Mason to J. Doss Phillips and wife, Glynnis Phillips, filed for record on January 2, 1997 and recorded in Instrument No. 97-R0000117 of the Real Property Records of Denton County, Texas. Said 1.0959 acre tract is commonly known as DCAD Property ID 189728.

EXHIBIT B
LOCATION MAP

A25-0004
Swisher Road Annexation Municipal Services Agreement

Bryce Van Arsdale

Assistant Planner

February 17, 2026

CITY OF DENTON

Request

- Consider adoption of an ordinance approving a **Municipal Services Agreement** for approximately **1.09 acres of land** located 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road

- Approving a **Schedule of Annexation**



Background

- Non-Annexation Agreement (NAA) for the property expired on August 1, 2020
- A new NAA has not been signed
- The property is undeveloped



Municipal Services Agreement

- ✓ Police
- ✓ Fire Protection
- ✓ Emergency Medical Service
- ✓ Solid Waste
- ✓ Wastewater Facilities
- ✓ Water Facilities
- ✓ Roads and Streets
- ✓ Drainage
- ✓ Parks, Playgrounds, Swimming Pools
- ✓ Publicly Owned Facilities
- ✓ Permitting and Inspections
- ✓ Other Services

Annexation Schedule

- **February 17, 2026**
  - Municipal Services Agreement – Action Required
  - Public Hearing – No Action
  - First Reading of the Annexation Ordinance – No Action

- **February 22, 2026**
  - Publication of Annexation Ordinance

- **March 24, 2026**
  - Second Reading and Adoption of the Annexation Ordinance – Action Required

QUESTIONS?

Bryce Van Arsdale
Assistant Planner
Development Services

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2026

SUBJECT

Hold a public hearing and consider a petition for voluntary annexation of approximately 2.00 acres of land, approximately located 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road, into the City of Denton, Denton County, Texas; providing for a correction to the City map to include the annexed land; and providing for a savings clause and an effective date. (A25-0005a, 5811 Mills Rd Annexation, Angie Manglaris)

BACKGROUND

The owner, Victor and Leticia Lopez, (hereafter referred to as "Owner"), had a non-annexation agreement (ordinance 2012-263), which expired on August 1, 2020. Pursuant to Council direction, the City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded. By operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of approximately 2.00 acres approximately located 300.77 feet north of Mills Road and approximately 1,453 feet west of South Trinity Road (hereafter referred to as "Subject Property").

In accordance with State Law, non-annexation agreements (NAAs) were initially offered to property owners between 2010 and 2016 when the City was in the process of annexing land area within the Extra-Territorial Jurisdiction (ETJ). Texas Local Government Code Section 43.016 requires municipalities to offer NAA agreements to property owners of land area the City is interested in annexing if that land area is appraised for tax purposes as having agricultural, wildlife management, or timber use. In addition, the City also offered NAAs to properties used as single-family residences. NAAs entered into during this initial time period had an original expiration date of August 2020. In 2020, City Council directed staff to offer extensions of the NAAs to August 2040. In accordance with State Law, the total duration of the NAA shall not exceed 45 years.

The general requirements of the NAAS are as follows:

- The property may only be used for single-family residential, agricultural, wildlife, timber, or related uses.
- City of Denton regulations apply to proposed development.
- Development applications and building permits must be submitted and approved through the City of Denton.
- Land may be subdivided into smaller parcels via plating, provided the minimum lot size is at least 5 acres.

- Notification must be provided to the City if the property is sold.
- Properties with agriculture, wildlife management, or timberland exemptions are required to provide notice to the City if there is a change in exemption status.
- If the property owner does not abide by these requirements, or if the NAA expires, the City may proceed with annexation of the property.

Following Council direction in 2020, staff began engaging with property owners with expired NAAs in an effort to enter into new agreements with 2040 expiration dates. Between 2020 and 2021 a majority of property owners with expired NAAs entered into new agreements; however, 18 NAAs remained expired.

In 2024, staff revisited the topic of expired NAAs with City Council. Direction was given to contact the property owners of the 18 expired agreements to extend the NAAs and pursue annexation for any remaining expired NAAs. Initial letters offering NAA extensions were mailed in May 2024 with follow-up letters in June prior to the initial response deadline of June 21, 2024. Additional letters were mailed in September 2024, and a final letter was sent to the property owner on December 11, 2025. Currently, 7 of the 18 property owners with expired NAAs have entered into new agreements with the City. 11 NAAs remain expired and the City has begun the process of annexing these areas. Given the number of expired NAAs, staff will bring forward the annexation cases in groups based on parcel size, beginning with the smallest parcels.

This public hearing is the second of several steps required for a voluntary annexation based upon the requirements of TXLGC Sec. 43.0672 and the City's Charter as outlined below:

1. Approval of a Municipal Services Agreement
2. **Annexation Public Hearing**
3. First Reading of Annexation Ordinance
4. Publication of Annexation Ordinance
5. Second Reading and Adoption of Annexation Ordinance

The first three of these items are on this agenda, with this being the second required step in the process. Following the first reading of the annexation ordinance, the ordinance must be published in the newspaper, and the second reading is required to occur at least 30 days following ordinance publication.

The subject property is situated approximately 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road. The property to the south of the subject property is situated within the City of Denton's Extraterritorial Jurisdiction (ETJ) and is under the same ownership as the subject property. This property also has an expired non-annexation agreement. The property to the east is situated within the City's ETJ. The property to the west and north of the Subject Property is situated within the City limits and zoned Rural Residential (RR). Mills Road, south of the Subject Property, is a two-lane roadway, classified as a Secondary Arterial per the 2022 Mobility Plan and Thoroughfare Map.

The Future Land Use designation for the subject property is Low Residential. The description for this Future Land Use category is provided below:

> This category includes the city's predominantly single-family neighborhoods, with lot sizes ranging from one acre or more in rural fringe areas up to five units per acre gross density throughout many of the city's suburban subdivisions. Dwellings in this land use district are generally one to two stories with private driveways and open space, consisting of privately maintained tree canopy and front, back and side yards. Building and driveway orientation, the locations of private garages, building material, and the presence of sidewalks vary by neighborhood and the era of neighborhood development. Generally, these types of single-family neighborhoods are developed as distinct subdivisions that are linked by internal circulation systems with limited access to local and connector roads. This category may also include land uses that support residential neighborhoods,

such as appropriately scaled commercial at arterial and collector street corners, and appropriately scaled public and quasi-public uses, such as religious and educational institutions.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)
The previously approved NAA (Ordinance 2012-363) expired on August 1, 2020.

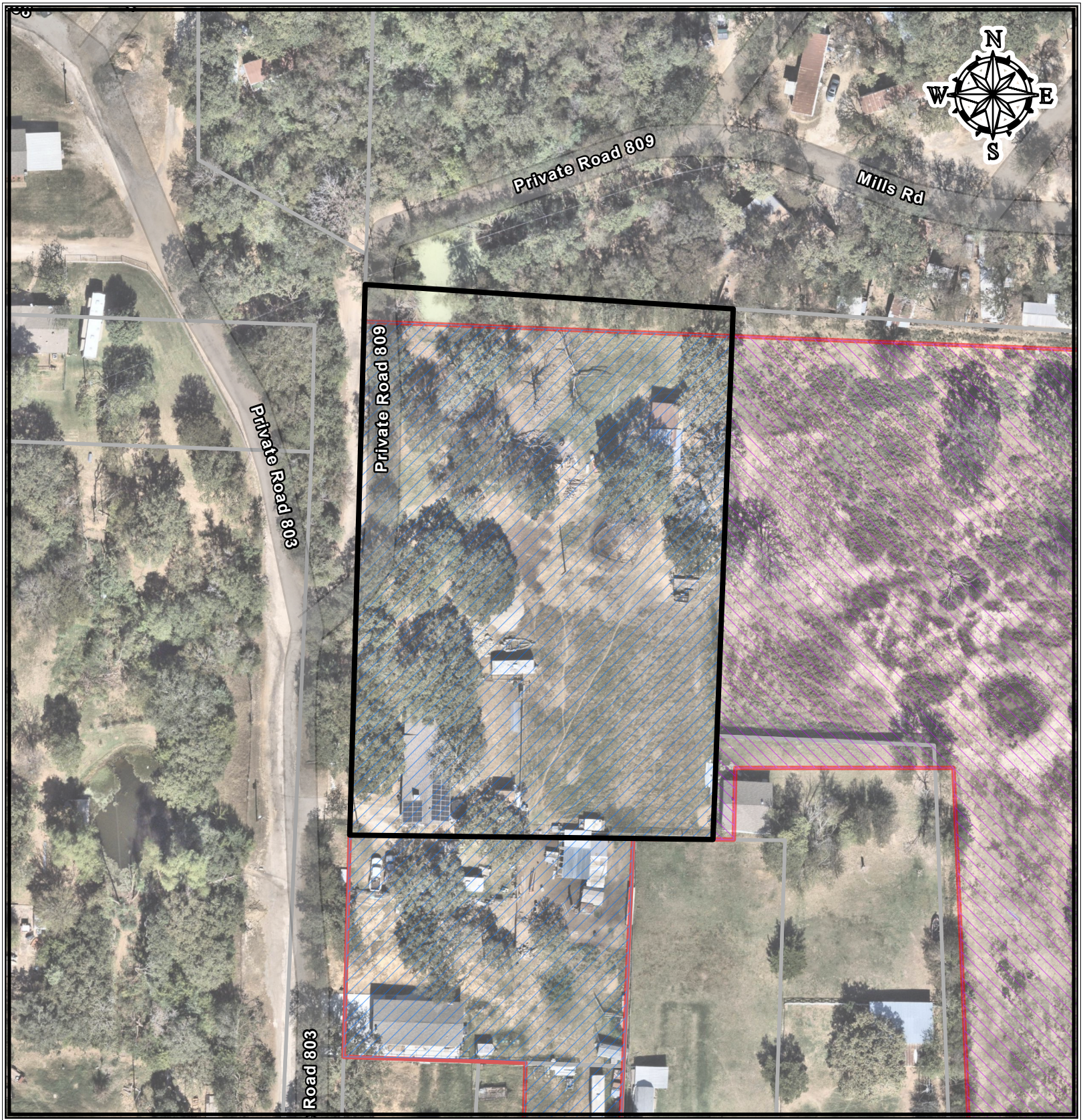
OPTIONS
No action is required for the public hearing.

EXHIBITS
Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Presentation

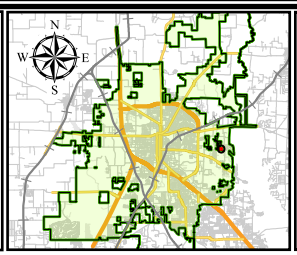
Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Angie Manglaris, AICP
Assistant Planning Director

A25-0005
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40

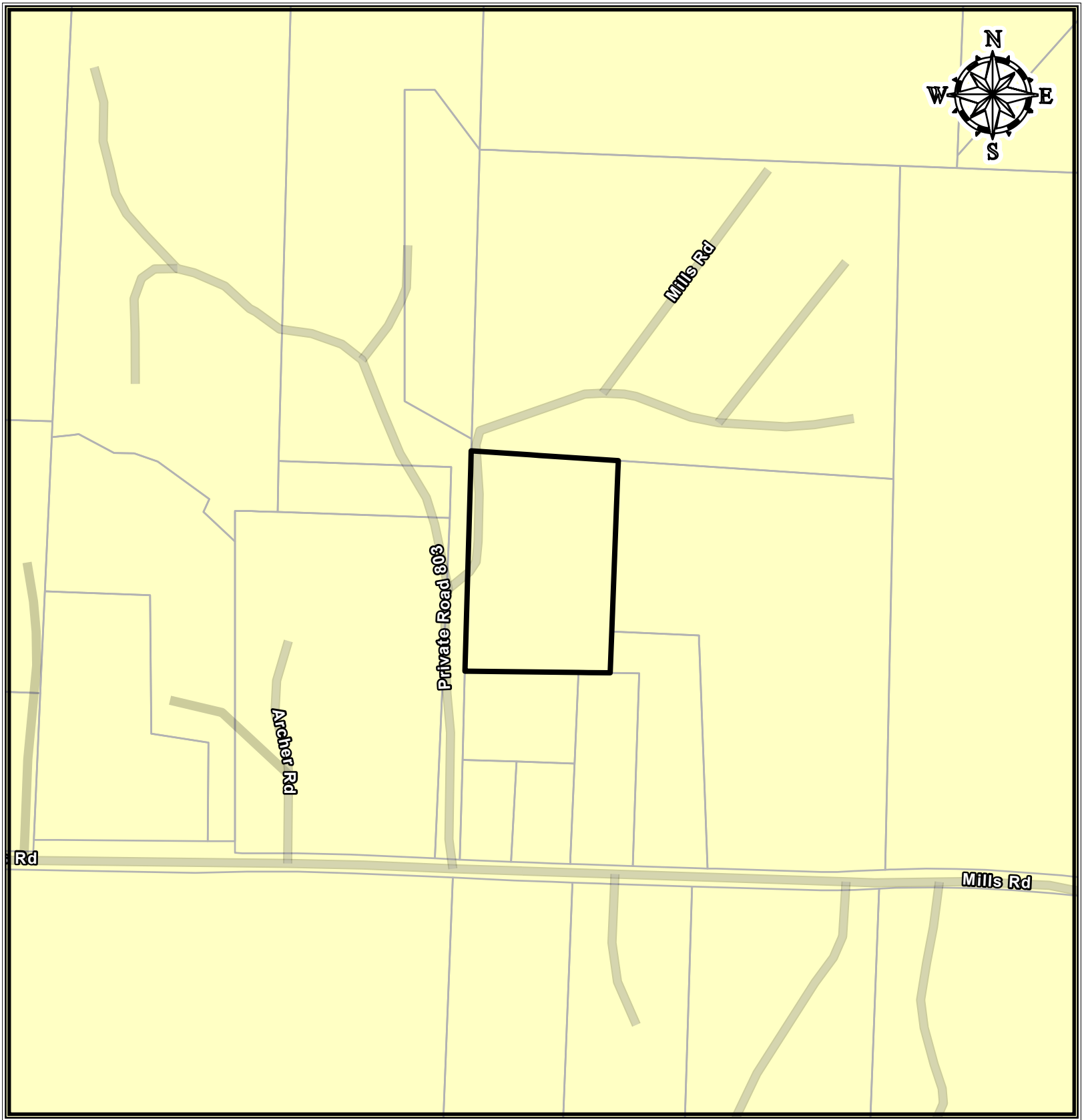


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CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

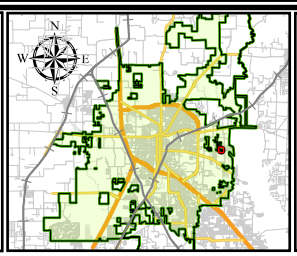
"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

A25-0005
Future Land Use Map



Future Land Use 2040

- Agriculture
- Rural Areas
- Low Residential
- Moderate Residential
- Master Planned Community
- Downtown Denton
- Regional Mixed Use
- Community Mixed Use
- Neighborhood Mixed Use
- Neighborhood / University Compatibility Area
- Business Center
- Light Industrial
- Industrial Commerce
- Government / Institutional
- Parks / Open Space
- Site Location

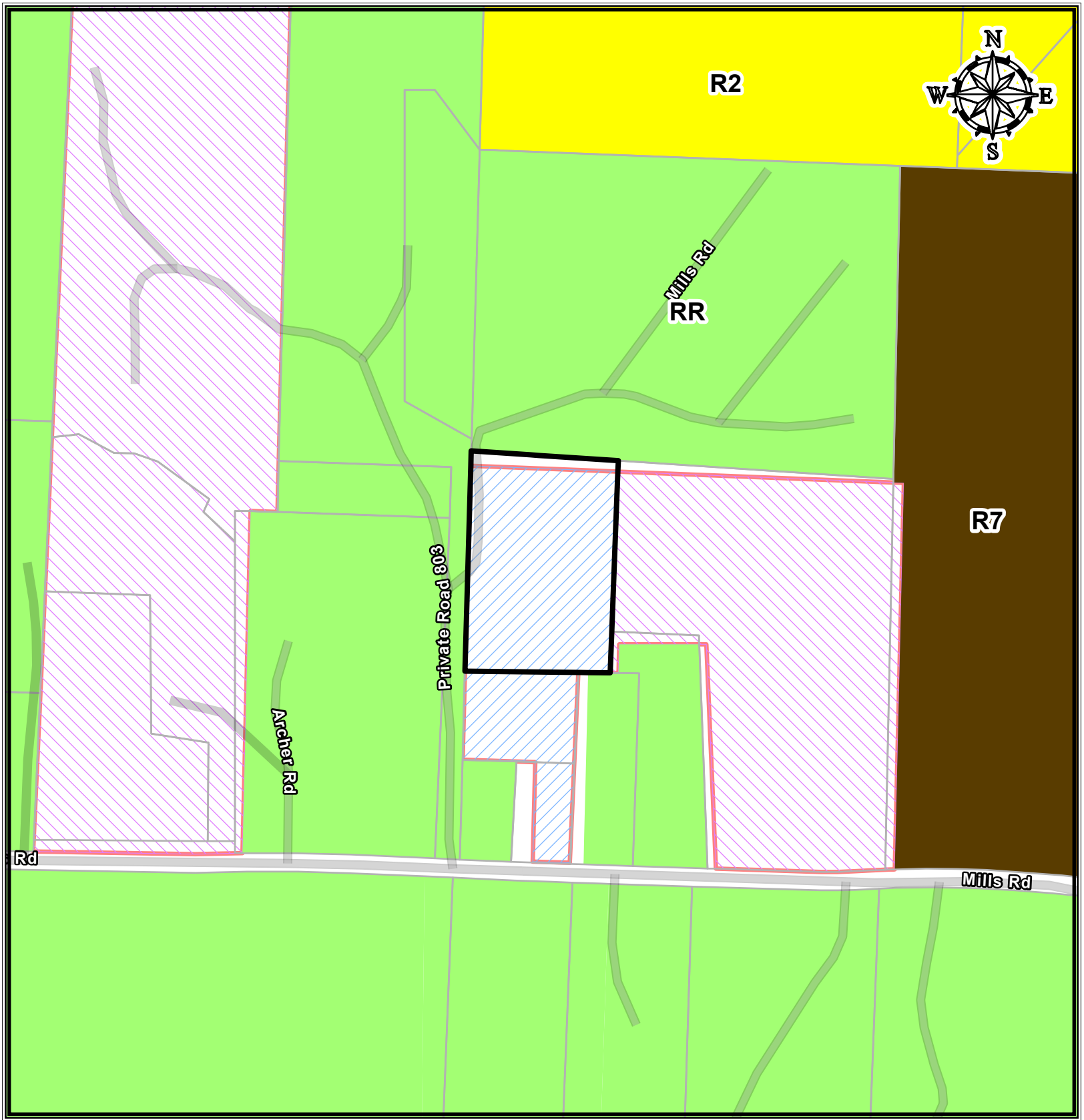


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CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

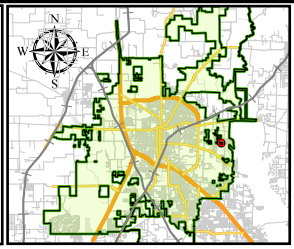
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A25-0005
Current Zoning Map



Current Zoning

- RR - Residential Rural
- R1 - Residential
- R2 - Residential
- R3 - Residential
- R4 - Residential
- R6 - Residential
- R7 - Residential
- MN - Mixed-Use Neighborhood
- MD - Mixed-Use Downtown Core
- MR - Mixed-Use Regional
- HC - Highway Corridor
- SC - Suburban Corridor
- GO - General Office
- LI - Light Industrial
- HI - Heavy Industrial
- PF - Public Facilities
- PD - Planned Development
- MPC
- OVERLAY



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CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

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A25-0005a
5811 Mills Road Annexation
Public Hearing

Angie Manglaris, ACIP

Assistant Planning Director

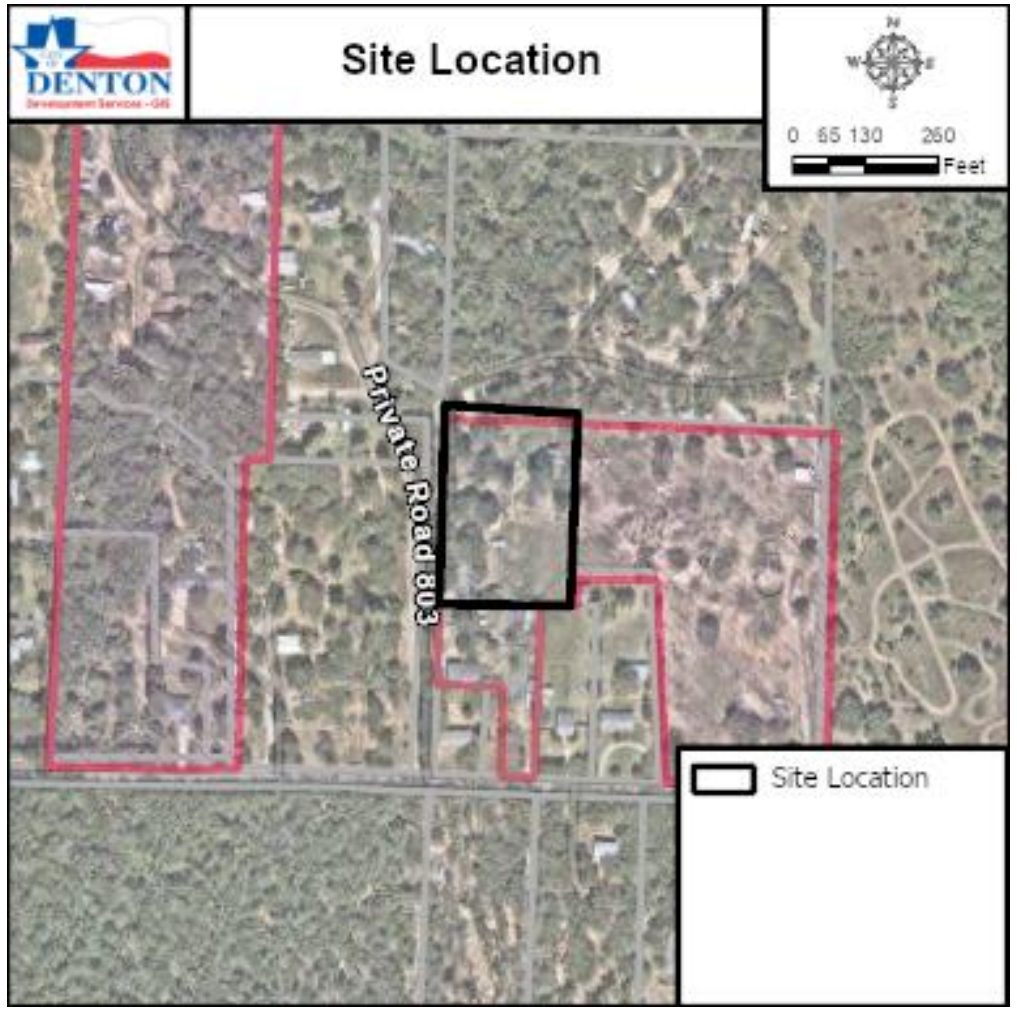
February 17, 2026

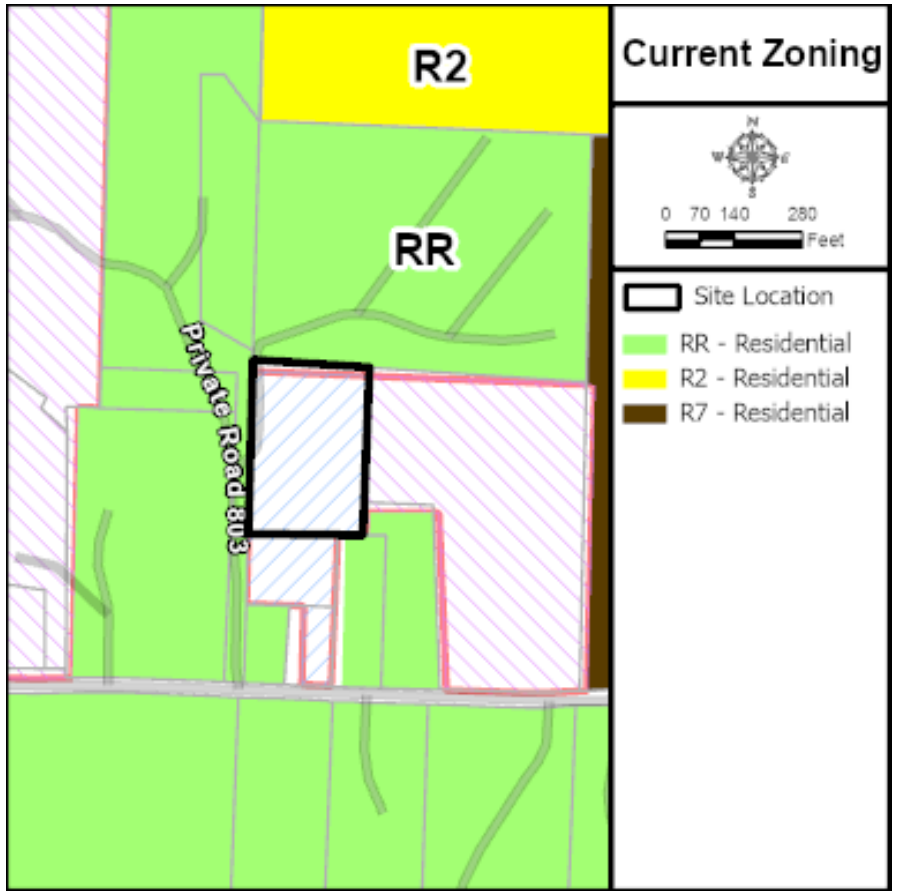
CITY OF DENTON

Request

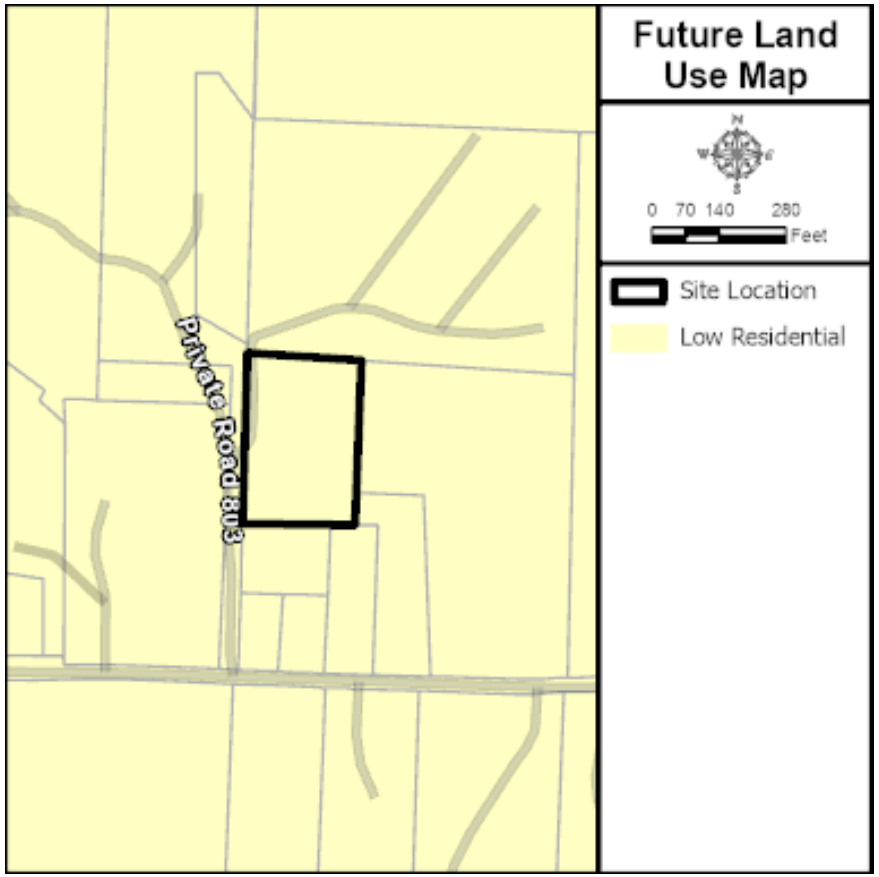
- Hold a **public hearing** regarding a petition for voluntary annexation of **approximately 2.00 acres of land**

- Located approximately 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road





Existing Surrounding Zoning



Future Land Use Designation: Low Residential

Annexation Schedule

- **February 17, 2026**
  - Municipal Services Agreement – Action Required
  - Public Hearing – No Action
  - First Reading of the Annexation Ordinance – No Action

- **February 22, 2026**
  - Publication of Annexation Ordinance

- **March 24, 2026**
  - Second Reading and Adoption of the Annexation Ordinance – Action Required

QUESTIONS?

Angie Manglaris, AICP
Assistant Planning Director
Development Services

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2026

SUBJECT

Hold a public hearing and consider a petition for voluntary annexation of approximately 1.03 acres of land, generally located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road, into the City of Denton, Denton County, Texas. (A25-0003a, Mills Rd Annexation, Ashley Ekstedt)

BACKGROUND

The owner, Victor Lopez, (hereafter referred to as "Owner"), had a non-annexation agreement (ordinance 2012-363), which expired on August 1, 2020. Pursuant to Council direction, the City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded. By operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of approximately 1.03 acres generally located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road (hereafter referred to as "Subject Property").

In accordance with State Law, non-annexation agreements (NAAs) were initially offered to property owners between 2010 and 2016 when the City was in the process of annexing land area within the Extra-Territorial Jurisdiction (ETJ). Texas Local Government Code Section 43.016 requires municipalities to offer NAA agreements to property owners of land area the City is interested in annexing if that land area is appraised for tax purposes as having agricultural, wildlife management, or timber use. In addition, the City also offered NAAs to properties used as single-family residences. NAAs entered into during this initial time period had an original expiration date of August 2020. In 2020, City Council directed staff to offer extensions of the NAAs to August 2040. In accordance with State Law, the total duration of the NAA shall not exceed 45 years.

The general requirements of the NAAS are as follows:

- The property may only be used for single-family residential, agricultural, wildlife, timber, or related uses.
- City of Denton regulations apply to proposed development.
- Development applications and building permits must be submitted and approved through the City of Denton.
- Land may be subdivided into smaller parcels via plating, provided the minimum lot size is at least 5 acres.
- Notification must be provided to the City if the property is sold.
- Properties with agriculture, wildlife management, or timberland exemptions are required to provide notice to the City if there is a change in exemption status.

- If the property owner does not abide by these requirements, or if the NAA expires, the City may proceed with annexation of the property.

Following Council direction in 2020, staff began engaging with property owners with expired NAAs in an effort to enter into new agreements with 2040 expiration dates. Between 2020 and 2021 a majority of property owners with expired NAAs entered into new agreements; however, 18 NAAs remained expired.

In 2024, staff revisited the topic of expired NAAs with City Council. Direction was given to contact the property owners of the 18 expired agreements to extend the NAAs and pursue annexation for any remaining expired NAAs. Initial letters offering NAA extensions were mailed in May 2024 with follow-up letters in June prior to the initial response deadline of June 21, 2024. Additional letters were mailed in September 2024, and a final letter was sent to the property owner on December 11, 2025. Currently, 7 of the 18 property owners with expired NAAs have entered into new agreements with the City. 11 NAAs remain expired and the City has begun the process of annexing these areas. Given the number of expired NAAs, staff will bring forward the annexation cases in groups based on parcel size, beginning with the smallest parcels.

This public hearing is the second of several steps required for a voluntary annexation based upon the requirements of TXLGC Sec. 43.0672 and the City's Charter as outlined below:

1. Approval of a Municipal Services Agreement
2. **Annexation Public Hearing**
3. First Reading of Annexation Ordinance
4. Publication of Annexation Ordinance
5. Second Reading and Adoption of Annexation Ordinance

The first three of these items are on this agenda, with this being the second required step in the process. Following the first reading of the annexation ordinance, the ordinance must be published in the newspaper, and the second reading is required to occur at least 30 days following ordinance publication.

The subject property is situated on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road. The property to the north of the subject property is situated within the City of Denton's Extraterritorial Jurisdiction (ETJ) and is under the same ownership as the subject property. This property also has an expired non-annexation agreement. The property to the east, west, and south of the Subject Property is situated within the City limits and zoned Rural Residential (RR). Mills Road, abutting the Subject Property to the south, is a two-lane roadway, classified as a Secondary Arterial per the 2022 Mobility Plan and Thoroughfare Map.

The Future Land Use designation for the subject property is Low Residential. The description for this Future Land Use category is provided below:

> This category includes the city's predominantly single-family neighborhoods, with lot sizes ranging from one acre or more in rural fringe areas up to five units per acre gross density throughout many of the city's suburban subdivisions. Dwellings in this land use district are generally one to two stories with private driveways and open space, consisting of privately maintained tree canopy and front, back and side yards. Building and driveway orientation, the locations of private garages, building material, and the presence of sidewalks vary by neighborhood and the era of neighborhood development. Generally, these types of single-family neighborhoods are developed as distinct subdivisions that are linked by internal circulation systems with limited access to local and connector roads. This category may also include land uses that support residential neighborhoods,

such as appropriately scaled commercial at arterial and collector street corners, and appropriately scaled public and quasi-public uses, such as religious and educational institutions.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

December 18, 2012	City Council	Non-Annexation Agreement	Approved

OPTIONS

No action is required for the public hearing.

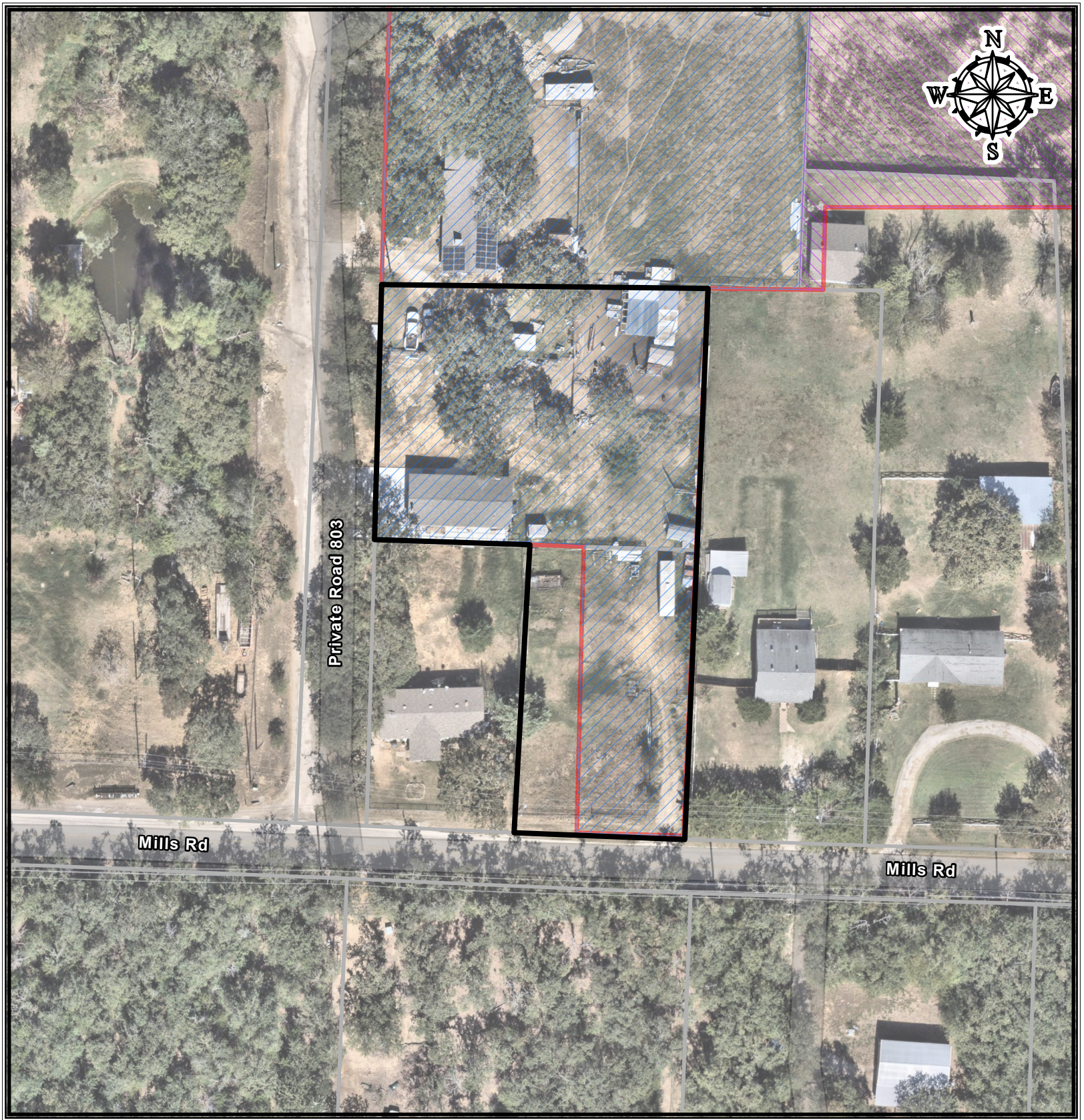
EXHIBITS

Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Presentation

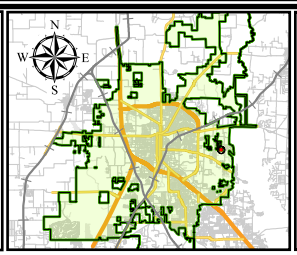
Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Ashley Ekstedt, AICP
Associate Planner

A25-0003
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40

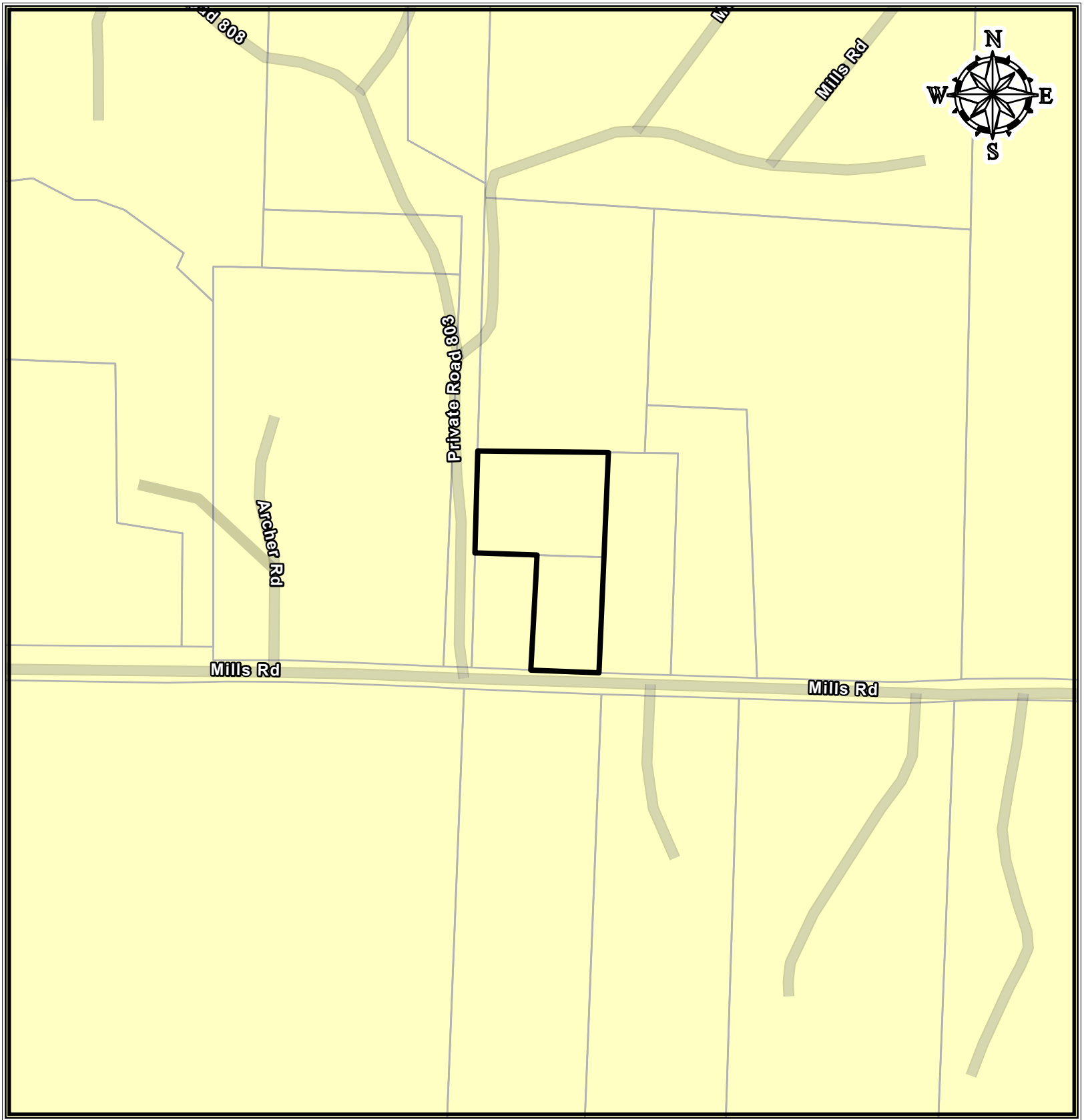


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CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

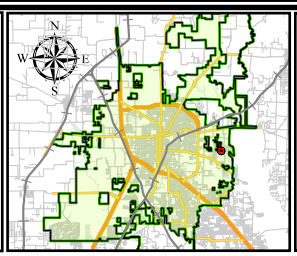
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A25-0003
Future Land Use Map



Future Land Use 2040

- Agriculture
- Rural Areas
- Low Residential
- Moderate Residential
- Master Planned Community
- Downtown Denton
- Regional Mixed Use
- Community Mixed Use
- Neighborhood Mixed Use
- Neighborhood / University Compatibility Area
- Business Center
- Light Industrial
- Industrial Commerce
- Government / Institutional
- Parks / Open Space
- Site Location

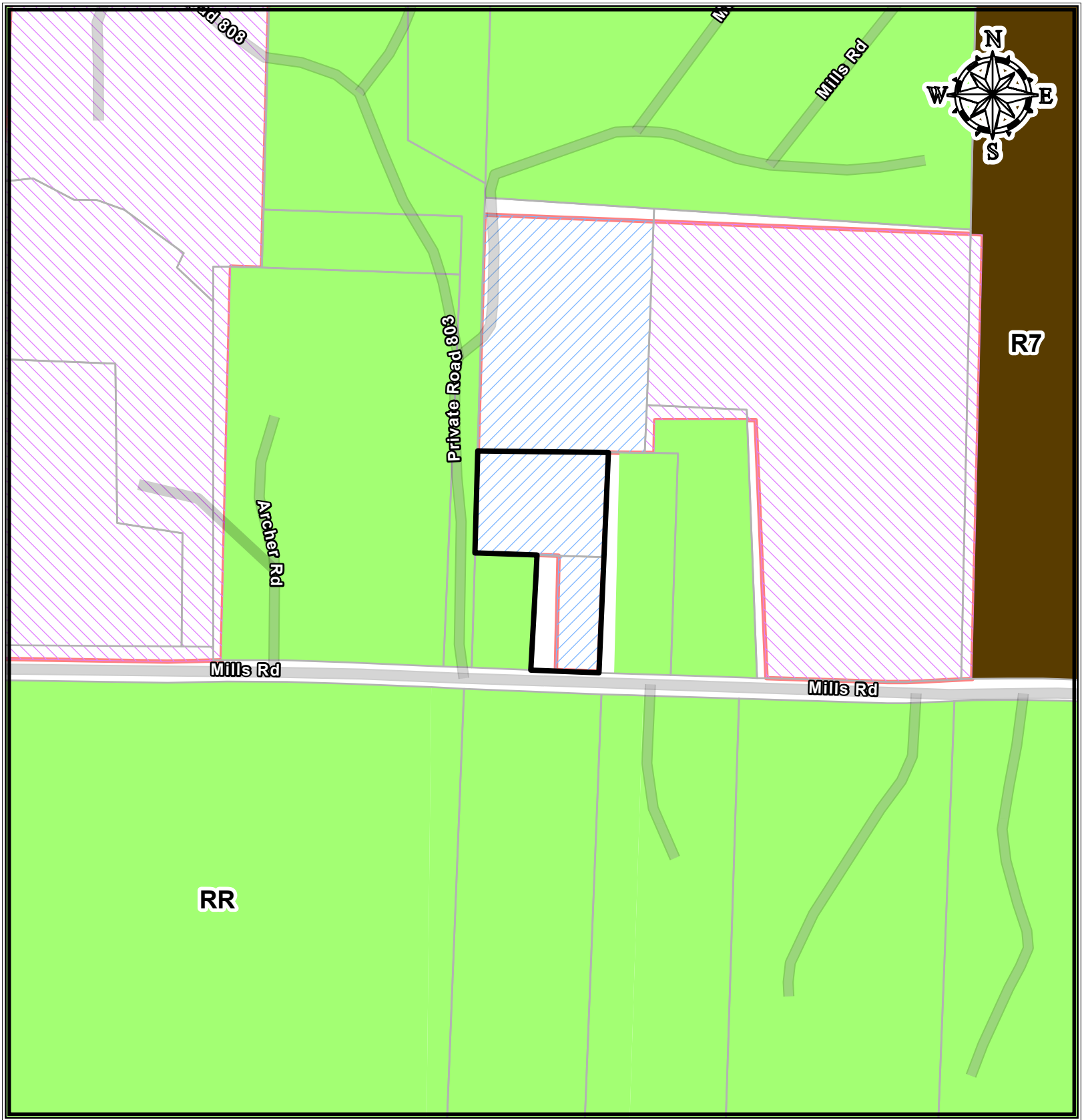


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CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

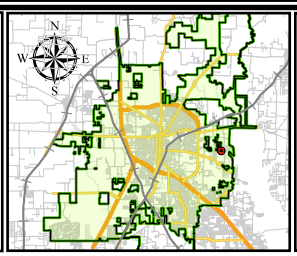
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A25-0003
Current Zoning Map



Current Zoning

- RR - Residential Rural
- R1 - Residential
- R2 - Residential
- R3 - Residential
- R4 - Residential
- R6 - Residential
- R7 - Residential
- MN - Mixed-Use Neighborhood
- MD - Mixed-Use Downtown Core
- MR - Mixed-Use Regional
- HC - Highway Corridor
- SC - Suburban Corridor
- GO - General Office
- LI - Light Industrial
- HI - Heavy Industrial
- PF - Public Facilities
- PD - Planned Development
- MPC
- OVERLAY



0 55 110 220 Feet

CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

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A25-0003a
Mills Road Annexation
Public Hearing

Ashley Ekstedt, ACIP

Associate Planner

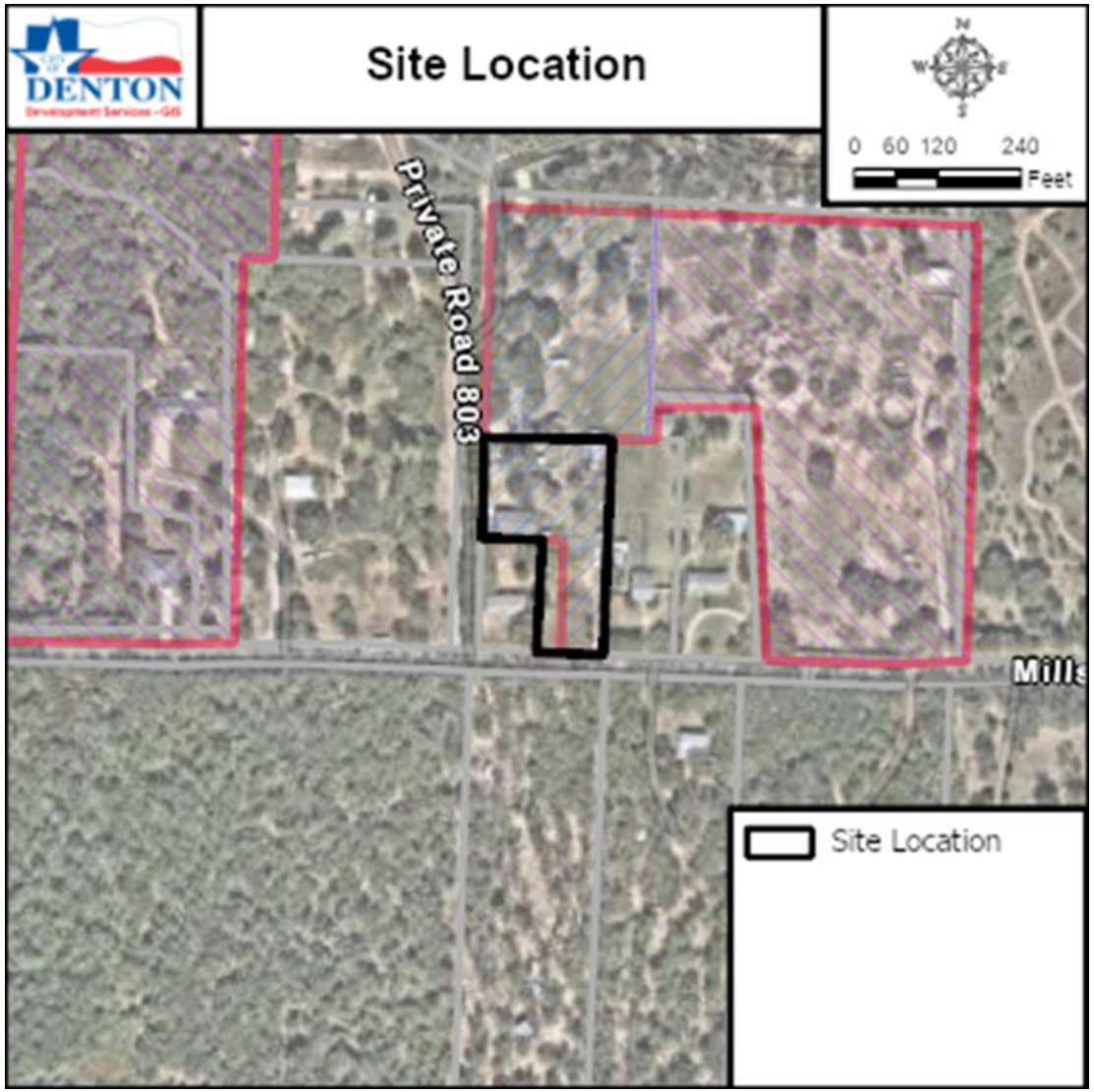
February 17, 2026

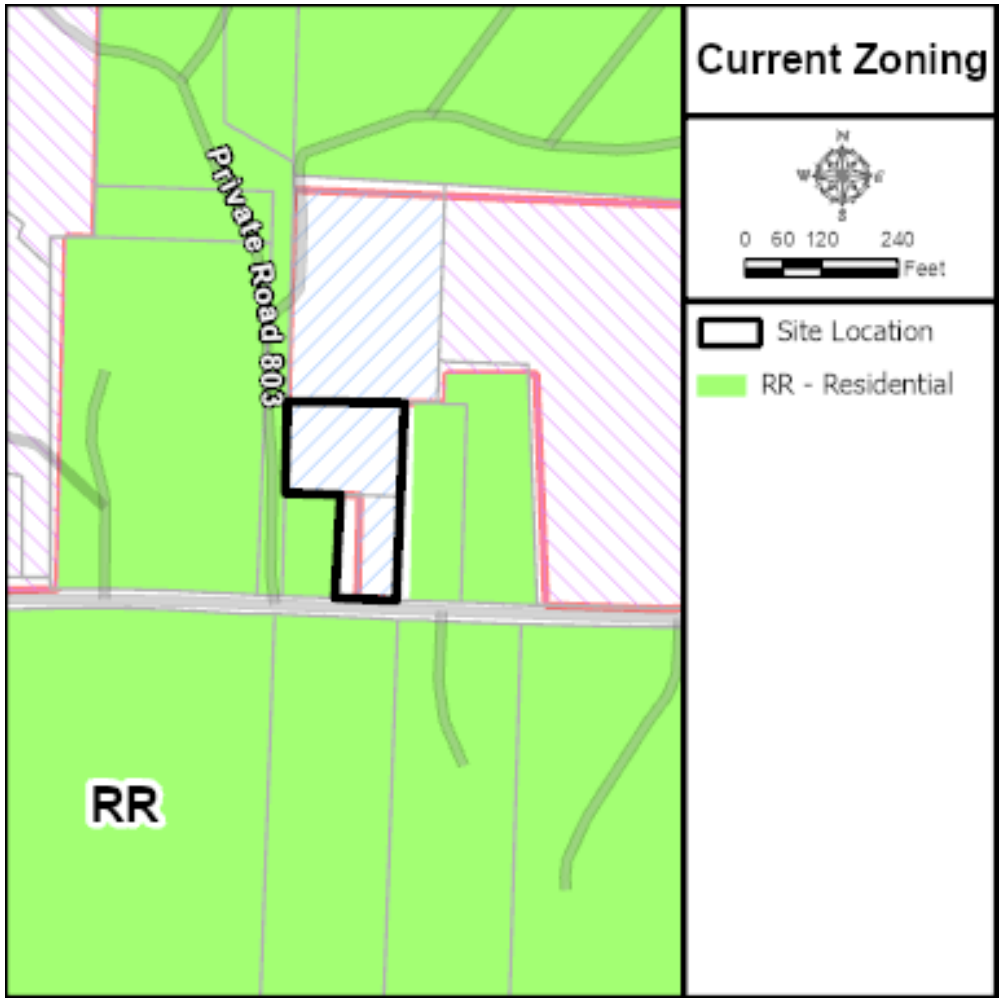
CITY OF DENTON

Request

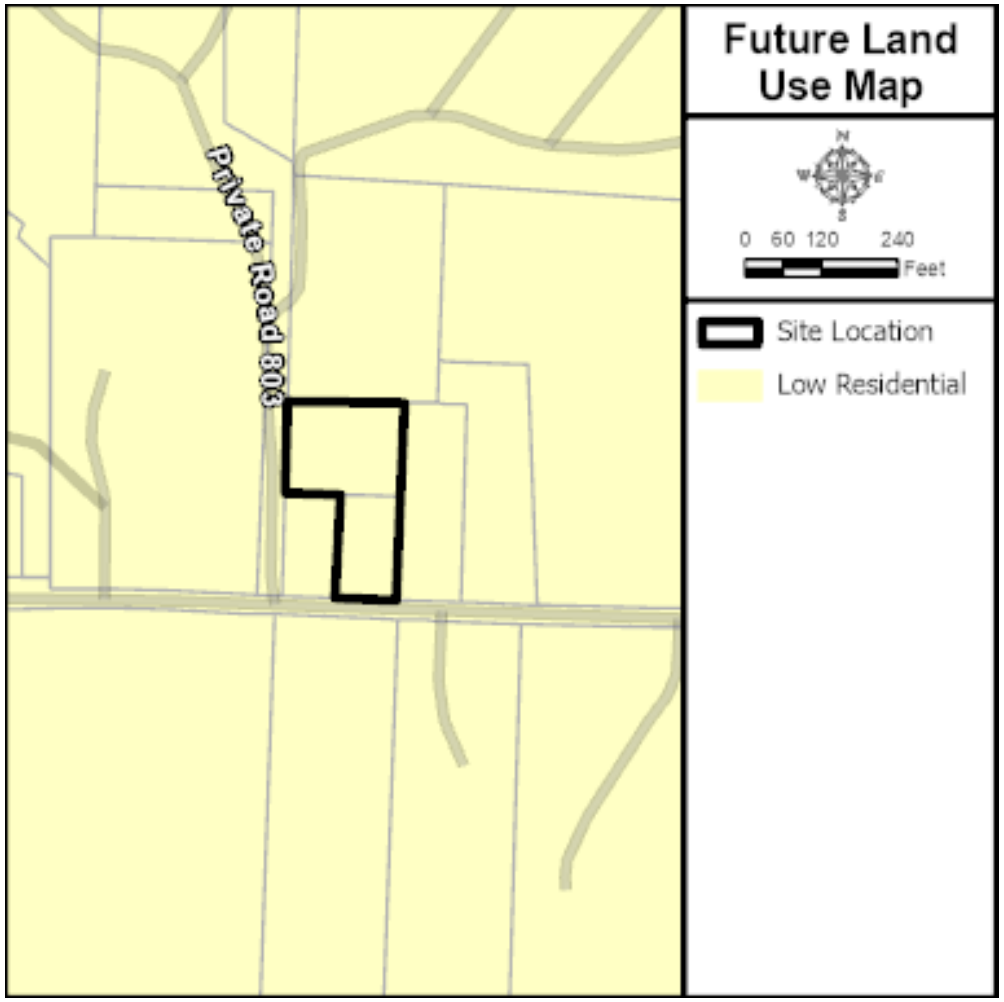
- Hold a **public hearing** regarding a petition for voluntary annexation of approximately 1.03 acres of land

- Located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road





Existing Surrounding Zoning



Future Land Use Designation: Low Residential

Annexation Schedule

- **February 17, 2026**
  - Municipal Services Agreement – Action Required
  - Public Hearing – No Action
  - First Reading of the Annexation Ordinance – No Action

- **February 22, 2026**
  - Publication of Annexation Ordinance

- **March 24, 2026**
  - Second Reading and Adoption of the Annexation Ordinance – Action Required

QUESTIONS?

Ashley Ekstedt, AICP
Associate Planner
Development Services

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2026

SUBJECT

Hold a public hearing and consider a petition for voluntary annexation of approximately 1.09 acres of land, generally located 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road, into the City of Denton, Denton County, Texas. (A25-0004a, Swisher Road, Bryce Van Arsdale)

BACKGROUND

The owner, J. Doss Phillips, (hereafter referred to as "Owner"), had a non-annexation agreement (ordinance 2012-362), which expired on August 1, 2020. Pursuant to Council direction, the City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded. By operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of approximately 1.09 acres of land, generally located 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road (hereafter referred to as "Subject Property").

In accordance with State Law, Non-Annexation Agreements (NAAs) were initially offered to property owners between 2010 and 2016 when the City was in the process of annexing land area within the Extra-Territorial Jurisdiction (ETJ). Texas Local Government Code Section 43.016 requires municipalities to offer NAA agreements to property owners of land area the City is interested in annexing if that land area is appraised for tax purposes as having agricultural, wildlife management, or timber use. In addition, the City also offered NAAs to properties used as single-family residences. NAAs entered into during this initial time period had an original expiration date of August 2020. In 2020, City Council directed staff to offer extensions of the NAAs to August 2040. In accordance with State Law, the total duration of the NAA shall not exceed 45 years.

The general requirements of the NAAs are as follows:

- The property may only be used for single-family residential, agricultural, wildlife, timber, or related uses.
- City of Denton regulations apply to proposed development.
- Development applications and building permits must be submitted and approved through the City of Denton.
- Land may be subdivided into smaller parcels via plating, provided the minimum lot size is at least 5 acres.
- Notification must be provided to the City if the property is sold.
- Properties with agriculture, wildlife management, or timberland exemptions are required to provide notice to the City if there is a change in exemption status.

- If the property owner does not abide by these requirements, or if the NAA expires, the City may proceed with annexation of the property.

Following Council direction in 2020, staff began engaging with property owners with expired NAAs in an effort to enter into new agreements with 2040 expiration dates. Between 2020 and 2021 a majority of property owners with expired NAAs entered into new agreements; however, 18 NAAs remained expired.

In 2024, staff revisited the topic of expired NAAs with City Council. Direction was given to contact the property owners of the 18 expired agreements to extend the NAAs and pursue annexation for any remaining expired NAAs. Initial letters offering NAA extensions were mailed in May 2024 with follow-up letters in June prior to the initial response deadline of June 21, 2024. Additional letters were mailed in September 2024, and a final letter was sent to the property owner on December 11, 2025. Currently, 7 of the 18 property owners with expired NAAs have entered into new agreements with the City. 11 NAAs remain expired and the City has begun the process of annexing these areas. Given the number of expired NAAs, staff will bring forward the annexation cases in groups based on parcel size, beginning with the smallest parcels.

This public hearing is the second of several steps required for an annexation based upon the requirements of TXLGC Sec. 43.0672 and the City's Charter as outlined below:

1. Approval of a Municipal Services Agreement
2. **Annexation Public Hearing**
3. First Reading of Annexation Ordinance
4. Publication of Annexation Ordinance
5. Second Reading and Adoption of Annexation Ordinance

The first three of these items are on this agenda, with this being the second required step in the process. Following the first reading of the annexation ordinance, the ordinance must be published in the newspaper, and the second reading is required to occur at least 30 days following ordinance publication.

The subject property is situated 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road. Swisher Road, the nearest right-of-way, is classified as a Proposed Secondary Arterial according to the 2022 Mobility Plan. The properties to the south and east of the subject property are situated within the City of Denton City Limits and classified under the Rural Residential (RR) zoning district. The property to the north of the subject property is within City Limits and zoned as Public Facilities (PF) zoning district; this property is maintained by the City as Villages of Carmel Park. The properties to the west of the subject property are within city limits and zoned as Residential-6 (R6) zoning district.

The Future Land Use designation for the subject property is Moderate Residential within the Denton 2040 Comprehensive Plan. The description for this Future Land Use category is provided below:

> This category accommodates single-family detached housing on small lots, typical of Denton's more compact, established single-family neighborhoods and low-rise multi-family dwellings and townhomes. This land use applies to areas within the central areas of Denton and transition areas between established single-family neighborhoods and mixed-use or commercial areas that can accommodate greater density, or adjacent to key corridors. Dwellings in this future land use category vary in scale and style and may contain a great deal of diversity by each street and block. Most areas are characterized by rectilinear lots with modest front yards. Most streets are lined by sidewalks, but this is not prevailing throughout. Development is linked by local streets and is most commonly accessed by

multiple intersections and points of access. While the land use primarily includes single-family dwellings, multi-family dwellings, and townhomes may be located in this land use as well. While the quality of multi-family dwellings and townhomes currently varies, in the case of future infill development, they should maintain a scale, style, and building orientation in order to complement the prevailing character of its surroundings. This category may also include land uses that support residential neighborhoods, such as neighborhood scaled commercial at arterial and collector street corners, and appropriately scaled public and quasi-public uses, such as religious and educational institutions

The Subject Property is not currently being served with City water or sewer.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)
On December 18, 2012, City Council approved the Non-Annexation Agreement (Ordinance 2012-362). An agreement which expired on August 1, 2020.

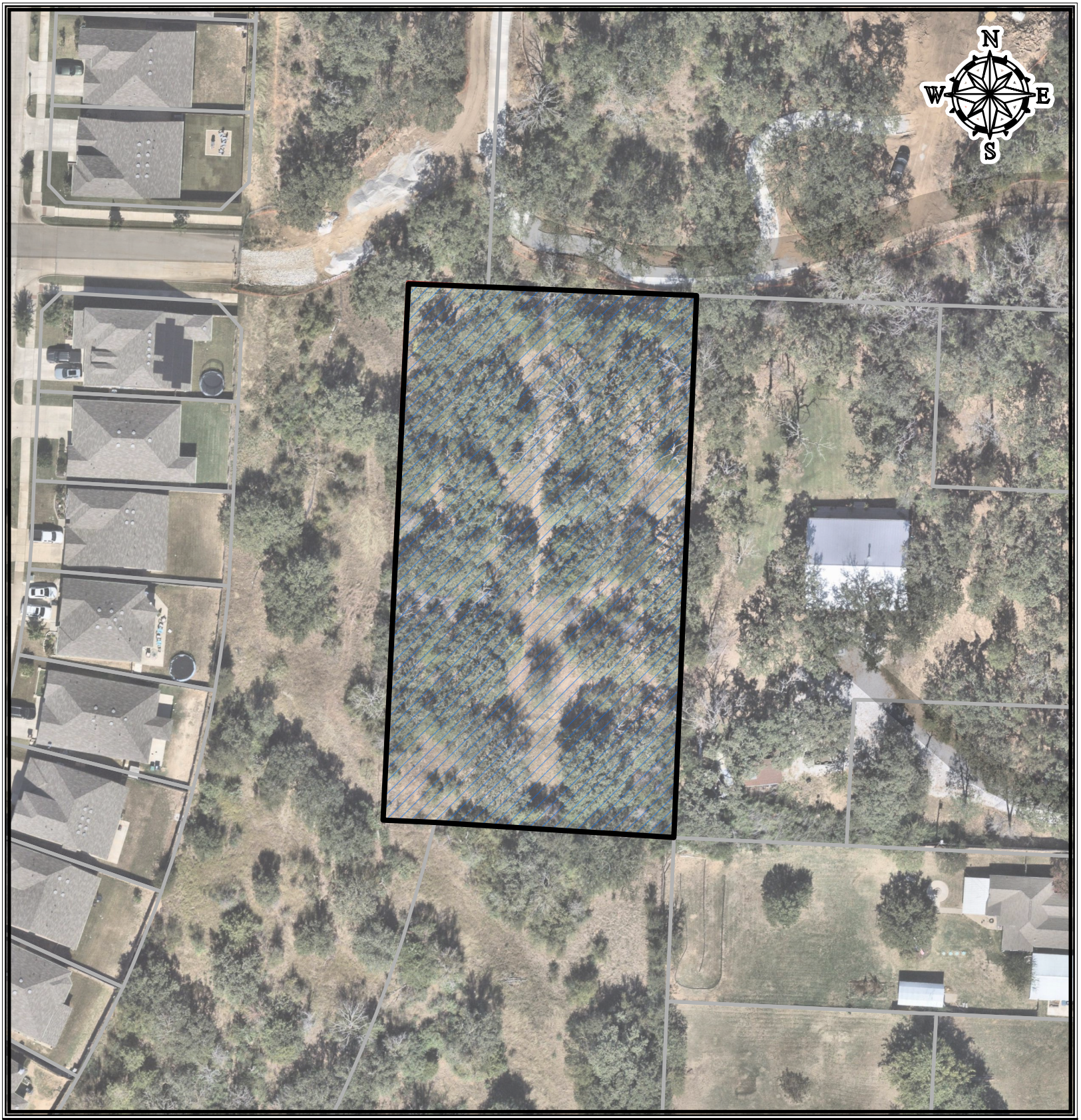
OPTIONS
No action is required for the public hearing.

EXHIBITS
Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Presentation

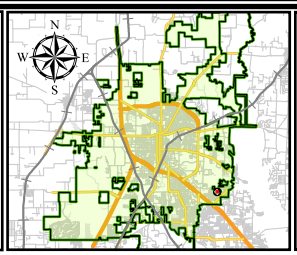
Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Bryce Van Arsdale
Assistant Planner

A25-0004
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40

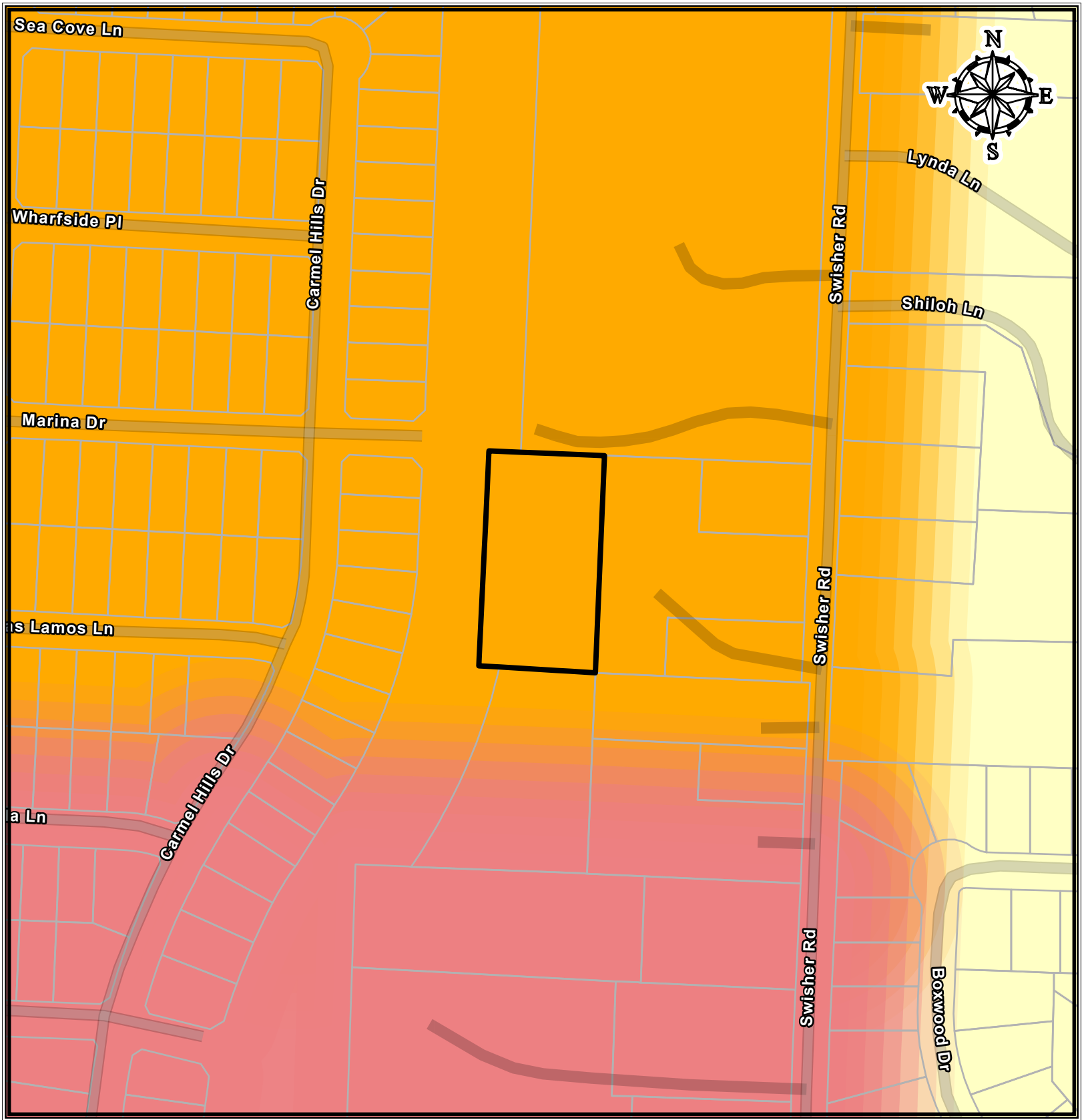


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CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

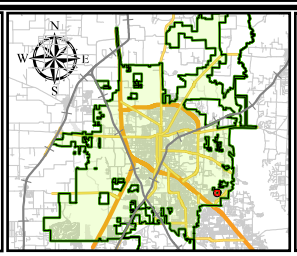
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A25-0004
Future Land Use Map



Future Land Use 2040

- Agriculture
- Rural Areas
- Low Residential
- Moderate Residential
- Master Planned Community
- Downtown Denton
- Regional Mixed Use
- Community Mixed Use
- Neighborhood Mixed Use
- Neighborhood / University Compatibility Area
- Business Center
- Light Industrial
- Industrial Commerce
- Government / Institutional
- Parks / Open Space
- Site Location

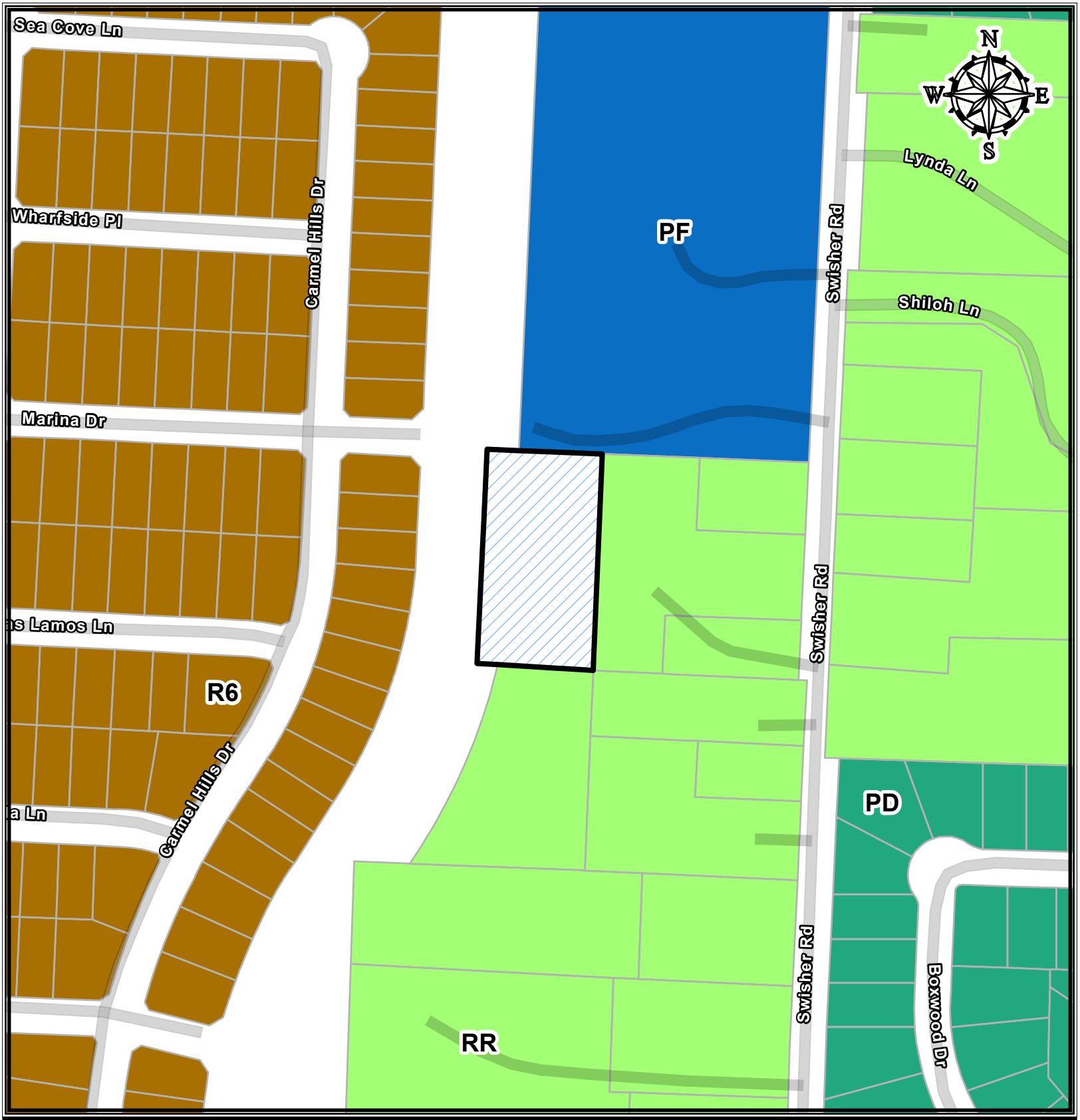


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CITY OF DENTON
Development Services • GIS
Date: 12/30/2025

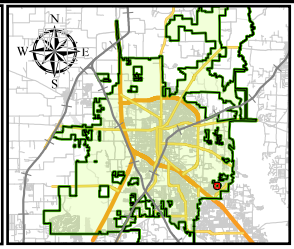
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A25-0004
Current Zoning Map



Current Zoning

- RR - Residential Rural
- R1 - Residential
- R2 - Residential
- R3 - Residential
- R4 - Residential
- R6 - Residential
- R7 - Residential
- MN - Mixed-Use Neighborhood
- MD - Mixed-Use Downtown Core
- MR - Mixed-Use Regional
- HC - Highway Corridor
- SC - Suburban Corridor
- GO - General Office
- LI - Light Industrial
- HI - Heavy Industrial
- PF - Public Facilities
- PD - Planned Development
- MPC
- OVERLAY



0 50 100 200 Feet

CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

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A25-0004a
Swisher Road Annexation
Public Hearing

Bryce Van Arsdale

Assistant Planner

February 17, 2026

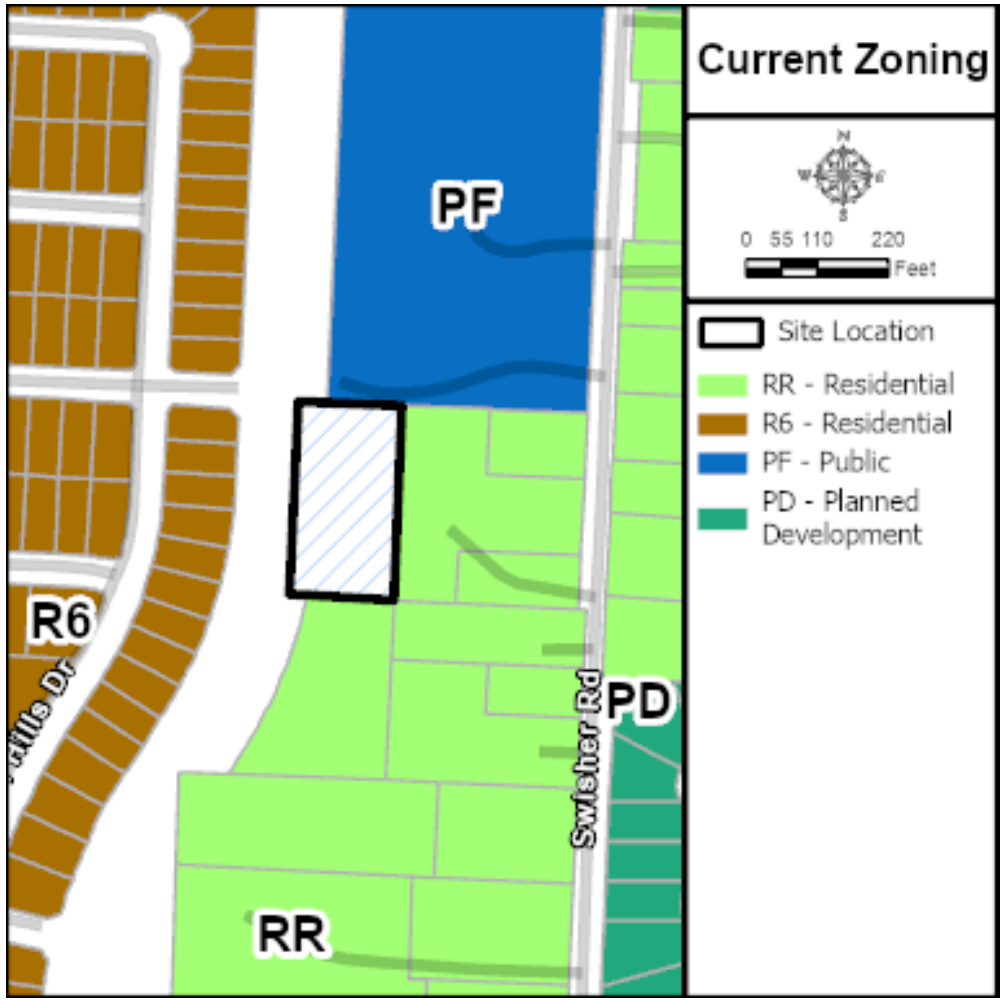
CITY OF DENTON

Request

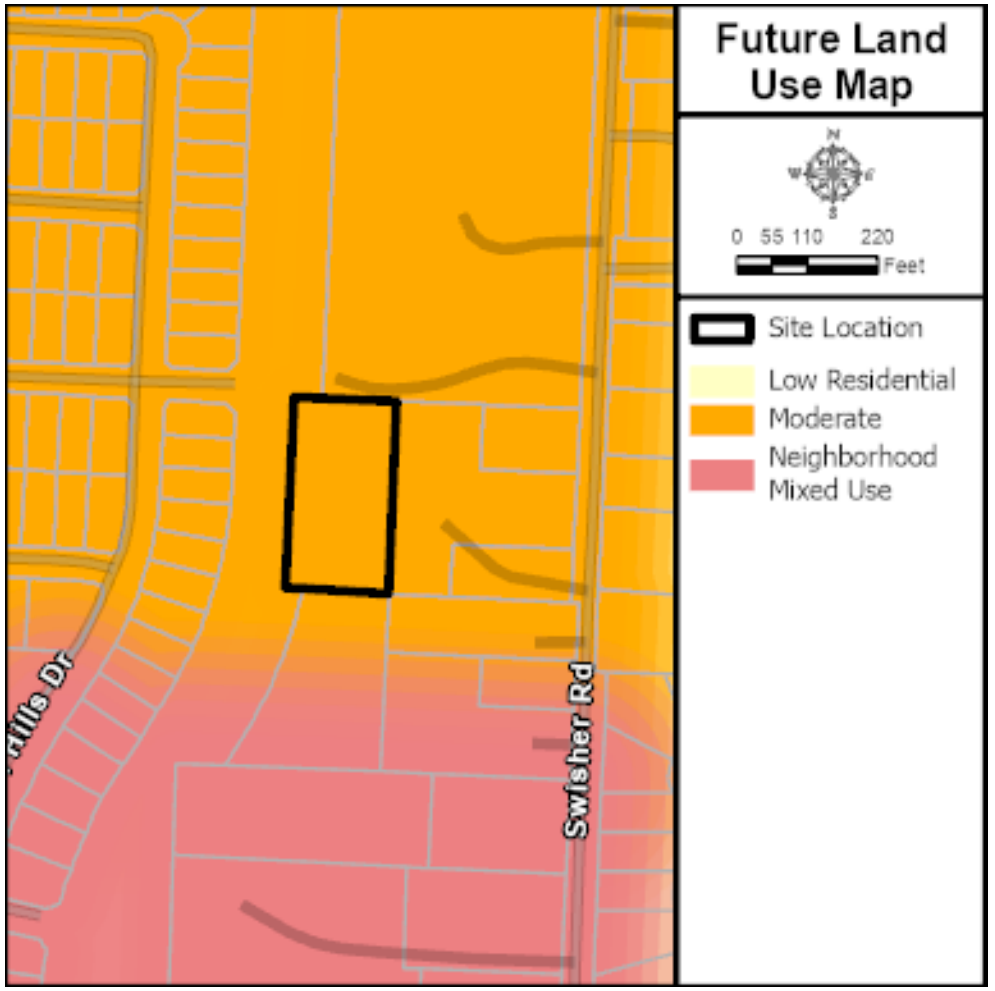
- Hold a **public hearing** regarding a petition for annexation of approximately 1.09 acres of land

- Located 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road





Existing Surrounding Zoning



Future Land Use Designation: Moderate Residential / Neighborhood Mixed Use

Annexation Schedule

- **February 17, 2026**
  - Municipal Services Agreement – Action Required
  - Public Hearing – No Action
  - First Reading of the Annexation Ordinance – No Action

- **February 22, 2026**
  - Publication of Annexation Ordinance

- **March 24, 2026**
  - Second Reading and Adoption of the Annexation Ordinance – Action Required

QUESTIONS?

Bryce Van Arsdale
Assistant Planner
Development Services

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2026

SUBJECT

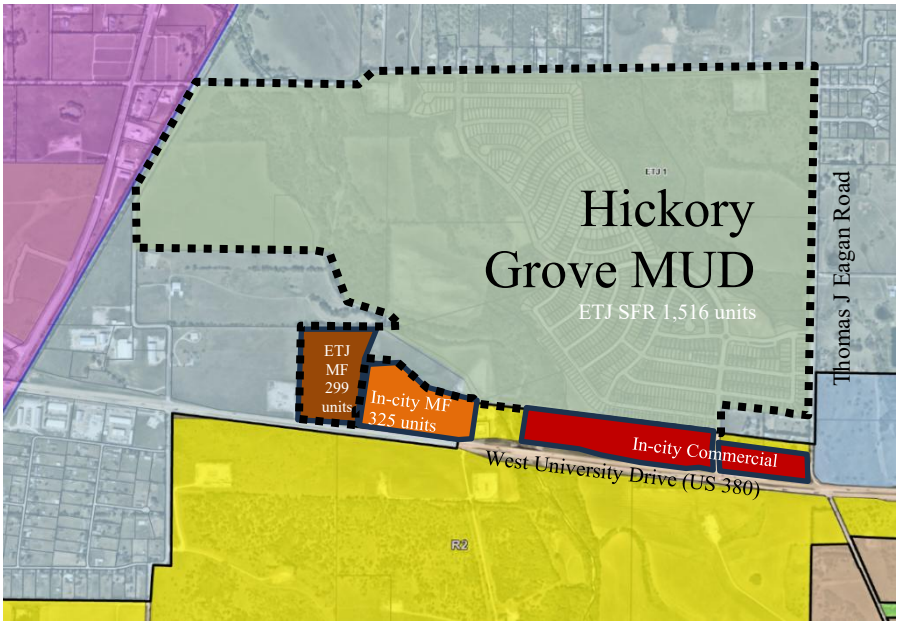
Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, regarding a Comprehensive Plan Amendment from the Agriculture and Low Residential Future Land Use Designations to the regional mixed use future land use designation on approximately 24.941 acres generally located at the northwest and northeast corners of the intersection of West University Drive (US 380) and Golden Hoof Drive, in the City of Denton, Denton County, Texas; adopting an amendment to the City's Official Future Land Use Map; providing for a penalty in the maximum amount of $2,000.00 for violations thereof; providing a severability clause and an effective date. The Planning and Zoning Commission voted (5-1) to recommend approval of the request. Motion for approval by Commissioner Ketchersid and second by Commissioner Dyer. (CA25-0005a, Hickory Grove Commercial, Mia Hines)https://dentontx.new.swagit.com/videos/372131?ts=3600

BACKGROUND

This request is for a Future Land Use Map (FLUM) amendment for an approximately 18.948-acre tract of land located at the northwest corner of the intersection of West University (US 380) and Golden Hoof Drive (Tract 1) and an approximately 5.993-acre tract of land located at the northeast corner (Tract 2). The request is to modify the FLUM designation from Agriculture and Low Residential to Regional Mixed Use to facilitate commercial developments. This is one of two concurrent applications associated with the Hickory Grove Commercial development on this agenda. Details regarding the history of Hickory Grove and the request are provided below.

HISTORY

The 24.941 subject property was annexed into the City of Denton in 1974 along with several tracts of land along both the north and south sides of West University Drive (US 380) between North Masch Branch Road and the North Hickory Creek Tributary. As shown on the inset map, the Hickory Grove (also known as Legends Ranch) Municipal Utility District (MUD) Development Agreement called for the development of single-family residences in the City's ETJ just north of the subject property,



multifamily residences in both the City limits and the City's ETJ west of the subject property, and unspecified "future commercial" development compliant with the standards and regulations applicable to the Highway Corridor (HC) District within the subject property. Accordingly, the phased construction of the single-family residential subdivision began in 2023 and the City is currently reviewing civil engineering plans for the multifamily units being developed within the City's ETJ. Additionally, the developers voluntarily annexed the property intended for the development of the in-City multifamily residences and applied for a Comprehensive Plan Amendment and Rezoning to entitle the property for the anticipated multifamily development. The Planning and Zoning Commission considered and recommended approval of these applications at their December 17, 2025 meeting. City Council approved the applications on January 13, 2026.

EXISTING CONDITIONS AND PROPOSED CHANGE

The Denton 2040 Comprehensive Plan predominately designates the subject property for Agriculture land use, and the properties are currently zoned Residential 2 (R2). Along the northern portion of Tract 1, abutting Phase 1 of the Hickory Grove MUD single-family residential subdivision, the Future Land Use Map also reflects the designation of Low Residential. As shown in Exhibit 8 the subject property is adjacent to the North Hickory Creek Tributary and associated floodway and is partially encumbered by floodplain along the western boundary of the westernmost tract of land. All future development activity would have to occur outside the limits of the floodplain and buildings within the floodplain buffer would have to be constructed at the appropriate elevation. Additionally, an approved Environmentally Sensitive Area (ESA) field assessment reflects the existence of undeveloped floodplain ESA within this floodway corridor. Should the applicant propose to adjust the limits of the floodplain, an updated ESA assessment may be required. Future developments would be subject to the Denton Development Code requirements for development within ESA.

In addition to this requested Comprehensive Plan Amendment, the applicant also submitted a proposal for a zoning change from the R2 District to Suburban Corridor (SC) District to allow for the anticipated commercial development in accordance with the Agreement. This request to rezone to the HC District and is also on the February 17, 2026 City Council agenda for separate consideration (item Z25-0022a).

The Denton Development Code (DDC) Section 2.7.1 establishes the comprehensive plan amendment process to provide flexibility in response to changing circumstances, to reflect changes in public policy, and to advance the general welfare of the city. Denton 2040 Comprehensive Plan was adopted on March 22, 2022 as an update to the previous comprehensive plan, Denton Plan 2030. To guide the City's zoning decisions and land use distribution, the plan includes a Future Land Use Map (FLUM) which identifies the locations of the different future land uses. Each Future Land Use Designation has distinct characteristics, and these are summarized below for the categories pertinent to this request:

a. **Agriculture (existing designation)**: This category includes farms and ranches as the predominant use along with rural residential (a maximum of one unit per five acres) and rural commercial including feed stores, farm equipment, etc. This land use may allow lots as small as one acre under the gross density provision to allow for conservation development which clusters smaller lots while permanently protecting scenic rural open space (through conservation easements). This land use may also include single-family homes on large lots, which are suited for areas on the periphery of the city that complement a more suburban type of development. Development in this future land use category will continue the present character of the rural areas of Denton with low-profile homes of no greater than two stories, generous lots and setbacks, and materials that complement the natural surroundings and ranch heritage.
b. **Low Residential (existing designation)**: This category includes the city's predominantly single-family neighborhoods, with lot sizes ranging from one acre or more in rural fringe areas up to five units per acre gross density throughout many of the city's suburban subdivisions. Dwelling in this land use district are generally one to two stories with private driveways and

open space, consisting of privately-maintained tree canopy and front, back and side yards. Building and driveway orientation, the locations of private garages, building material, and the presence of sidewalks vary by neighborhood and the era of neighborhood development. Generally, these types of single-family neighborhoods are developed as distinct subdivisions that are linked by the internal circulation systems with limited access to local and connector roads. This category may also include land uses that support residential neighborhoods, such as appropriately scaled commercial at arterial and collector street corners, and appropriately scaled public and quasi-public uses, such as religious and educational institutions. The appropriate density within this designation is up to 5 dwelling units per acre.

c. **Regional Mixed Use (proposed designation)**: This designation applies to areas that serve as regional destinations within Denton. Development may include residential, commercial, office, entertainment and other uses except industrial, at the highest levels of scale and density within the city. Unique development standards are proposed to create the walkable urban character and day and nighttime activity of an urban center. Major medical and health care institutions and the areas of influence around them are included in this future land use designation. This designation is located primarily along I-35 interchanges and along primary arterials to encourage the greatest regional accessibility. Future development in Regional Mixed-Use areas will complement and embrace existing, viable uses, and raise the standard of design to increase their regional draw, accommodate greater connectivity and mobility options, and create a sense of place.

This Comprehensive Plan amendment is not a change to the existing zoning of any property within the subject boundary, nor does it render any use or property non-conforming. The accompanying Zoning Change application shall be considered as a separate request.

A detailed Staff Analysis of the Comprehensive Plan Amendment request is provided in Exhibit 2.

OPTIONS

1. Approve
2. Approve Subject to Conditions
3. Deny
3. Postpone Item.

PLANNING AND ZONING COMMISSION

At their January 14, 2026 meeting, the Planning and Zoning Commission held a public hearing and recommended approval [5-1] of the Comprehensive Plan Amendment request. At this meeting, Staff presented the facts of the case and the applicant provided clarity on the intended development, but the Commission held no major discussions regarding the requested Comprehensive Plan Amendment.

RECOMMENDATION

Staff recommends approval of the request as it complies with the criteria in Section 2.4.5.E of the Denton Development Code (DDC) for approval of all applications, and Section 2.7.1D of the DDC for approval of a comprehensive plan amendment.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

Date	Council, Board, Commission	Request	Action
September 3, 1974	City Council	Annexation	Approved
June 28, 2022	City Council	Legends Ranch (Hickory Grove) MUD Development Agreement	Approved

August 23, 2024	City Council	Amended Hickory Grove MUD Development Agreement	Approved
January 14, 2026	Planning and Zoning Commission	Comprehensive Plan Amendment – Agriculture and Low Residential FLUM to Mixed Use Regional FLUM	Recommend Approval
January 14, 2026	Planning and Zoning Commission	Rezoning R2 to SC	Recommend Approval

PUBLIC OUTREACH:

Nine (9) notices were sent to the property owners within 200 feet of the subject boundary. As of the writing of this report, no responses have been received by the City.

Five (5) notices were sent to residents within 500 feet of the subject boundary. As of the writing of this report, no responses have been received by the City.

A notice was published in the Denton Record Chronicle on Sunday, December 27, 2025 and March 1, 2026.

A notice was published on the City's website on December 19, 2025 and January 29, 2026.

Five (5) signs were posted on the property by January 2, 2026.

The applicants have not hosted any community meeting related to this request.

A map showing the notification boundaries as well as documentation regarding the sign posting is provided in Exhibit 9.

EXHIBITS

Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Staff Analysis
Exhibit 3 - Site Location Map
Exhibit 4 - Existing Future Land Use Map
Exhibit 5 - Proposed Future Land Use Map
Exhibit 6 - Project Narrative
Exhibit 7 - Existing Thoroughfare Map
Exhibit 8 - Existing ESA and Floodplain Map
Exhibit 9 - Notification Map and Sign Posting
Exhibit 10 - Draft Ordinance
Exhibit 11 - Presentation

Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Mia Hines, AICP
Senior Planner

Planning Staff Analysis
CA25-0005a / Hickory Grove Commercial
City Council District #3

REQUEST:
To modify the Future Land Use Map on approximately 24.941 acres of land to change the designation from Agriculture and Low Residential to Regional Mixed Use.

STAFF RECOMMENDATION:
Staff recommends approval of the request as it complies with the criteria in Section 2.4.5.E of the Denton Development Code (DDC) for approval of all applications, and Section 2.7.1D of the DDC for approval of a comprehensive plan amendment.

SITE DATA:
The subject property is made up of two tracts adjacent to the intersection of West University Drive (US 380) and Golden Hoof Drive, including approximately 18.958 acres located at the northwest corner (Tract 1) and approximately 5.993 acres located at the northwest corner (Tract 2). The entire subject property was annexed into the City of Denton in 1974, zoned Neighborhood Residential 2 (NR-2) with the adoption of the 2002 Denton Development Code, which transitioned to the Residential 2 (R2) District under the 2019 Denton Development Code. The area is currently undeveloped.

The subject property is adjacent to the North Hickory Creek Tributary and associated floodway and is partially encumbered by floodplain along the western boundary of Tract 1. Additionally, an approved Environmentally Sensitive Area (ESA) field assessment reflects the existence of undeveloped floodplain ESA within this floodway corridor. Future developments are subject to the Denton Development Code requirements for development within the floodplain and ESA.

Surrounding roadways include Thomas J Eagan Road to the east of Tract 2, Golden Hoof Drive between the two tracts, and West University Drive (US 380) to the south of the subject property. Thomas J Eagan Road is constructed with two travel lanes within an approximately 60-foot-wide right-of-way (ROW) and a posted speed limit of 35 miles per hour. Golden Hoof Drive, adjacent to the subject property, serves as a Collector Street and as the main entrance into the Hickory Grove single-family residential subdivision, with permitted speeds up to 35 miles per hour. The section of West University Drive (US 380) abutting the subject property is currently constructed with 6 travel lanes, 5-foot-wide sidewalks on both the north and south sides of the roadway, approximately 150-200 feet of ROW, and a posted speed limit of 65 miles per hour.

In accordance with the Hickory Grove Municipal Utility District (MUD) and Development Agreement, the subject property is intended for commercial development. Abutting Tract 1, to the north, is Phase 1 of the Hickory Grove MUD single-family residential subdivision and, to the west, a lift station constructed to serve the Hickory Grove MUD and surrounding developments. Abutting Tract 2 to the north are two tracts of land, one tract is developed with a single-family residence while the other tract is undeveloped. Further detail regarding the surrounding zoning, land uses, and roadways are provided in the table below.

[Continue on next page]

SURROUNDING ZONING AND USES:

Northwest: Extraterritorial Jurisdiction 1 (ETJ 1) Zoning: None (ETJ 1) Use: North Hickory Creek Tributary; lift station	North: ETJ 1 Zoning: None (ETJ 1) Use: Single-family residential (Hickory Grove MUD)	Northeast: Golden Hoof Drive; ETJ 1 Zoning: None (ETJ 1) Use: Single-family residence
West: Zoning: Residential 2 (R2) Use: Undeveloped; North Hickory Creek Tributary	**SUBJECT PROPERTY (Tract 1)**	East: Golden Food Drive Zoning: R2 (Tract 2) Use: Undeveloped
Southwest: West University Drive (US 380) Zoning: R2 Use: Undeveloped; North Hickory Creek Tributary	South: West University Drive (US 380) Zoning: R2 Use: Undeveloped/agriculture; gas well drilling and production	Southeast: West University Drive (US 380) & Golden Hoof Drive Zoning: R2 Use: Undeveloped and gas well drilling and production

Northwest: Zoning: R2 Use: Single-family residence	North: Zoning: R2 Use: Single-family residence	Northeast: Thomas J Eagan Road Zoning: Light Industrial (LI) Use: Undeveloped
West: ETJ 1 Zoning: Residential 2 (R2) (Tract 1) Use: Undeveloped;	**SUBJECT PROPERTY (Tract 2)**	East: Thomas J Eagan Road Zoning: LI Use: Undeveloped
Southwest: West University Drive (US 380) & Golden Hoof Drive Zoning: R2 Use: Undeveloped/agriculture; gas well drilling and production	South: West University Drive (US 380) Zoning: R2 Use: Undeveloped/agriculture; gas well drilling and production	Southeast: West University Drive (US 380) & Thomas J Eagan Road Zoning: R2 Use: Undeveloped

CONSIDERATIONS:

A. Section 2.4.5.E of the DDC provides approval criteria applicable to all applications.

1. *General Criteria*

a. Unless otherwise specified in this DDC, City review and decision-making bodies must review all development applications submitted pursuant to this subchapter for compliance with the general review criteria stated below.

The review criteria were applied as required.

b. The application may also be subject to additional review criteria specific to the type of application, as set forth in sections 2.5 through 2.9.

Section 2.7.1D of the DDC applies to this Comprehensive Plan Amendment request. An analysis of this request per those criteria can be found below in Consideration B.

c. *If there is a conflict between the general review criteria in this section and the specific review criteria in sections 2.5 through 2.9, the applicable review criteria in sections 2.5 through 2.9 controls*.
There are no conflicts between the general criteria and the criteria specific for comprehensive plan amendments.

2. *Prior Approvals*
The subject property was identified for "future commercial" development within the Hickory Grove Municipal Utility District (MUD). There are no other prior land use approvals, plans, development agreements, or plat approvals. The applicant has concurrently submitted a Zoning Change to a zoning district which allows for more commercial land uses than those permitted with the current R2 Zoning. These are separate requests, but the simultaneous consideration of these applications is intended to provide the Commission with a transparent and comprehensive look at the intended development of the property.

3. *Consistent with the Comprehensive Plan and Other Applicable Plans*
The decision–making authority:
a. Shall weigh competing goals, policies, and strategies.
The Denton 2040 Comprehensive Plan contains goals related to land use, fiscal and economic vitality, community character and urban design, parks and the environment, housing, community health and safety, infrastructure, and mobility. Saff acknowledges the following competing goals related to this proposal:
- Goal LU-1: Grow Compactly – Achieve sound, sustainable growth in compact development patterns with balanced land uses planned in coordination with transportation and infrastructure systems.
- Goal LU-6: Grow with Balance: achieve re-investment, revitalization, and redevelopment of key growth Centers cand Corridors

Action 2.2 calls for utilizing the Preferred Growth Concept Map, the Preferred Land Preservation Plan, and the Future Land Use Map (FLUM) to guide all development review applications within the plan horizon. Action 2.3 calls for providing expanded flexibility for mixed-use by implementing the mixed-use future land use designations that reflect the priorities of the Denton community and reflect current market conditions.

While Staff acknowledges that the location of this development is beyond the compact core of the City, given regional growth trends seen along the West University Drive (US 380) corridor west of Denton, the requested proposal to change the FLUM designation from Agriculture to the Regional Mixed-Use designation would provide flexibility with regard to permitted land uses, contributing to a balanced mix of residential and nonresidential land uses along a rapidly developing corridor. Currently, the properties between West University Drive (US 380) and FM 156 are either undeveloped with industrial or residential zoning, creating an approximately 4.3 mile stretch of West University Drive (US 380) not entitled for commercial and retail services. The proposed amendment would facilitate the development of commercial and retail services needed to serve the new residences within this area of the City and in the ETJ.

- Goal FEV-5: Design a fiscally advantageous land use pattern paired with fiscally responsible infrastructure management and investment.
- Goal FEV-6: Ensure that new development pays its fair and proportionate share of the cost to maintain current levels of services such as public safety, parks and recreation, streets, and utilities.

The proposed amendment is anticipated to allow for land uses which are more fiscally advantageous than agriculture. The subject property's location and direct access onto a freeway calls to question whether or not agriculture is the highest and best land use within this growing corridor. The Denton 2040 Comprehensive Plan acknowledges that, on average, no single land use provides a strictly positive fiscal result and the Preferred Growth Concept is intended to encourage a balanced development pattern to mitigate the financial implications of each land use type. Within the Denton Plan 2030, the entire Hickory Grove MUD area had a FLUM designation of Rural Areas. With the minor update, the Denton 2040 Plan changed the Future Land Use Designation from Rural Areas to Low Residential for the single-family portion of the Hickory Grove MUD but did not account for a future land use beyond Agriculture for the subject property despite the MUD development agreement acknowledging multifamily and commercial uses along the West University Drive (US 380) corridor. The current Agricultural FLUM designation significantly limits the potential of a development that does provide a net positive fiscal impact. The proposed Regional Mixed Use FLUM designation expands that opportunity.

b. May approve an application that furthers the overall goals of the Comprehensive Plan even if the development does not match the future land use designation in the Comprehensive Plan.

The request is to amend the future land use designation. As discussed above, the proposed amendment would help meet other goals of the Comprehensive Plan. It is important to note that while the proposed Regional Mixed Use designation may not initially appear consistent with the Agriculture designation on the property to the west, this area is intended to develop with commercial uses per the adopted MUD development agreement and will remain within the City's ETJ for the foreseeable future. Additionally, a Comprehensive Plan Amendment to change the FLUM designation to Regional Mixed Use on properties west of the subject property to provide greater flexibility and allow for more appropriate land uses in this corridor was approved by City Council on January 13, 2025.

4. *Compliance with this DDC*

a. *The proposed development shall comply with all applicable standards in this DDC, unless the standard is to be lawfully modified.*

This request is for a Comprehensive Plan Amendment, which provides the City's policy direction, but cannot be used to modify development standards. Therefore, any future development of this site must comply with applicable standards in the DDC unless those standards are modified through a Planned Development application.

b. *Compliance with these standards is applied at the level of detail required for the subject submittal.*

The request is for an amendment to Denton 2040 Comprehensive Plan FLUM and has provided sufficient detail for the subject submittal. Subsequent applications associated with development of parcels within the subject property must provide an increasing level of detail to demonstrate that the proposal will be able to meet the standards in the DDC.

5. *Compliance with Other Applicable Regulations*
   This proposed Comprehensive Plan Amendment complies with all other applicable regulations. Subsequent applications associated with the future development of the property must also demonstrate compliance at the time of review and approval.

6. *Consistent with Interlocal and Development Agreements*
   As discussed above and in Exhibit 1, the subject property was identified for "future commercial" development within the Hickory Grove MUD Development Agreement. The proposed amendment is intended to facilitate the development of commercial land uses as was anticipated by that Agreement. There are no other interlocal or development agreements for the subject property.

7. *Minimizes Adverse Environmental Impacts*
   The area is adjacent to the floodway and partially encumbered by floodplain along the west boundary of the subject property. An approved Environmentally Sensitive Area (ESA) field assessment reflects the existence of undeveloped floodplain ESA within the subject property. Should the applicant propose to further adjust the limits of the floodplain, an updated ESA field assessment may be required. Future developments would be subject to the Denton Development Code requirements for development within ESA. Additionally, all of the City's tree preservation, landscaping, and stormwater standards apply to any future development.

8. *Minimizes Adverse Impacts on Surrounding Property*
   The proposed revision to the Future Land Use Map minimizes adverse impacts on surrounding property. The Regional Mixed Use Future Land Use designation would provide commercial and retail support for the emerging residential and commercial growth in this region of the City limits and ETJ. Should the FLUM amendment and subsequent Zoning Change be approved, the development will be required to demonstrate compliance with all applicable DDC requirements designed to minimize adverse impacts, including lighting, screening, drainage, and landscaping requirements.

9. *Minimizes Adverse Fiscal Impacts*
   No Fiscal Impact Analysis was completed for the requested Future Land Use Map amendment as no development plans are proposed with this project. A Fiscal Impact Analysis was completed with the companion rezoning request. It can generally be assumed that commercial development will increase revenue compared to the limited uses allowed today such as large-lot single-family homes and agriculture.

10. *Compliance with Utility, Service, and Improvement Standards*
    This proposed Comprehensive Plan Amendment is not expected to negatively impact utilities, services, or improvement standards. While the proposed Regional Mixed Use designation is intended to facilitate the development of commercial land uses, all future developments must propose the construction of and connection to utilities in compliance with the City's standards. As part of the surrounding Hickory Grove MUD development, City utilities are being extended along West University Drive (US 380) and throughout surrounding property to the north and west, to which future development on this property could connect.

11. *Provides Adequate Road Systems*
    Surrounding roadways include Thomas J Eagan Road, Golden Hoof Drive, and West University Drive (US 380). These roadways are adequate to support the anticipated commercial development. Future developments may be required to submit analyses of the traffic they intend to generate and future improvements to adjacent roadways may be required to ensure the continued provision of adequate road systems.

12. *Provides Adequate Public Services and Facilities*
    This Comprehensive Plan Amendment request is not anticipated to affect public services and facilities.

13. *Rational Phasing Plan*
    This Hickory Grove MUD development is being developed in accordance with a rational phasing plan with phases of the single-family land uses to the north proceeding the development of the multifamily residences planned to the west of the subject property. This request is to facilitate the development of the commercial development anticipated by this MUD.

B. Section 2.7.1D of the DDC states that an application for a Comprehensive Plan Amendment may be approved only following a determination that the proposed amendment:

1. Is consistent with the overall purpose and intent of the Comprehensive Plan and that any **one** of the following criteria has been met:

    a. *There was an error in the original Comprehensive Plan adoption;*
    The Future Land Use Map was based upon an existing land use analysis, growth capacity, and the preferred growth concept. The Agriculture designation was not an error and reflected existing conditions at the time. However, the Denton 2040 Comprehensive Plan was only intended to serve as an update to the existing Denton Plan 2030, meaning extensive analysis and substantive changes to the plan were not made. Within the Denton Plan 2030, the entire Hickory Grove MUD area had a FLUM designation of Rural Areas. With the update, the Denton 2040 Comprehensive Plan changed the Future Land Use Designation from Rural Areas to Low Residential for the single-family portion of the Hickory Grove MUD but did not account for a future land use beyond Agriculture for the subject property despite the MUD development agreement acknowledging multifamily and commercial uses along the Highway 380 corridor. Therefore, while a specific error did not occur with the adoption of the Denton 2040 Comprehensive Plan, the update did not account for all conditions, as detailed further in the consideration below. The applicant has stated that market conditions are now ripe for the development

of the subject property. Hence the applicant's seeking consideration of this amendment at this time.

b. *The City Council failed to take into account then-existing facts, projections, or trends that were reasonably foreseeable to exist in the future;*
As discussed herein, the Denton 2040 Comprehensive Plan anticipated development occurring within this area but did not plan for any future land uses beyond agriculture on the subject property, as evident by the change in the FLUM designation from Rural Areas to Low Residential for the area north of the subject property, opposite the floodplain. At the time of adoption of the Denton 2040 Comprehensive Plan, it was known that the MUD developer intended to develop nonresidential uses along the West University Drive (US 380)frontage.

c. *Events, trends, or facts after adoption of the Comprehensive Plan have changed the City Council's original findings made upon plan adoption; or*
The western region of the City has experienced significant residential and commercial growth and development since the adoption of the Denton 2040 Comprehensive Plan. Specifically, this growth and development has occurred on both the north and south sides of the corridor of West University Drive (US 380), starting at North IH-35 and stretching west toward the limits of the City's ETJ 2. This is evident by the additional warehousing and industrial commerce facilities west of North IH-35 and south of West University Drive (US 380), the Meadows MUD at the southwest and northwest corners of the intersection of US 380 and FM 156 North, as well as multiple other approved MUDs for property in the vicinity that are currently under City review. In addition to the approved MUDs, the City has been informed of up to three others that are under review for areas south of West University Drive (US 380) in the City's ETJ 2.

d. *Events, trends, or facts after adoption of the Comprehensive Plan have changed the character or condition of an area so as to make the proposed amendment necessary*
An increased interest in Infrastructure Finance Districts (such as Municipal Utility Districts) coupled with private development patterns around the City's rural fringes and within the ETJ seem to indicate an increase in demand for City services at a level that is largely beyond the City's control. The increased development activity described in the criterion above is changing the character of the western region of the City from predominantly agricultural land uses to low- and moderate- density residential land uses with commercial uses along key thoroughfares and at key intersections. As such, the designation of Regional Mixed-Use is appropriate for the region and consistent with the emerging development patterns in the area. Based on surrounding development patterns, the current Agricultural designation is not realistic in the long term.

2. *In addition to the above-listed criteria, any proposed amendment is subject to the following additional review standards:*
   a. *That the amendment is not in conflict with any portion of the goals and policies of the plan.*

The proposed amendment is not in conflict with the overall goals and policies of the plan. The intent of this amendment is to facilitate the development of commercial land uses. The Comprehensive Plan calls for compact development in conjunction with infrastructure improvements as well as preservation of the rural fringe. In the last several years, the City has seen a significant increase in this type of development in its ETJ as Municipal Utility Districts, over which the City has very limited control. Since the subject property is within the City limits, it was excluded from the Hickory Grove MUD, but anticipated commercial development in conjunction with the development included within the MUD.

b. *That the amendment constitutes a substantial benefit to the city and is not solely for the good or benefit of a particular landowner or owners at a particular point in time.*

As discussed throughout, the proposed amendment is intended to provide support for the development of more fiscally advantageous land uses and infrastructure construction compared to the existing Agriculture FLUM designation.

c. *The extent to which the proposed amendment and other amendments in the general area are compatible with the land use goals of the plan and that they avoid creation of isolated uses that will cause incompatible community form and a burden on public services and facilities.*

The proposed amendment is intended to facilitate a compatible development pattern within the overall area. The Hickory Grove MUD includes the development of 1,516 single-family and 624 multifamily residences. Development within the Regional Mixed Use designated areas may include residential, commercial, office, entertainment, and other uses except industrial, at the highest levels of scale and density within the city. The proposed request could allow for the development of several uses that align with the Regional Mixed Use FLUM designation as this designation is intended to pave the way for commercial and retail services that could benefit the new residential communities being developed within this area.

d. *That the development pattern contained in the existing plan does not provide adequate and appropriate optional sites for the use or change being proposed in the amendment.*

The existing plan assigns a Agricultural of Low Residential FLUM designation to the vast majority of land that was undeveloped or used for agriculture at the time of the Plan's adoption. As discussed above, this approach did not consider growth trends in the broader region. Because of these ongoing growth trends and the City's lack of ability to regulate land use in the ETJ, a significant portion of the land that was indicated for Rural or Agriculture use in the City's western and northern ETJ areas was at the time or has since been planned as moderate density residential developments, governed by MUDs. Within the City limits, Regional Mixed Use FLUM designated areas are largely built out in accordance with the intent of this designation. The residential and commercial growth being experienced within this western region of the City limits and ETJ adds to the market demand for regional destinations and developments at higher levels of scale and intensity. The development pattern contained in the existing plan did not anticipate the increase in low-to-moderate residential development in the western portion of the City and therefore does not provide adequate optional sites within this region.

e. *That the impact of the amendment, when considered cumulatively with other applications and development in the general area, will not adversely impact the city or a portion of the city by:*

i. *Significantly altering acceptable existing land use patterns;*

The amendment is not anticipated to result in undesirable land use patterns. As discussed herein, the Hickory Grove MUD includes the development of single-family and multifamily residences, and the Development Agreement anticipated commercial development on the subject property. The applicant has concurrently submitted a Zoning Change to facilitate the anticipated commercial development. This proposed rezoning would alter the existing land use pattern by allowing for commercial land uses at a higher level of density than what is currently permitted, but this would not be inconsistent with the other applications and developments in the general area.

ii. *Having significant adverse impacts on public services and facilities that are needed to support the current land use and that cannot be mitigated to the maximum extent feasible;*

The proposed FLUM amendment is not anticipated to have an adverse impact on public services and facilities needed to support the current land uses. As discussed above, subsequent development applications must provide for adequate public services and facilities needed to support the existing and proposed land uses while minimizing costs incurred by the City.

iii. *Adversely impacting environmentally sensitive areas or resources; or*

The proposed modification to the Future Land Use Map would not limit the City's ability to regulate tree preservation, stormwater, and development activity within Environmentally Sensitive Areas.

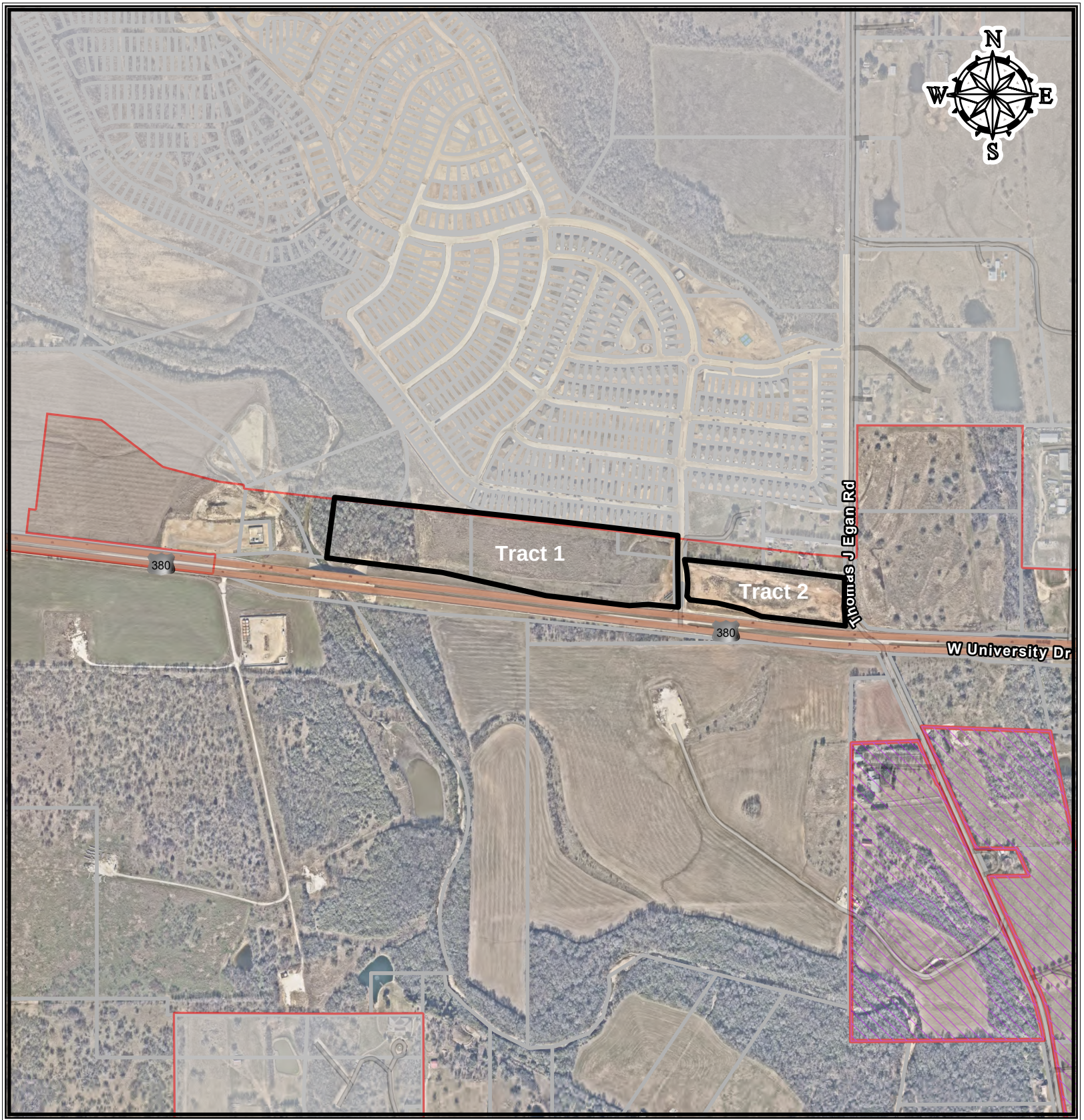
iv. *Adversely impacting existing uses because of increased traffic on existing systems.*

The existing land use plan for this area include developing low- and moderate-density residential, undeveloped property, and agriculture. During the Zoning Compliance Plan process, a trip and/or traffic assessment will be required to determine how the proposed land uses will impact the traffic on existing systems and future developers will be required to make transportation related improvements necessary to minimize adverse traffic impacts.

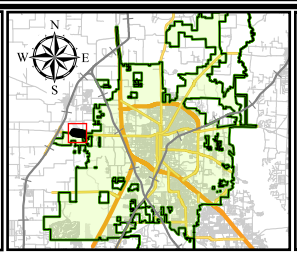
f. *That site conditions, including but not limited to topography, utility corridors/easements, drainage patterns, noise, odors, or environmental contamination, would make development under the current plan designation inappropriate.*

Under the current Future Land Use designations, appropriate zoning districts are limited to the Rural Residential and Residential 1 (R1) under the right conditions. The R2 zoning district and its permitted uses are no longer appropriate for this corridor as the property is adjacent to West University Drive (US 380). Recent development in the area and development inquiries include denser residential developments as well as commercial interest representing a much more efficient use of land to accommodate the significant population growth in the broader area.

CA25-0005
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40

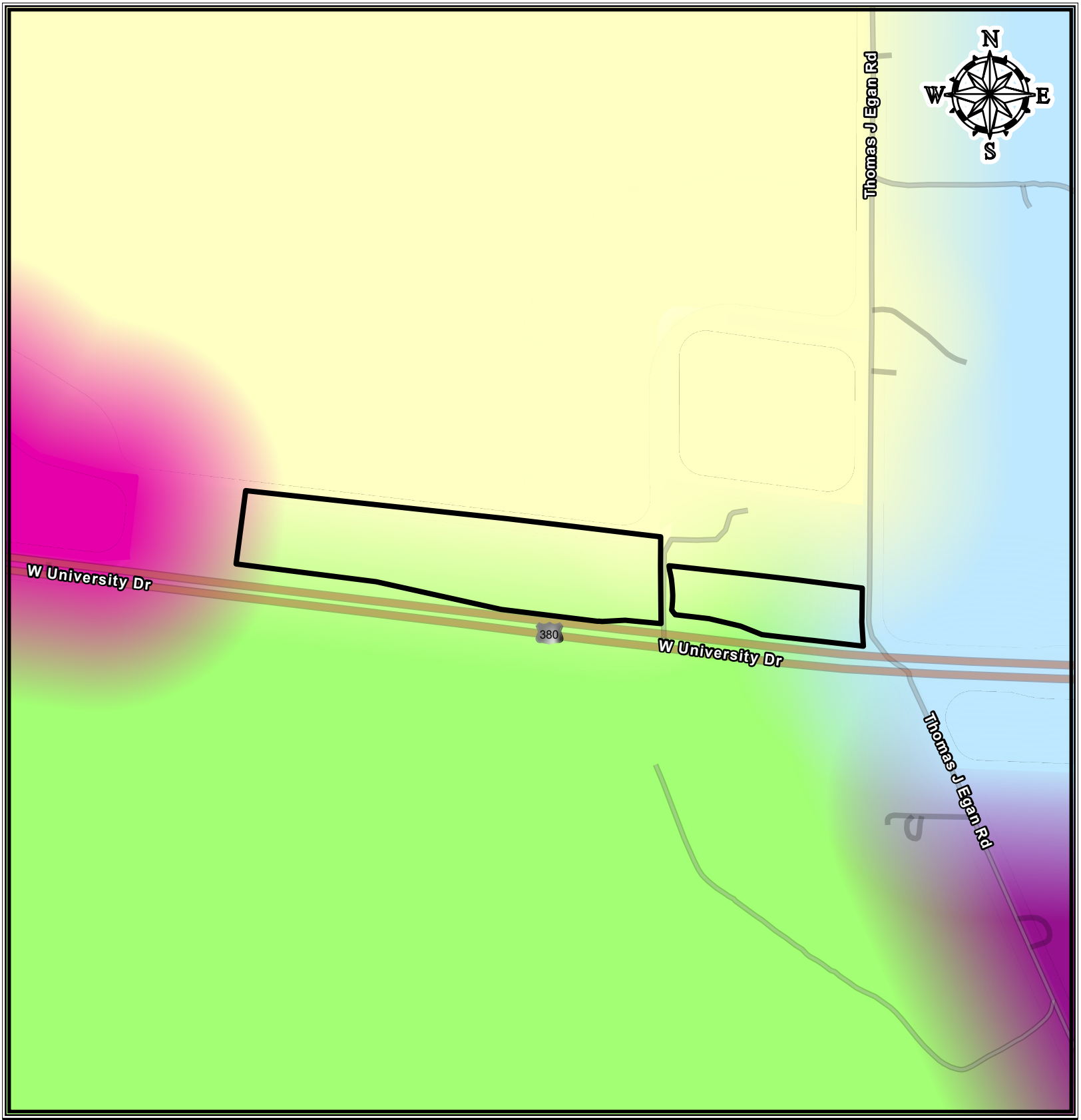


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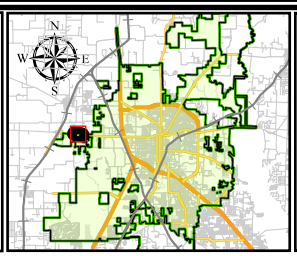
CITY OF DENTON
Development Services · GIS
Date: 2/6/2026

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CA25-0005
Future Land Use Map



- Site Location
- Agriculture
- Business Center
- Community Mixed Use
- Downtown Denton
- Government / Institutional
- Industrial Commerce
- Light Industrial
- Low Residential
- Master Planned Community
- Moderate Residential
- Neighborhood / University Compatibility Area
- Neighborhood Mixed Use
- Parks / Open Space
- Regional Mixed Use
- Rural Areas

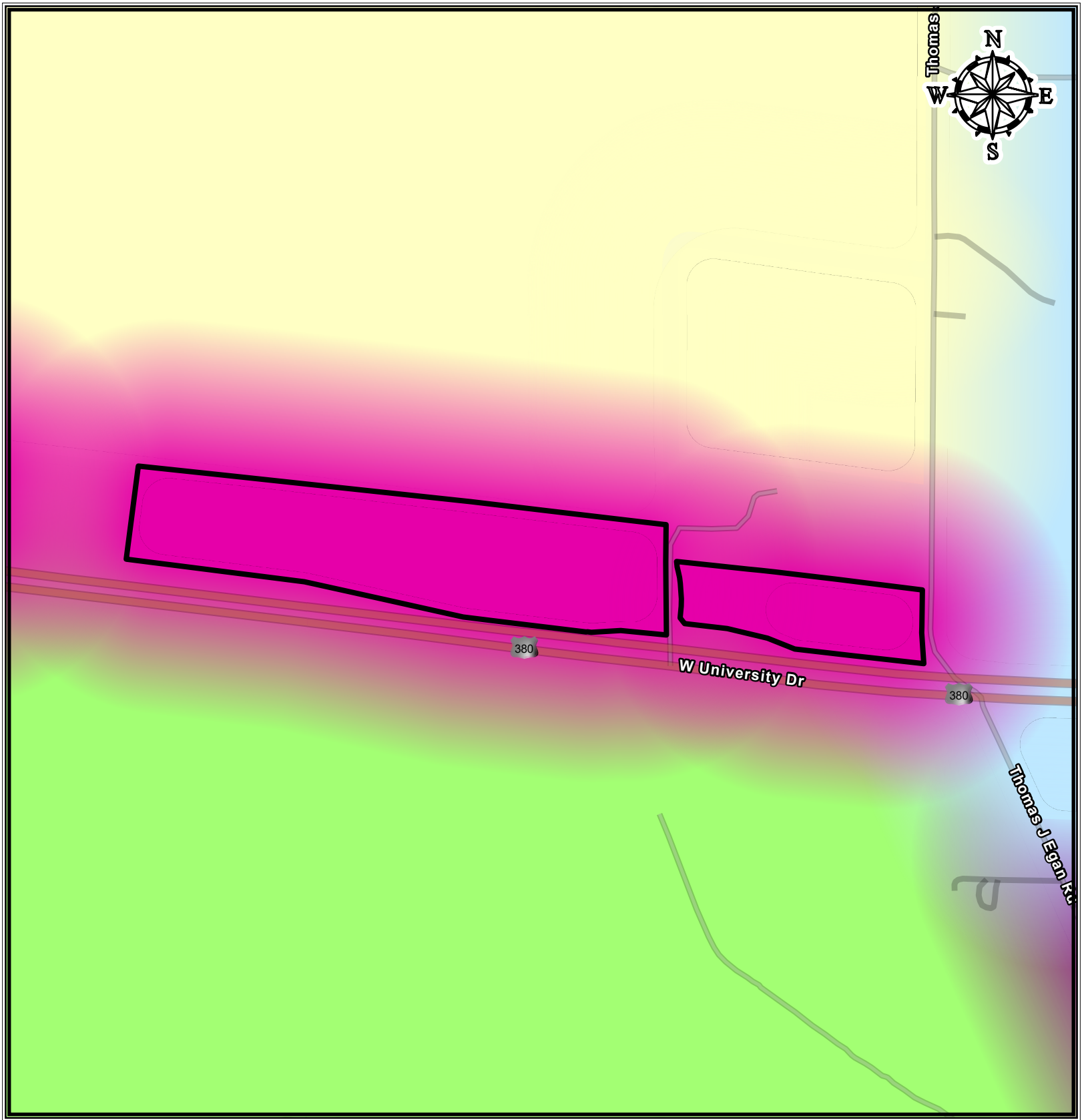


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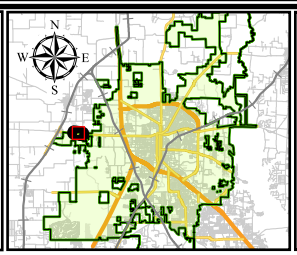
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CA25-0005
Proposed Future Land Use Map



- Site Location
- Agriculture
- Business Center
- Community Mixed Use
- Downtown Denton
- Government / Institutional
- Industrial Commerce
- Light Industrial
- Low Residential
- Master Planned Community
- Moderate Residential
- Neighborhood / University Compatibility Area
- Neighborhood Mixed Use
- Parks / Open Space
- Regional Mixed Use
- Rural Areas



0 150 300 600 Feet

CITY OF DENTON
Development Services • GIS
Date: 2/6/2026

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Comprehensive Plan Amendment
Project Narrative
Legends Ranch Development, LLC
Commercial Tract 1 & Tract 2
CA25-0005

Project Description/Summary:

Location:

The Legends Ranch Development, LLC Commercial Tract 1 is located northwest of the intersection of Golden Hoof Drive and US Highway 380. The western portion of the tract is adjacent to North Hickory Creek. This tract has approximately 2,095-feet of frontage on US 380. Tract 1 is a total of 18.95-acres. Commercial Tract 2 is located north of US Highway 380 and between Golden Hoof Drive and Thomas J Egan Road. Tract 2 has approximately 927-feet of frontage on US 380. Tract 2 is a total of 5.99-acres. Golden Hoof Drive divides Tract 1 and Tract 2.

Purpose/Project Description:

The purpose of the zoning submittal is to change the property zoning of both tracts from R2 to SC per the development agreement. The properties are currently annexed into the city and under R2 zoning classification. The proposed zoning of SC is consistent with the Denton Development Code to provide moderate- to high-intensity commercial, office, and retail uses along high-traffic corridors while providing appropriate buffering from adjacent neighborhoods.

Site History:

Both tracts are currently unplatted and within the City of Denton city limits. Both have always been vacant. The west portion of Commercial Tract 1 contains undeveloped floodplain ESA.

Surrounding Property Use:

Hickory Grove Development, formerly Legends ranch, is adjacent to the property to the north. To the west is Hickory Grove Multi-Family Phase 1. To the south is US 380.

Existing and Proposed Land Use:

Existing Zoning: R2

Proposed Zoning: SC

Existing Plat(s): No Plats exist for the property.

Acreage: Commercial Tract 1 is approximately 18.95-acres, and Commercial Tract 2 approximately 5.99-acres. The total acreage is approximately 24.94-acres.

Land Characteristics: Tract 1 contains trees on the western portion adjacent to and along North Hickory Creek and undeveloped floodplain ESA. There is approximately 21' of fall across Tract 1 from the northeast corner to the southwest corner. Per City maps, a portion of Tract 1 is within FEMA floodplain that is also located within an ESA, but there is no riparian buffer ESA onsite. Tract 2 contains trees along the boundary to the north. There is approximately 9' of fall from the north central portion of Tract 2 the southwest corner, and approximately 5' of fall from the north central portion to the east boundary.

Existing Uses: Both tracts are vacant.

Proposed Uses: This development will consist of various use commercia. The proposed development will have multiple points of connection to US 380, Golden Hoof Drive, and Thomas J Egan Road.

Phasing and Traffic Access: At this time, it is assumed that the proposed development will be constructed as commercial/retail pad sites. Construction access will be from Golden Hoof Drive.

Existing Utilities: Utilities in the form of City water, sanitary sewer and electric exist to the property. City water has been stubbed to Tract 1 with a 12-inch water main and Tract 2 with a 8-inch waterline, both constructed with Legends Ranch Phase 1A. City sewer service has been stubbed to Tract 1 with an 8-inch sewer main constructed with Legends Ranch Phase 1B and Tract 2 with an 8-inch sewer main constructed with Phase 1A. Both sewer stubs tie into an existing lift station west of North Hickory Creek.

Proposed Utilities: Water will be provided by connections with the existing stubs. The 12-inch stub in Tract 1 will be extended west along US 380. The internal water lines will create a looped system for the proposed development. Sewer will be provided by connecting to the existing stubs at the northwest corner of Tract 1 and the west of Tract 2.

Existing Topography and Drainage: Tract 1 falls from the northeast to the southwest towards North Hickory Creek. There is approximately 21' of fall across Tract 1 from the northeast corner to the southwest corner. There is approximately 9' of fall from the north central portion of Tract 2 the southwest corner, and approximately 5' of fall from the north central portion to the east boundary. The existing slopes are moderate and are suited for the proposed project.

Proposed Topography (Grading) and Drainage: Onsite cut-fill is proposed to grade the site for commercial site planning uses. The proposed grades will conform generally to existing slopes and patterns. The proposed hydrology will be paved or covered consistently with uses and intensity of development within SC zoning districts. Drainage systems will be enclosed conduits out-falling into the existing floodplain.

Public Benefit:

The following benefits are provided by this development to the public using the SC Zoning District:

The SC district is intended to support compatibility between moderate to higher-intensity commercial, office, and retail uses along high-traffic corridors. This zoning district will ensure appropriate buffering for adjacent neighborhoods is provided while also serving as a transition area between established single-family neighborhoods and high-traffic corridors such as US Highway 380. Having the SC zoning district adjacent to an existing residential neighborhood and along a highly visible corridor US 380 will increase regional draw, accommodate greater mobility options, and create a sense of place.

Community Amenities:

Within the SC development there will be open spaces and amenities typical to commercial development and will provide a safe environment for pedestrians and cyclists.

Proposed Mitigation Measures for Nuisance Abatement:

Control of noise, odor, fumes, dust, and lighting, and sufficient landscaping and screening created by the development will be accomplished with required, and if necessary, enhanced techniques and methods to be determined at the time of platting and design. Nuisances, if any, are not anticipated to be exacerbated or significantly different from the existing zoning as a result of the proposed zoning change.

Consistency with the requirements of the Denton Development Code (DDC):

It is anticipated that the proposed uses and development on the tract will be consistent with and in accordance with all requirements of the DDC and other applicable regulations.

Impact of the Proposed Change On:

a. The Goals and Objectives of The Denton 2040 Comprehensive Plan: The 2040 Comprehensive Plan Future Land Use Plan for this area is Agriculture. As this does not follow the Comprehensive Plan an amendment is being submitted to instead be for Suburban Corridor development. This proposed designation is consistent with the development along the US 380 corridor.

b. The Future Land Use Element of The Denton 2040 Comprehensive Plan: The proposed zoning district change meets the intent of the Development Agreement for the Legends Ranch Development Master Plan Community.

c. The Balance of Land Uses in the City: The balance of Land Uses in the City will not be altered because of the proposed zoning district change.

d. Adequate Public Facility Elements and How the Change Will Effect the Provision of Services Anticipated by The City**:** The proposed zoning change will have a negligible impact on the services provided by the City, DME, the D.I.S.D., and other services and infrastructure anticipated in the Denton 2040 Comprehensive Plan.

Further Evaluation of the Proposed Zoning Change Under the Following Factors:

a. *The existing land use pattern surrounding the property and the possible impact on existing or future development or uses are in accordance with existing regulations:* The surrounding mix of uses is compatible with the proposed use on the tract. Furthermore, the change of zoning does not materially alter, compound, diminish, or exacerbate any perceived adjacency issues that might already be present with the existing zoning.

b. *The possible creation of an isolated district unrelated to adjacent and nearby districts:* This will not occur as the proposed zoning is compatible with the surrounding uses. Furthermore, the proposed development will enhance the overall development to the north.

c. *The population density in order to facilitate the adequate provision of transportation, water, sewer, schools, parks, public convenience, and other public requirements:* The area of proposed change is not large enough, and the change in allowed density will not increase the population enough, to create negative impacts on the provision of services related to population. Development will generate impact fees for the City for services provided.

d. *The cost to the city and other governmental entities in providing, improving, increasing, or maintaining public utilities, schools, streets and other public safety measures:* The area of proposed change is not large enough, and will not increase the population enough, to create negative impacts on the provision of services related to population. Development will generate additional tax revenue for the City services provided.

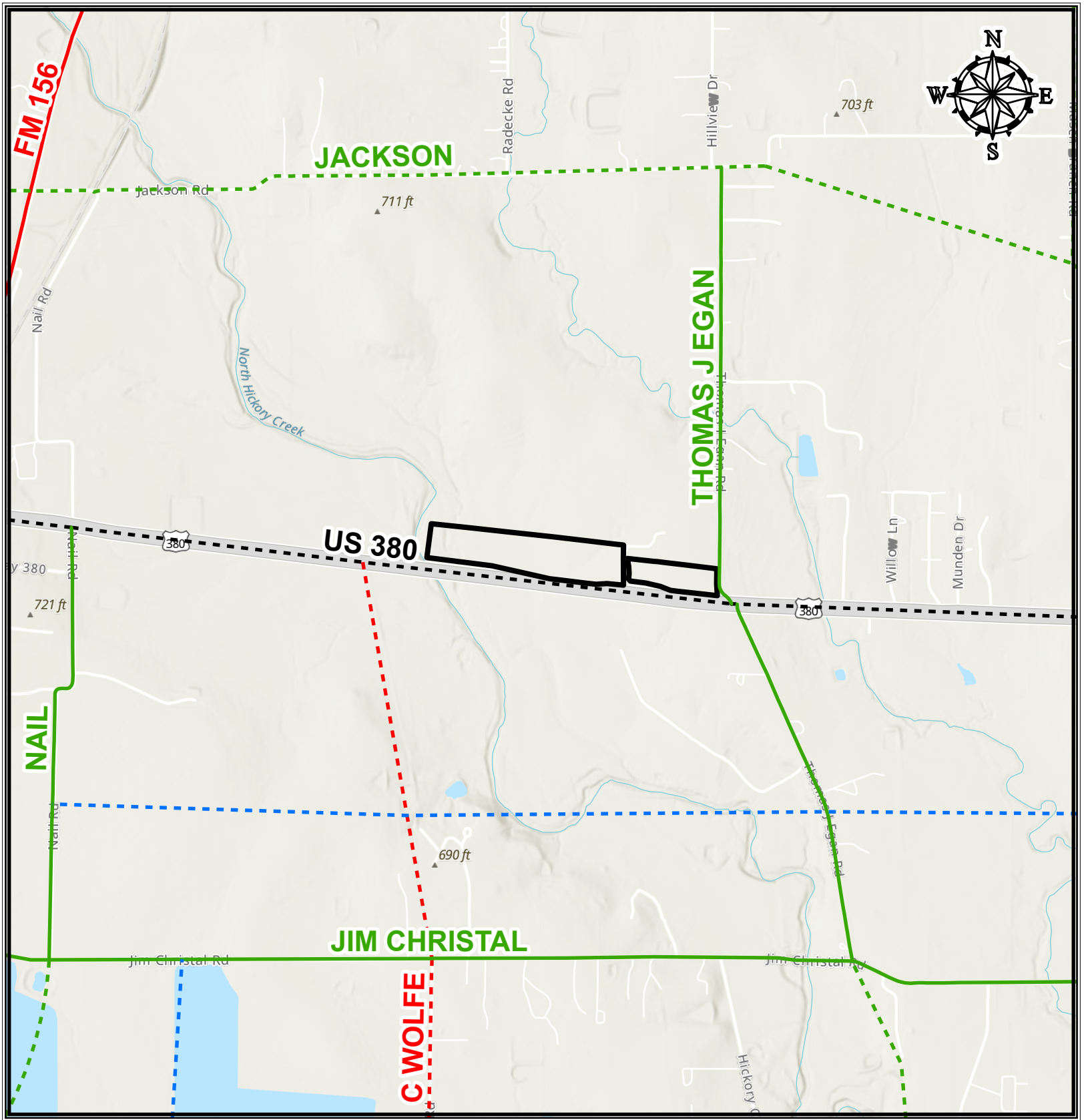
e. *The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quantity:* The proposed commercial development will plant trees and additional landscaping. Layout will provide connectivity with adjacent open spaces.

f. *Whether there are substantial reasons why the property cannot be used in accordance with existing zoning or that proposed by the Future Land Use Map:* The proposed zoning and comprehensive plan amendment will match the uses of the surrounding properties.

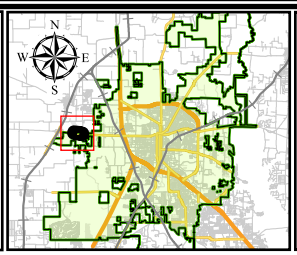
Zoning Map Amendment Approval Criteria:

a. *The proposed rezoning is consistent with the Comprehensive Plan. T*he proposed zone district change is not consistent with the 2040 Comprehensive Plan, and an amendment is being submitted.
b. *The proposed rezoning is consistent with the relevant Small Area Plan(s):*
c. *The proposed rezoning is consistent with the purpose statement of the proposed zoning district, as provided in Subchapter 3: Zoning Districts:* The rezoning is consistent with the purpose statement for the SC district on the FLUP. When developed, the commercial development will be within walking distance of residential homes and auto accessible to the US 380 corridor.
d. *There have been significant changes to the area to warrant a zoning change:* The development of Hickory Grove, formerly Legends Ranch, and the Meadows, and future land for commercial corridors projects have caused significant changes in the area. SC zoning is consistent with these developments.
e. *The intensity in the new zoning district is not expected to create significantly adverse impacts to surrounding properties or the neighborhood:* As shown above, this zoning change will have negligible impact on the surrounding properties.
f. *Public facilities and services are available to adequately serve the subject property while maintaining adequate level of service to existing development:* Adequate public facilities are available, and this development will not have a negative impact on existing service.
g. *There was an error in establishing the current zoning:* There was not an error in establishing the current zoning.

CA25-0005
Thoroughfare Map



- Proposed Freeway
- Existing Primary Arterial
- Proposed Primary Arterial
- Exisitng Secondary Arterial
- Proposed Secondary Arterial
- Proposed Collector
- Site Location

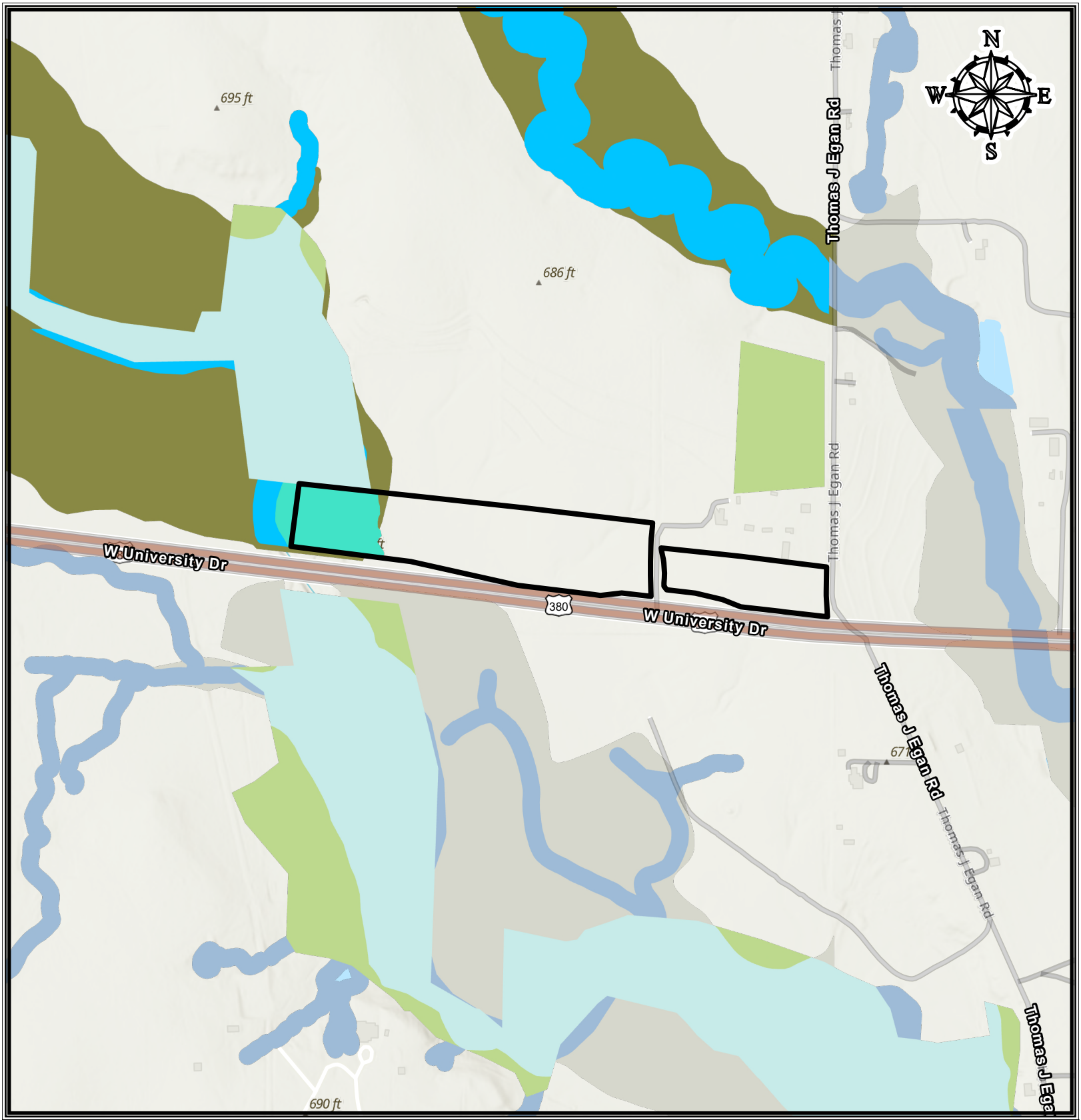


0 412.5 825 1,650 Feet

CITY OF DENTON
Development Services · GIS
Date: 2/6/2026

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CA25-0005
Environmentally Sensitive Area Map



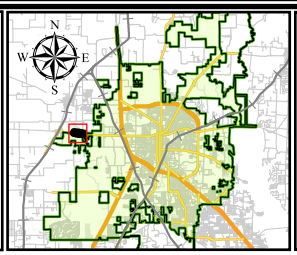
CA25-0005

Cross Timbers Upland Habitat
- Designation Confirmed
- Not Assessed or Assessment Expired

Water Related Habitat
- Designation Confirmed
- Not Assessed or Assessment Expired

Riparian Buffer ESA
- Designation Confirmed
- Not Assessed or Assessment Expired

Floodplain ESA
- Undeveloped Floodplain
- Not Assessed or Assessment Expired

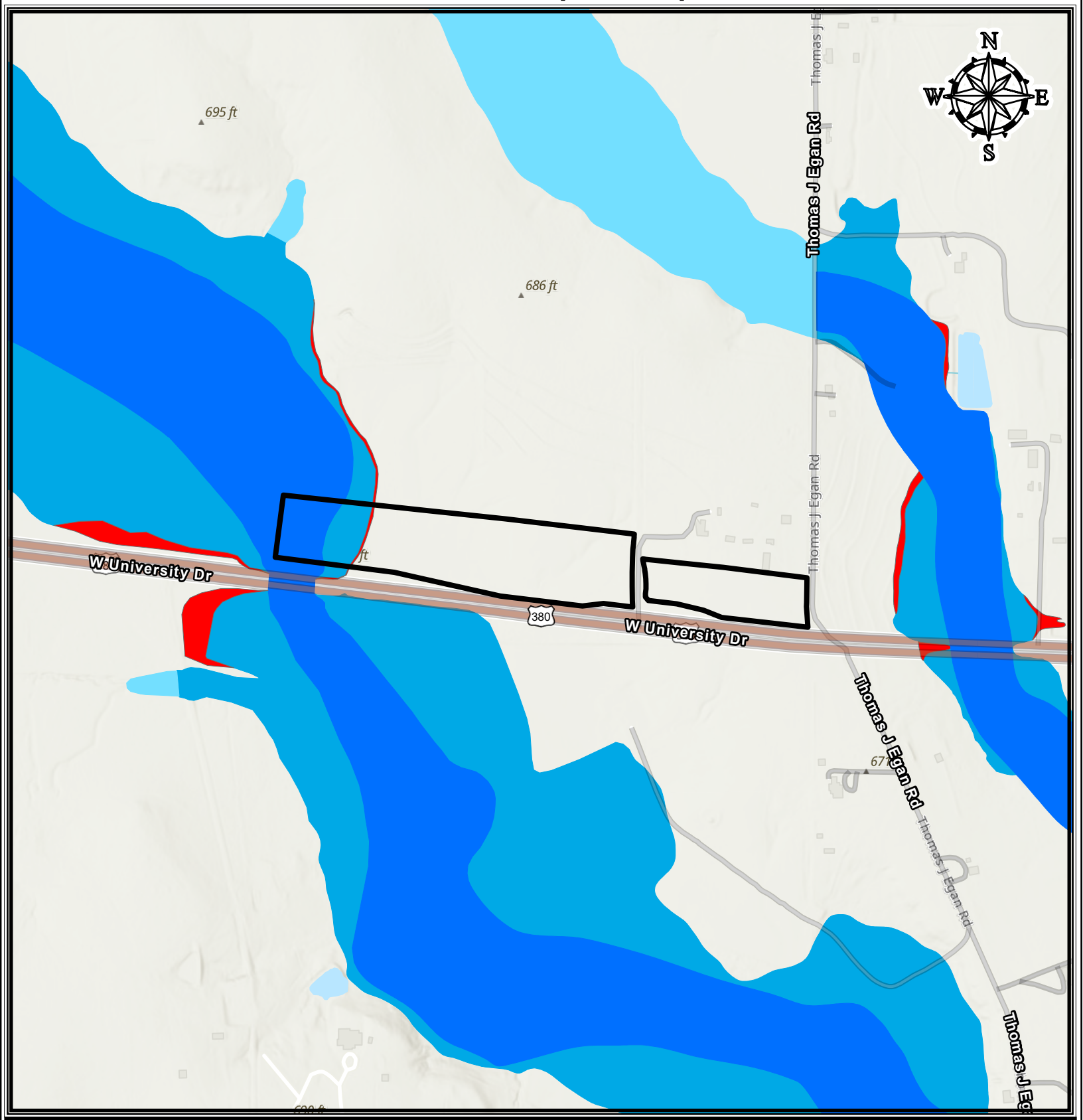


0 225 450 900 Feet

CITY OF DENTON
Development Services · GIS
Date: 1/5/2026

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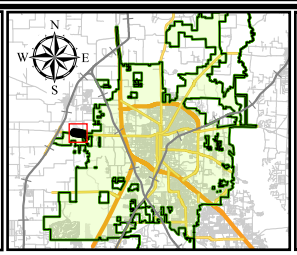
CA25-0005
FEMA Floodplain Map



CA25-0005

FEMA Floodplain Year 2024

- Zone X = 0.2% Annual Chance Flood
- Zone X = 1 % Annual Chance, Less Than 1 Sq Mi Drainage
- Zone A = 1 % Annual Chance, No BFE Detemined,
- Zone AE = 1 % Annual Chance, BFE Determined
- Floodway

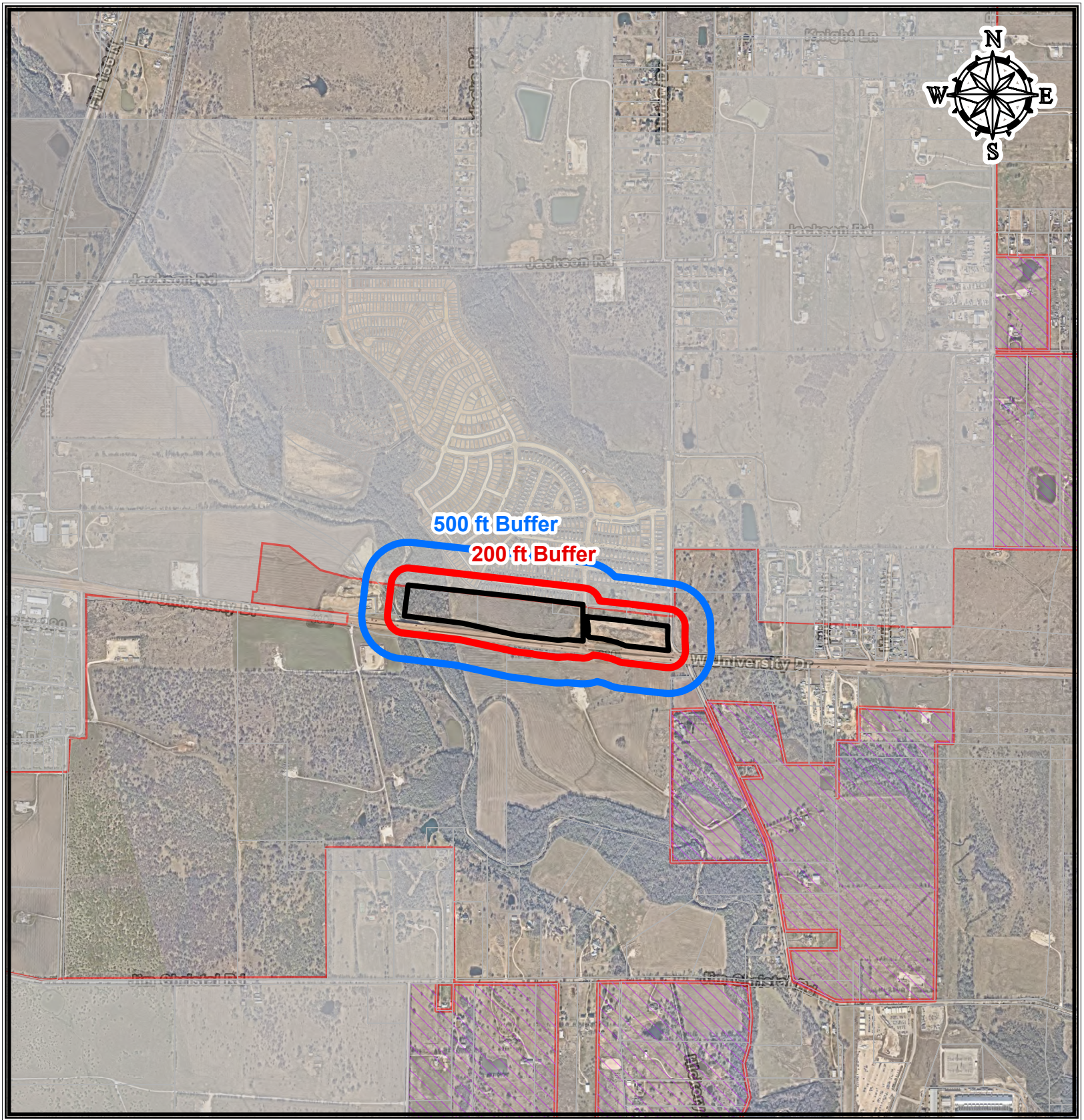


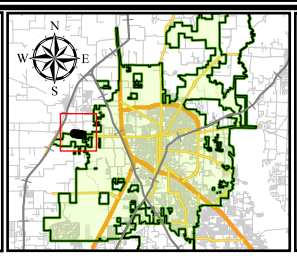
0 225 450 900 Feet

CITY OF DENTON
Development Services · GIS
Date: 1/5/2026

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CA25-0005
Notification Map





0 455 910 1,820 Feet

CITY OF DENTON
Development Services · GIS
Date: 2/6/2026

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DEPARTMENT OF DEVELOPMENT SERVICES

Development Services Center – 401 N. Elm Street – Denton, Texas 76201 voice: (940) 349-8600 www.cityofdenton.com

PUBLIC HEARING NOTIFICATION SIGN AFFIDAVIT OF SIGN POSTING

Project No. CA25-0005 / Z25-0022

Date of Planning and Zoning Commission Meeting: January 14, 2026

I hereby certify that I have posted or caused to be posted Public Hearing Notification sign(s) on the property subject to Project Name/Number Legends Ranch Retail Center CA25-0005 / Z25-0022,

located at _____

Said sign(s) have been obtained through a sign contractor of choice and meet the specifications as stated in the City of Denton Public Hearin« Sign Criteria Sheet.

Posting of said signs was accomplished on Jan. 02, 2026, 2025 Said signs have been posted in a manner that provides an unobstructed view and allows clear reading from the public right(s)of-way along HWY 380 & Thomas Egan Rd.

Said signs will be maintained on the property throughout the entire public hearing process and will be removed within three (3) calendar days subsequent to the final decision by the approving body. I further certify that this affidavit was filed with the Planning Department of the City of Denton within the time provisions specified in the City of Denton Public Hearing Sign Criteria Sheet.

Executed this the 2nd day of January 20 26

Matthew K. Hall

Signature of Applicant or Authorized Representative for Project No.

MATT K. HALL / SUPERIOR SIGNS - CA25-0005 / Z25-0022

Printed Name of Applicant or Authorized Representative for Project No.

STATE OF TEXAS COUNTY OF DENTON BEFORE ME, a Notary Public, on this 01/02/26 day personally appeared (printed owner's name) the above signed, who, under oath, stated the following: "I hereby certify that I am the owner, for the purposes of this application; that all information submitted herein is true and correct."

SUBSCRIBED AND SWORN TO before me, this the 2nd day of January, 20 26.

Taryn Blair Watson

Notary Signature

TARYN BLAIR WATSON
Notary ID # 130465520
My Commission Expires
July 17, 2027

PLEASE NOTE: ***Failure to post the notification sign(s) on the property by the close of business (5 pm) on the tenth (10th) day prior to the first public hearing shall result in the postponement of consideration by the Board or Commission.***

STAFF USE ONLY:

Date/Time submitted: _____ Verified by: _____

GRAPHIC SCALE IN FEET
0 50 100 200
1"=100' @ 22x34

HICKORY GROVE SINGLE FAMILY

GOLDEN HOOF DRIVE

EXISTING TREE LINE

EXISTING POWER POLE

TRACT 1

PROPOSED SIGN LOCATION

EXISTING POWER POLE

TRACT 2

EXISTING POWER POLE

EXISTING POWER POLE

EXISTING POWER POLE

EXISTING POWER POLE

US HIGHWAY 380

PROPOSED SIGN LOCATION

PROPOSED SIGN LOCATION

PROPOSED SIGN LOCATION

Legends Ranch Development, LLC Commercial Tracts 1 & 2

Denton, Texas

DWG NAME K:\FRI_CIVIL\063246400-LEGENDS RANCH\CAD\EXHIBITS\PLANSHEETS\LEGENDS RANCH COMMERCIAL\PLANSHEETS\LEGENDS RANCH COMMERCIAL CP.DWG
LAST SAVED 11/4/2025 1:07 PM, BY: STANG, TYLER

Kimley»Horn
6160 Warren Parkway, Suite 210
Frisco, Texas 75034
P 972-335-3580
State of Texas Registration No. F-928

November 2025

Jan 2, 2026 at 5:09:54 PM
8774–8804 W University Dr
Denton TX 76249
United States
M



Jan 2, 2026 at 5:17:43 PM
Golden Hoof Dr
Denton TX 76249
United States
M

CITY OF DENTON

Notice of Public Hearing

Project Numbers: CA25-0005 & Z25-0022

Project Name:Legends Ranch Retail Center

Request: From Rural Residential, to Suburban Corridor

For more information:
www.cityofdenton.com/public-meetings
CALL: (940) 329-8600

Jan 2, 2026 at 5:23:26 PM
Golden Hoof Dr
Denton TX 76249
United States
M

CITY OF DENTON

Notice of Public Hearing

Project Numbers: CA25-0005 & Z25-0022

Project Name: Legends Ranch Retail Center

Request: From Rural Residential, to Suburban Corridor

For more information:
www.cityofdenton.com/public-meetings
CALL: (940) 329-8600

Jan 2, 2026 at 5:28:57 PM
W University Dr
Denton TX 76249
United States
M

CITY OF DENTON

Notice of Public Hearing

Project Numbers: CA25-0005 & Z25-0022

Project Name: Legends Ranch Retail Center

Request: From Rural Residential, to Suburban Corridor

For more information:
www.cityofdenton.com/public-meetings
CALL: (940) 329-8600

Jan 2, 2026 at 5:34:55 PM
W University Dr
Denton TX 76249
United States
M

CITY OF DENTON

Notice of Public Hearing

Project Numbers: **CA25-0005 & Z25-0022**

Project Name: **Legends Ranch Retail Center**

Request: **From Rural Residential, to Suburban Corridor**

For more information:

www.cityofdenton.com/public-meetings

CALL: (940) 329-8600

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, REGARDING A COMPREHENSIVE PLAN AMENDMENT FROM THE AGRICULTURE AND LOW RESIDENTIAL FUTURE LAND USE DESIGNATIONS TO THE REGIONAL MIXED USE FUTURE LAND USE DESIGNATION ON APPROXIMATELY 24.941 ACRES GENERALLY LOCATED AT THE NORTHWEST AND NORTHEAST CORNERS OF THE INTERSECTION OF WEST UNIVERSITY DRIVE (US 380) AND GOLDEN HOOF DRIVE, IN THE CITY OF DENTON, DENTON COUNTY, TEXAS; ADOPTING AN AMENDMENT TO THE CITY'S OFFICIAL FUTURE LAND USE MAP; PROVIDING FOR A PENALTY IN THE MAXIMUM AMOUNT OF $2,000.00 FOR VIOLATIONS THEREOF; PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE. (CA25-0005a)

WHEREAS, Kimley-Horn has applied for a comprehensive plan amendment from the Agriculture and Low Residential Future Land Use Designations to the Regional Mixed Use Future Land Use Designation on approximately 24.941 acres of land, legally described in **Exhibit "A"** and depicted in **Exhibit "B"** attached hereto, said amendment being depicted in **Exhibit "C"** incorporated herein by reference (hereinafter, the "Property"); and

WHEREAS, on January 14, 2026, the Planning and Zoning Commission, in compliance with the laws of the State of Texas, have given the requisite notices by publication and otherwise, and have held due hearings and afforded full and fair hearings to all property owners interested in this regard, and have recommended approval (5-1) of the amendment; and

WHEREAS, on February 17, 2026, the City Council likewise conducted a public hearing as required by law, and finds that the request meets and complies with all substantive and procedural standards set forth in Subsection 2.7.1 of the Denton Development Code, and is consistent with the Denton 2040 Comprehensive Pland and the Denton Development Code; and

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Denton, in considering the application for a change in the Future Land Use designation of the property, have determined that the proposed change is in the best interest of the health, safety, morals, and general welfare of the City of Denton, and accordingly, the City Council of the City of Denton is of the opinion and finds that said Future Land Use Map change is in the public interest and should be granted as set forth herein; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference and found to be true.

SECTION 2. The Future Land Use designation for the Property is hereby changed from Agriculture to Mixed Use Regional as shown on Exhibit "C."

SECTION 3. The City's Denton 2040 Comprehensive Plan is hereby amended to show the change in the Future Land Use Map.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by any court, such invalidity shall not affect the validity of the provisions or applications, and to this end the provisions of this ordinance are severable.

SECTION 5. Any person, firm, partnership or corporation violating any provision of this ordinance shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by fine in a sum not exceeding $2,000.00 for each offense. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

SECTION 6. That an offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Denton Code or Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 7. In compliance with Section 2.09(c) of the Denton Charter, this ordinance shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, a daily newspaper published in the City of Denton, Texas, within ten (10) days of the date of its passage.

The motion to approve this ordinance was made by _____ and seconded by _____, the 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Hilary McMahon _____

Exhibit A

TRACT 1

BEING a tract of land situated in the Thomas J. Egan Survey, Abstract No. 406, and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 1470, City of Denton, Denton County, Texas and being a portion of a called 565.364-acre tract of land described in a deed to Legends Ranch Development, LLC, recorded in Instrument No. 2019-146384, Official Records, Denton County, Texas, and being a portion of Lot 1, Block B, Golden Hoof Ranchettes, an Addition to the City of Denton, Texas, according to the plat thereof recorded in Volume 4, Page 8, Plat Records, Denton County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod with plastic cap stamped “RPLS 4561” found for the westernmost corner of a tract of land described as Parcel 5 - Tract 2 in a deed to the State of Texas, recorded in Instrument No. 2009-116573, said Official Records, common to an angle point in the southerly line of said 565.364-acre tract, same being on the northerly right-of-way line of U.S. 380 (variable width public right-of-way);

THENCE in a westerly direction along the common line of said 565.364-acre tract and said U.S. 380 the following courses and distances:

North 82°39'34" West, a distance of 238.81 feet to a 1/2-inch iron rod with plastic cap stamped “RPLS 4561” found for corner;

North 07°20'26" East, a distance of 5.00 feet to an aluminum TXDot Monument found for corner;

North 83°19'32" West, a distance of 236.23 feet to a 1/2-inch iron rod with plastic cap stamped “RPLS 4561” found for the easternmost corner of a tract of land described as Parcel 5 - Tract 1 In a deed to the State of Texas, recorded in Instrument No. 2009-116573, said Official Records;

North 77°42'04" West, a distance of 655.45 feet to a 1/2-inch iron rod with plastic cap stamped “RPLS 4561” found for corner;

North 83°15'19" West, a distance of 685.77 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for the southernmost southeast corner of Hickory Grove, Phase 1B, an addition to the City of Denton, Texas, according to the final plat thereof recorded in Document No. 2024-94 of the Plat Records of Denton County, Texas;

THENCE departing said common line and along the southerly line of said Hickory Grove, Phase 1B, the following courses and distances:

North 06°44'41" East, a distance of 361.74 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 83°28'14" East, a distance of 193.43 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 83°31'06" East, a distance of 637.92 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 83°31'07" East, a distance of 908.19 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 83°10'56" East, a distance of 312.71 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for the easternmost southeast corner of said Hickory Grove, Phase 1B, same being on the westerly right-of-way line of Golden Hoof Drive, a variable width right-of-way, as dedicated in Hickory Grove, Phase 1A, an addition to the City of Denton, Texas, according to the amending plat thereof recorded in Document No. 2024-183;

THENCE along the westerly right-of-way line of said Golden Hoof Drive, the following courses and distances:

South 00°26'45" West, a distance of 136.46 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a tangent curve to the left with a radius of 432.50 feet, a central angle of 05°13'40", and a chord bearing and distance of South 02°10'05" East, 39.45 feet;

In a southerly direction, with said tangent curve to the left, an arc distance of 39.46 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a reverse curve to the right with a radius of 237.00 feet, a central angle of 09°57'23", and a chord bearing and distance of South 00°11'46" West, 41.13 feet;

In a southerly direction, with said reverse curve to the right, an arc distance of 41.18 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a reverse curve to the left with a radius of 261.00 feet, a central angle of 09°57'23", and a chord bearing and distance of South 00°11'46" West, 45.30 feet;

In a southerly direction, with said reverse curve to the left, an arc distance of 45.35 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 04°46'55" East, a distance of 29.49 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a tangent curve to the right with a radius of 360.00 feet, a central angle of 11°31'46", and a chord bearing and distance of South 00°58'58" West, 72.32 feet;

In a southerly direction, with said tangent curve to the right, an arc distance of 72.44 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 06°44'51" West, a distance of 30.00 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for on the north end of a corner clip at the intersection of the westerly right-of-way line of said Golden Hoof Drive, with the northerly right-of-way line of said U.S. 380;

THENCE South 51°59'21" West, along said corner clip, a distance of 28.40 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found on the south end of said corner clip, same being on the southerly line of said 565.364 acre tract;

THENCE North 83°15'09" West, departing said corner clip, along the northerly right-of-way line of said U.S. 380 and along the southerly line of said 565.364 acre tract, a distance of 143.54 feet to a 1/2 inch iron rod with plastic cap stamped “RPLS 4561” found for corner;

THENCE South 83°20'00" West, continuing along the northerly right-of-way line of said U.S. 380 and the southerly line of said 565.364 acre tract, a distance of 122.85 feet to the **POINT OF BEGINNING** and containing 18.948 acres (825,357 square feet) of land, more or less.

TRACT 2

BEING a tract of land situated in the Thomas J. Egan Survey, Abstract No. 406, City of Denton and City of Denton Extra Territorial Jurisdiction (E.T.J.), Denton County, Texas, and being a portion of a called 565.364 acre tract of land described in a deed to Legends Ranch Development, LLC as recorded in Instrument No. 2019-146384 of the Official Records of Denton County, Texas (O.R.D.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found in the westerly right-of-way line of Thomas J. Egan Road, a 22.50 feet-wide right-of-way, according to the plat of Golden Hoof Ranchettes, an addition to Denton County, recorded in Volume 4, Page 8 of the Plat Records of Denton County, Texas (P.R.D.C.T.), at the southeast corner of a 10 feet-wide right-of-way dedication according to the plat of Lot 1R1 and 1R2 of Golden Hoof Ranchettes, an addition to Denton County, recorded in Document No. 2015-319 P.R.D.C.T., being on the easterly line of said 565.364 acre tract;

THENCE South 00°26'20" West, along the westerly right-of-way line of said Thomas J. Egan Road and along the easterly line of said 565.364 acre tract, a distance of 280.07 feet to a 1/2 inch iron rod with plastic cap stamped “RPLS 4561” found for the southeast corner of said 565.364 acre tract, being on the northerly right-of-way line of U.S. Highway 380, a variable width right-of-way;

THENCE North 83°31'12" West, along the northerly right-of-way line of said U.S. Highway 380 and along the southerly line of said 565.364 acre tract, a distance of 540.31 feet to a 1/2 inch iron rod with plastic cap stamped “RPLS 4561” found for corner;

THENCE North 83°15'09" West, continuing along the northerly right-of-way line of said U.S. Highway 380 and the southerly line of said 565.364 acre tract, a distance of 3.35 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

THENCE North 78°01'51" West, departing the southerly line of said 565.364 acre tract and continuing along the northerly right-of-way line of said U.S. 380, a distance of 164.81 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

THENCE North 83°15'10" West, continuing along the northerly right-of-way line of said U.S. 380, a distance of 219.00 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found on the south end of a corner clip at the intersection of the northerly right-of-way line of said U.S. 380, with the easterly right-of-way line of Golden Hoof Drive, a variable width right-of-way, as dedicated in Hickory Grove, Phase 1A, an addition to the City of Denton, Texas, according to the amending plat thereof recorded in Document No. 2024-183 of the Plat Records of Denton County, Texas;

THENCE North 38°15'09" West, along said corner clip, a distance of 28.28 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found on the north end of said corner clip;

THENCE departing said corner clip and along the easterly right-of-way line of said Golden Hoof Drive, the following courses and distances:

North 06°44'51" East, a distance of 15.00 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a tangent curve to the left with a radius of 440.00 feet, a central angle of 11°31'46", and a chord bearing and distance of North 00°58'58" East, 88.39 feet;

In a northerly direction, with said tangent curve to the left, an arc distance of 88.54 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

North 04°46'55" West, a distance of 29.49 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a tangent curve to the left with a radius of 261.00 feet, a central angle of 09°57'23", and a chord bearing and distance of North 09°45'37" West, 45.30 feet;

In a northerly direction, with said tangent curve to the left, an arc distance of 45.35 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a reverse curve to the right with a radius of 237.00 feet, a central angle of 09°57'23", and a chord bearing and distance of North 09°45'37" West, 41.13 feet;

In a northerly direction, with said reverse curve to the right, an arc distance of 41.18 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a compound curve to the right with a radius of 367.50 feet, a central angle of 05°13'40", and a chord bearing and distance of North 02°10'05" West, 33.52 feet;

In a northerly direction, with said compound curve to the right, an arc distance of 33.53 feet to a 1/2 inch iron rod found for the southwest corner of Lot 6, Block A of said Golden Hoof Ranchettes;

THENCE South 83°08'15" East, departing the easterly right-of-way line of said Golden Hoof Drive, along the southerly line of said Lot 6, Block A of said Golden Hoof Ranchettes and along the southerly line of Lot 1R2 of said Lot 1R1 and 1R2 of Golden Hoof Ranchettes, a distance of 960.54 feet to a point for corner; to the **POINT OF BEGINNING** and containing 5.993 acres (261,043 square feet) of land, more or less.

Exhibit B

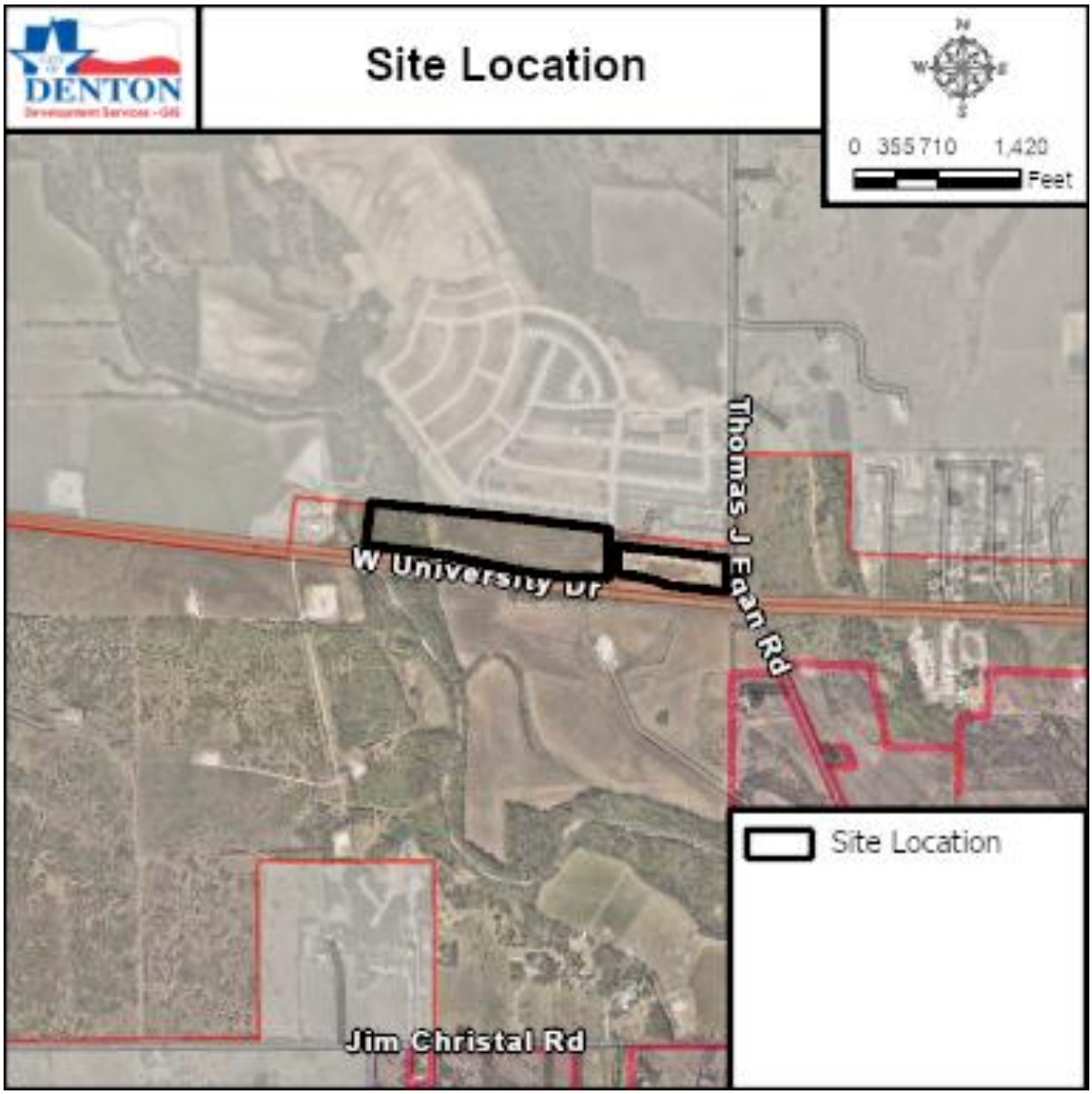
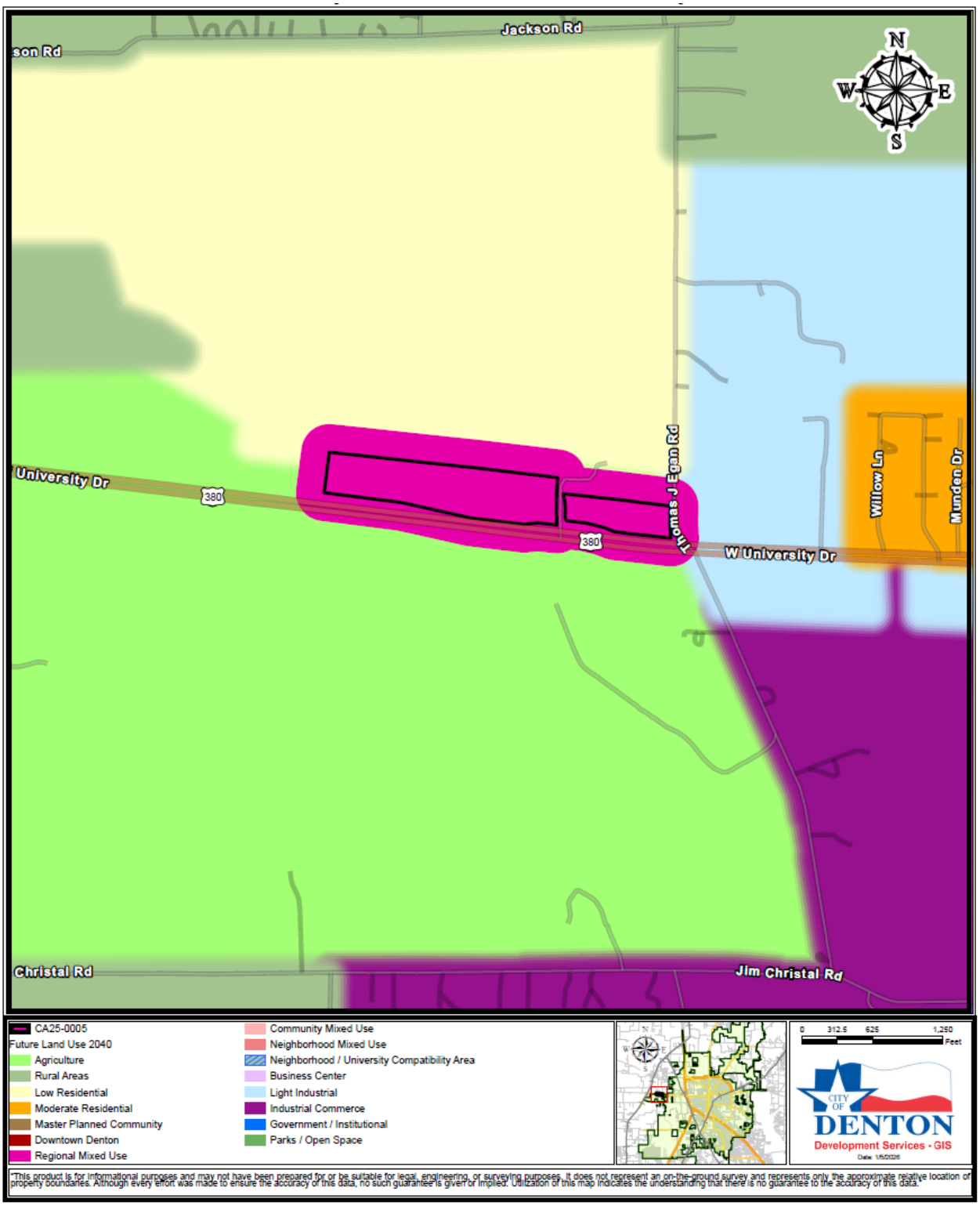

DENTON
Site Location
N
W
E
S
0 355 710 1,420
Feet
W University Dr
Thomas J Egan Rd
Jim Christal Rd
Site Location

Exhibit C


Jackson Rd
son Rd
N
W
E
S
University Dr
380
380
Thomas J Egan Rd
W University Dr
Willow Ln
Munden Dr
Christal Rd
Jim Christal Rd
CA25-0005
Future Land Use 2040
Agriculture
Rural Areas
Low Residential
Moderate Residential
Master Planned Community
Downtown Denton
Regional Mixed Use
Community Mixed Use
Neighborhood Mixed Use
Neighborhood / University Compatibility Area
Business Center
Light Industrial
Industrial Commerce
Government / Institutional
Parks / Open Space
0 312.5 625 1,250
Feet
CITY OF DENTON
Development Services - GIS
"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

Hickory Grove Commercial
CA25-0005a / Z25-0022a

Mia Hines, AICP

Senior Planner

February 17, 2026

CITY OF DENTON

Overview

Requests

- Comprehensive Plan Amendment
- Rezoning

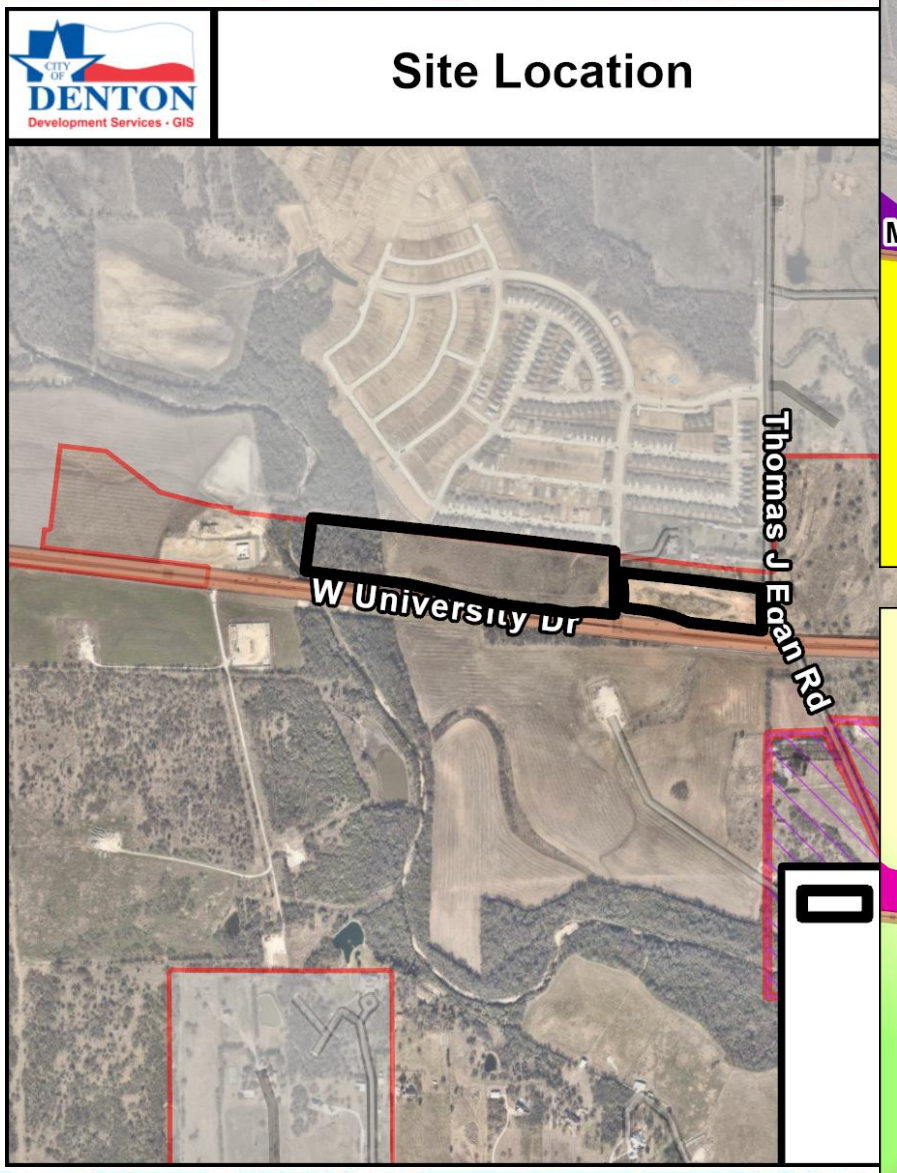
Property

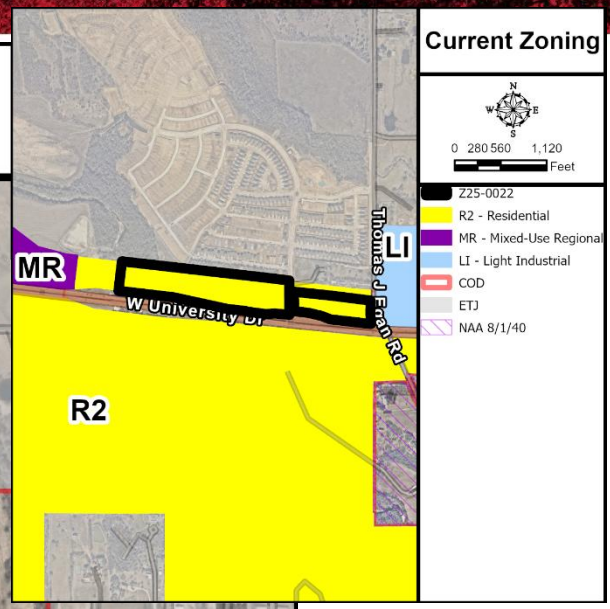
- 24.941 acres

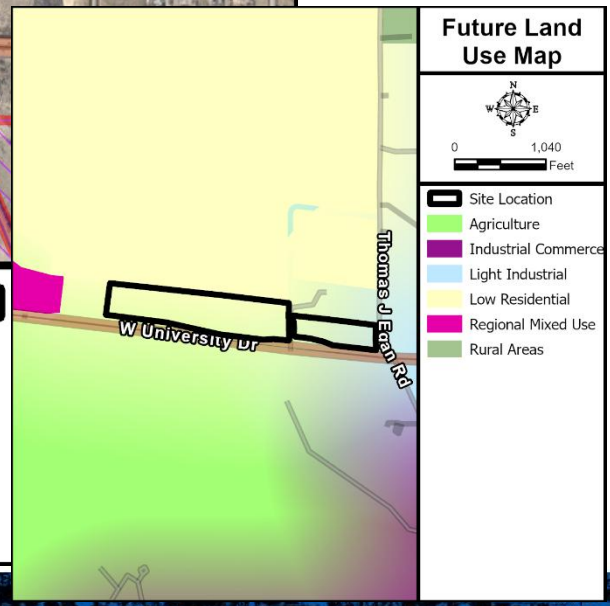
- Existing FLUM: Agriculture & Low Residential
- Proposed FLUM: Regional Mixed Use

- Existing Zoning: Residential 2 (R2)
- Proposed Zoning: Suburban Corridor (SC)

Purpose – to entitle the property for anticipated commercial development







History

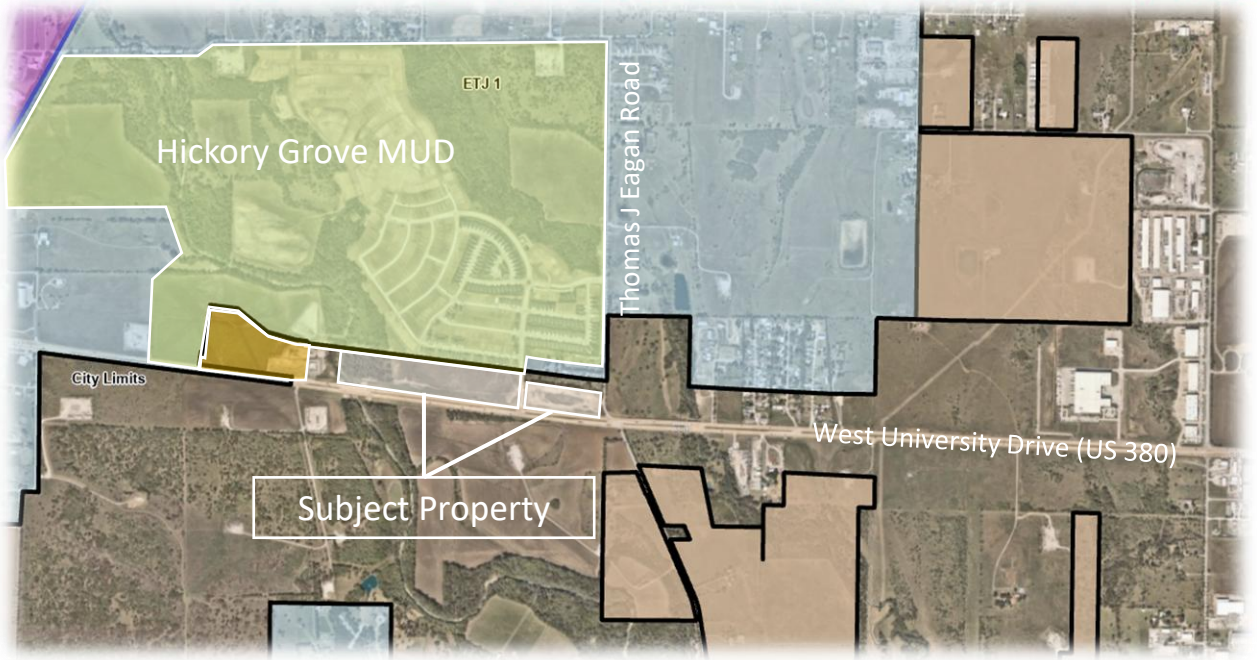
- Existing Land Use: Undeveloped

- Denton Plan 2030 – all Rural Areas
- Denton 2040 (minor update) – Agriculture FLUM
  - (Low Residential FLUM for Hickory Grove SFR)

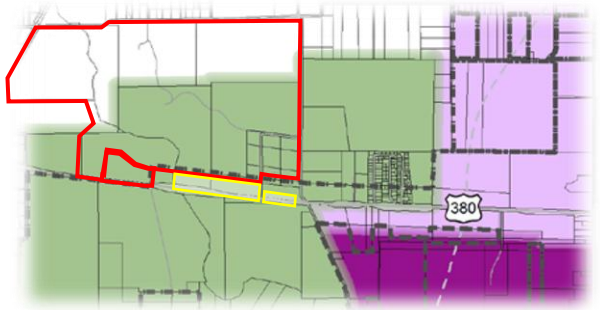
Hickory Grove Municipal Utility District (MUD)

- *Special-purpose district created to provide essential services such as water, wastewater, and drainage to areas outside city limits.*

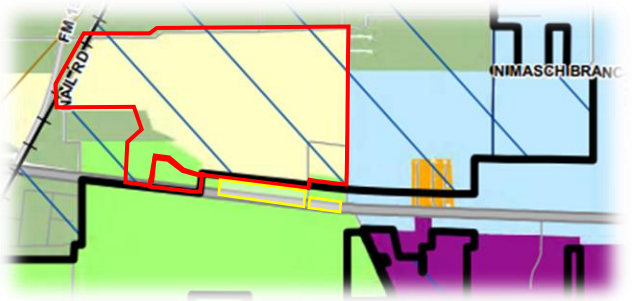
- 2022 - Creation of MUD to include 1,551 SFR & 625 MF
- August 2024 - Amendment agreement to include additional multifamily units and partial annexation
- Dec. 2025 – Feb. 2026: Multifamily



Site Location – north of US 380, south of Hickory Grove / Legends Ranch MUD



Denton 2030 - Rural Areas

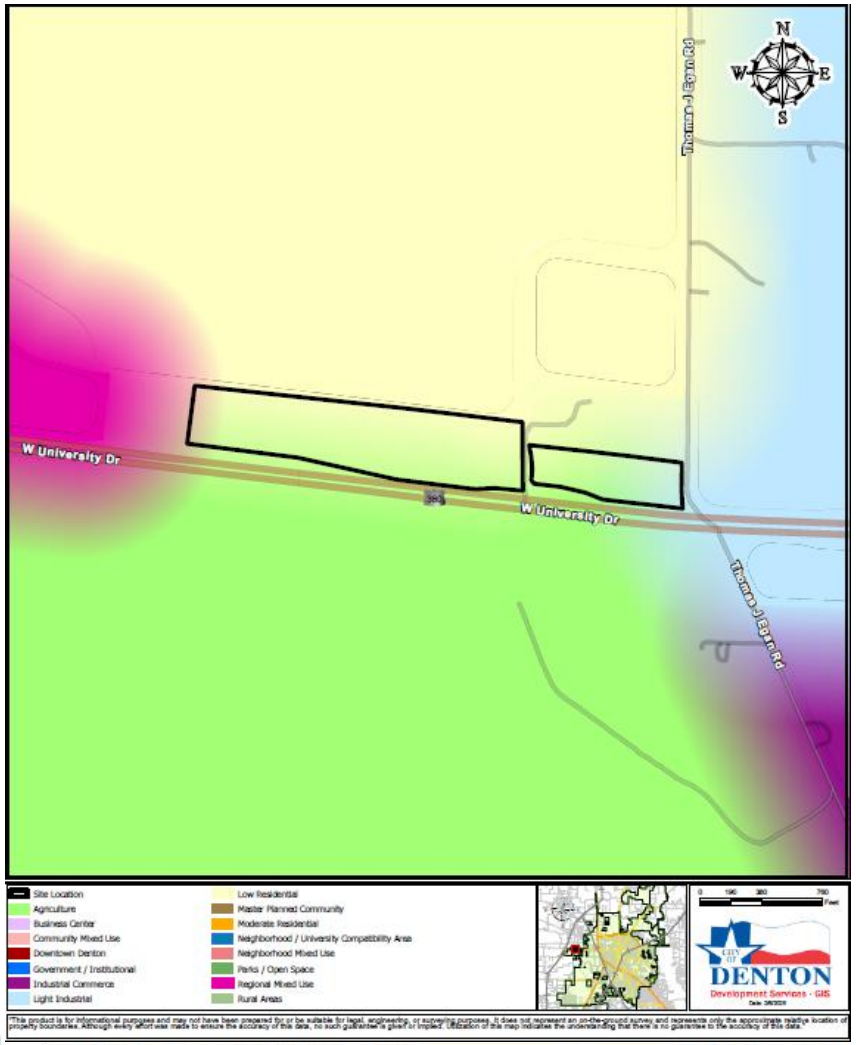


Denton 2040 - Agriculture & Low Residential

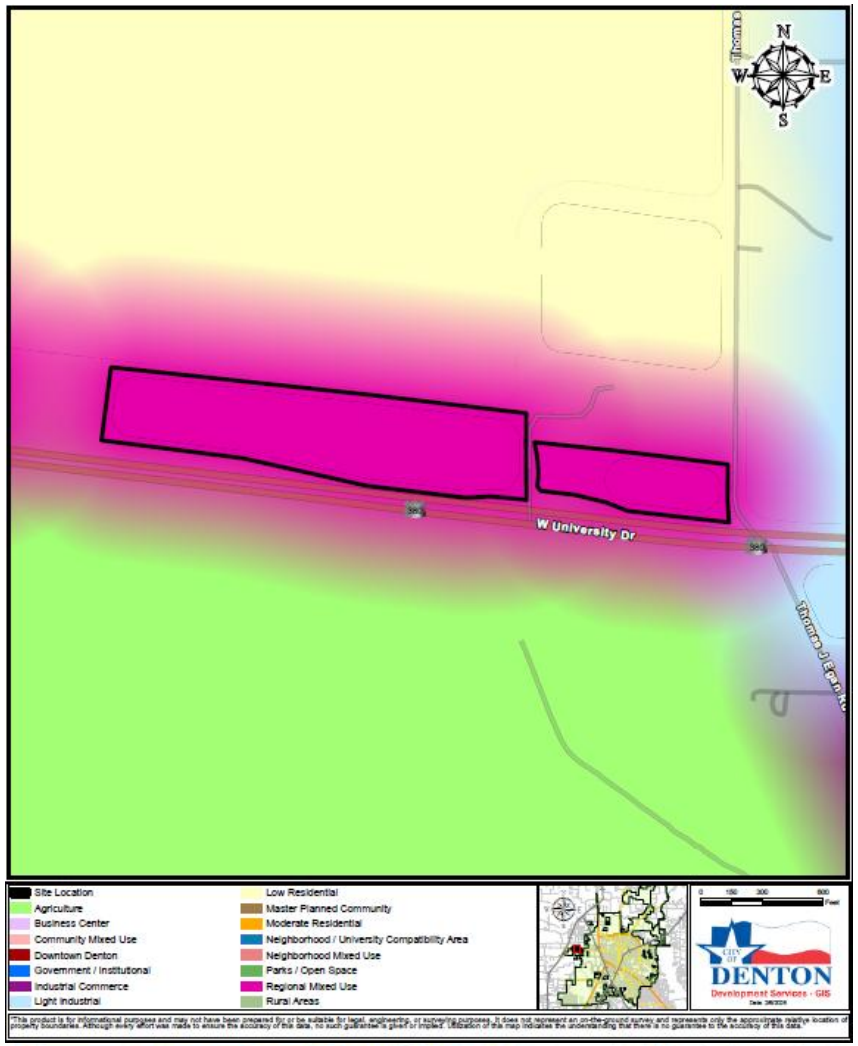
Comprehensive Plan Amendment

(CA25-0005)

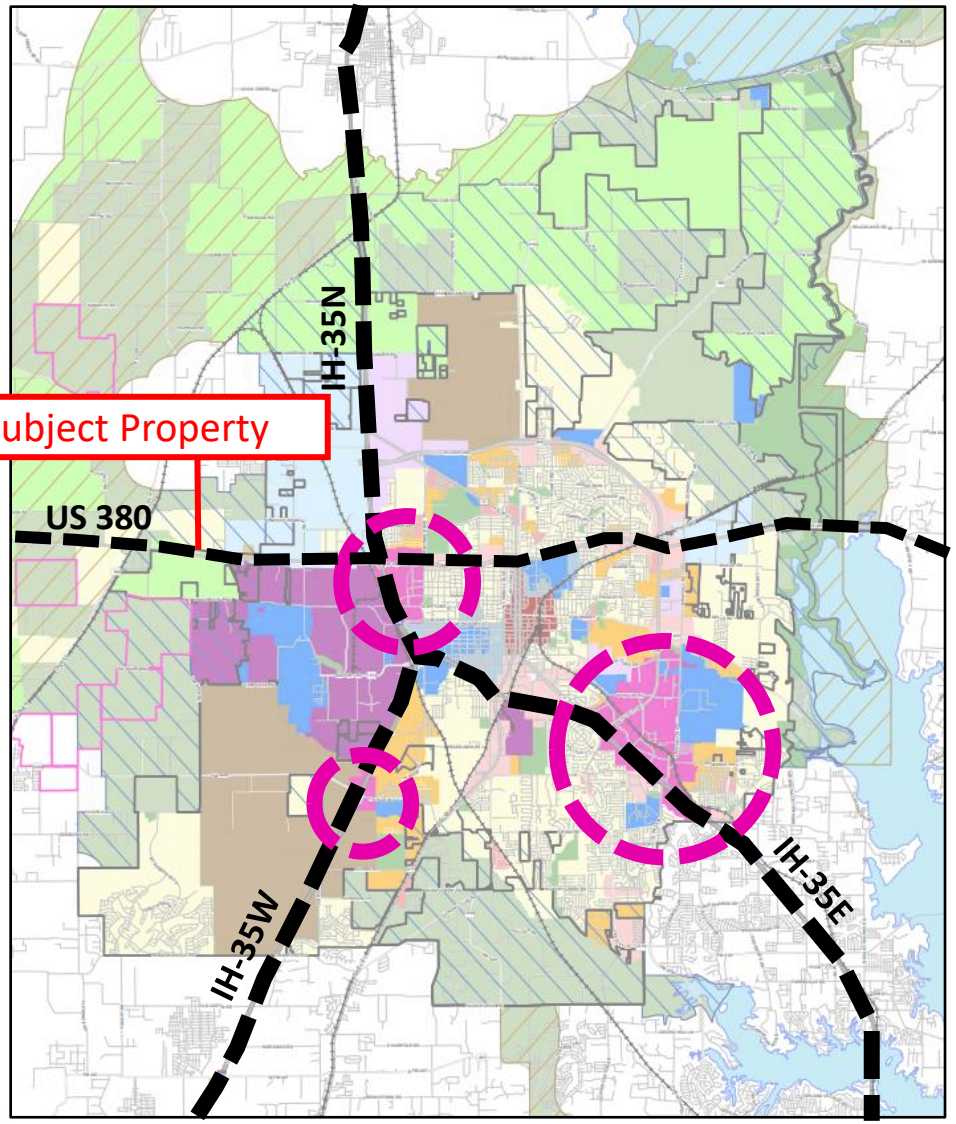
Existing FLUM: Agriculture & Low Residential



Proposed FLUM: Regional Mixed Use



Regional Mixed Use FLUM



- Applies to areas that serve as regional destinations within Denton
- May include residential, commercial, office, entertainment and other uses except industrial, at the highest levels of scale and density within the city
- Future development in Regional Mixed-use areas will complement and embrace existing, viable uses, and raise the standard of design to increase their regional

City Limits
ETJ Division 1
ETJ Division 2
Lakes
Potential Municipal Utility Districts (MUDs) (petitioning for state approval)

Future Land Use

Agriculture
Rural Areas
Low Residential
Moderate Residential
Master Planned Community (refer to approved development plans)
Downtown Denton
Regional Mixed Use
Community Mixed Use
Neighborhood Mixed Use
Neighborhood / University Compatibility Area
Business Center
Light Industrial
Industrial Commerce
Government / Institutional
Parks / Open Space

Criteria for Approval

Summary:

- ✓ Regional planning & development trends reflect a need to plan for the development of this area beyond agriculture
- ✓ Compatible with existing and proposed development occurring within the City and in the City's ETJ
- ✓ Regional Mixed Use is intended to encourages development at high density along regional corridors, such as US 380

Comprehensive Plan Amendment Approval Criteria (Sec. 2.7.1D1)

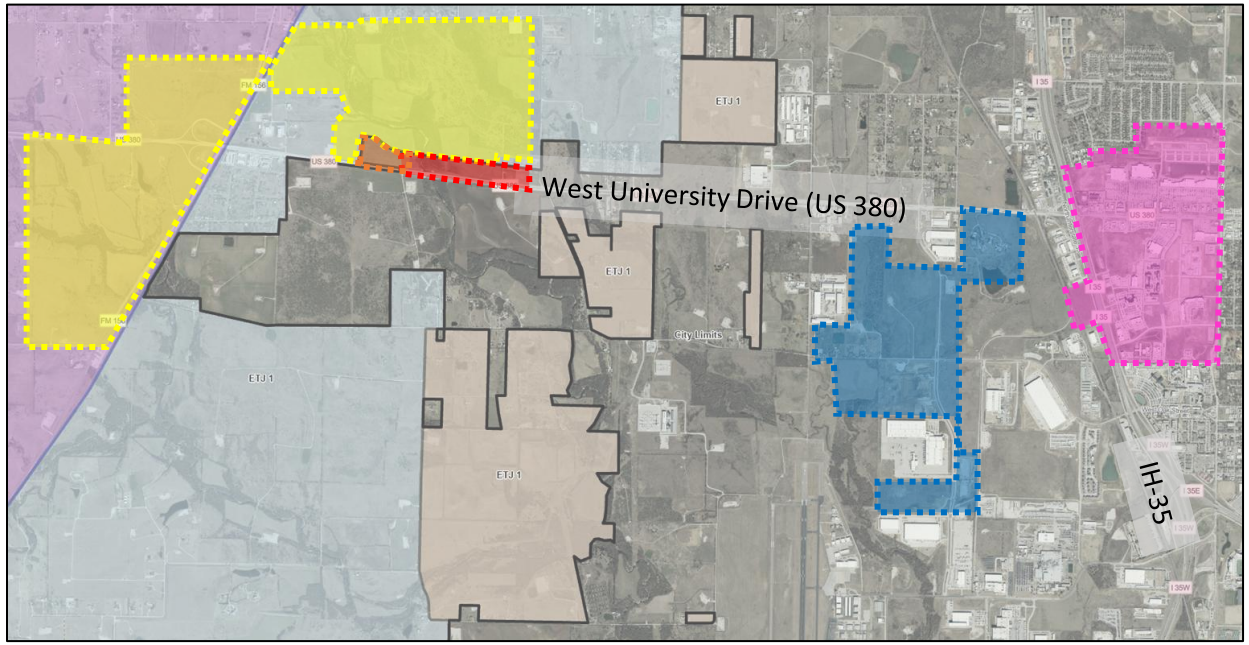
1. Is consistent with the overall purpose and intent of the Comprehensive Plan and that any one of the following criteria has been met:
   a. There was an error in the original Comprehensive Plan adoption;
   b. The City Council failed to take into account then-existing facts, projections, or trends that were reasonably foreseeable to exist in the future;
   c. Events, trends, or facts after adoption of the Comprehensive Plan have changed the City Council's original findings made upon plan adoption
   d. Events, trends, or facts after adoption of the Comprehensive Plan have changed the character or condition of an area so as to make the proposed amendment necessary

Comprehensive Plan Amendment Approval Criteria (Sec 2.7.1.D2)

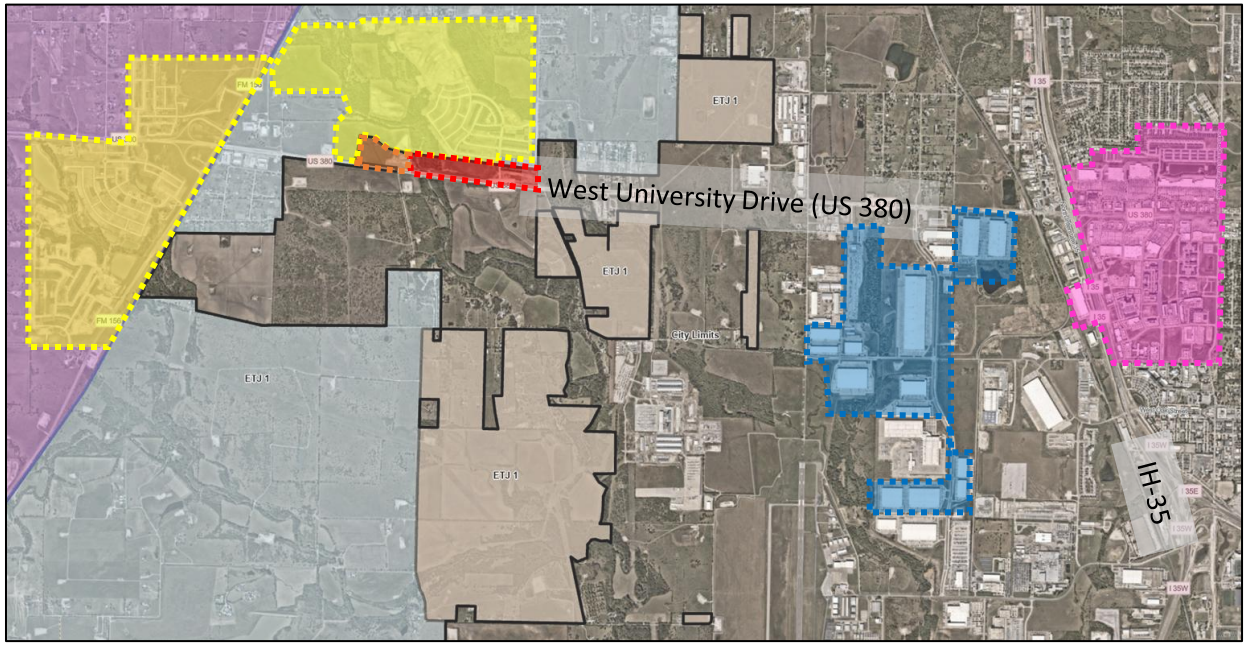
a. That the amendment is not in conflict with any portion of the goals and policies of the plan.
b. That the amendment constitutes a substantial benefit to the city and is not solely for the good or benefit of a particular landowner or owners at a particular point in time.
c. The extent to which the proposed amendment and other amendments in the general area are compatible with the land use goals of the plan and that they avoid creation of isolated uses that will cause incompatible community form and a burden on public services and facilities.
d. That the development pattern contained in the existing plan does not provide adequate and appropriate optional sites for the use or change being proposed in the amendment.
e. That the impact of the amendment, when considered cumulatively with other applications and development in the general area, will not adversely impact the city or a portion of the city by.
f. That site conditions, including but not limited to topography, utility corridors/easements, drainage patterns, noise, odors, or environmental contamination, would make development under the current plan designation inappropriate.

Regional Development

2021 Aerial - undeveloped



2025 Aerial - developed



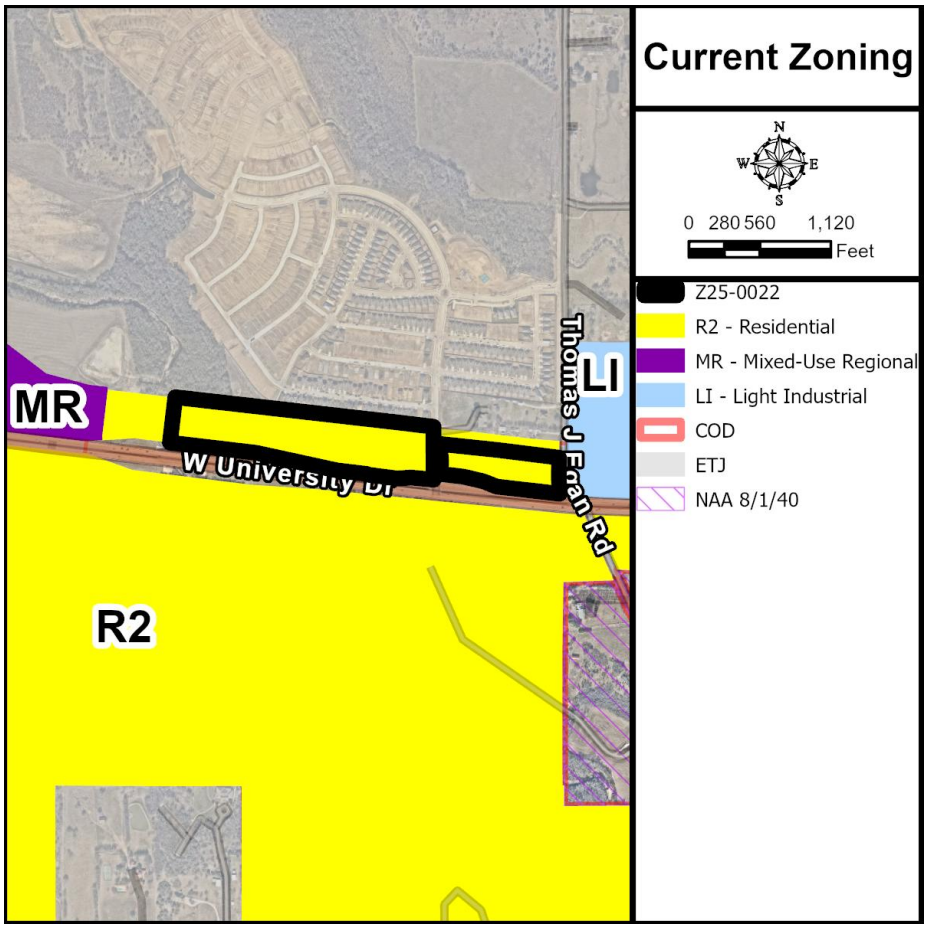
- Rayzor Ranch, East of IH-35 – residential, commercial, medical
- Industrial & Commercial West of IH-35, south of US 380
- MUD residential in ETJ 1 & 2
- Anticipated residential in City
- Subject Property - anticipated commercial north of US 380, South of Hickory Grove / Legends Ranch MUD

Recommendation

Staff recommends **approval** of the **Comprehensive Plan Amendment** request as it complies with the criteria in Section 2.4.5E of the Denton Development Code for approval of all applications, and Section 2.7.1D of the DDC for approval of a Comprehensive Plan Amendment.

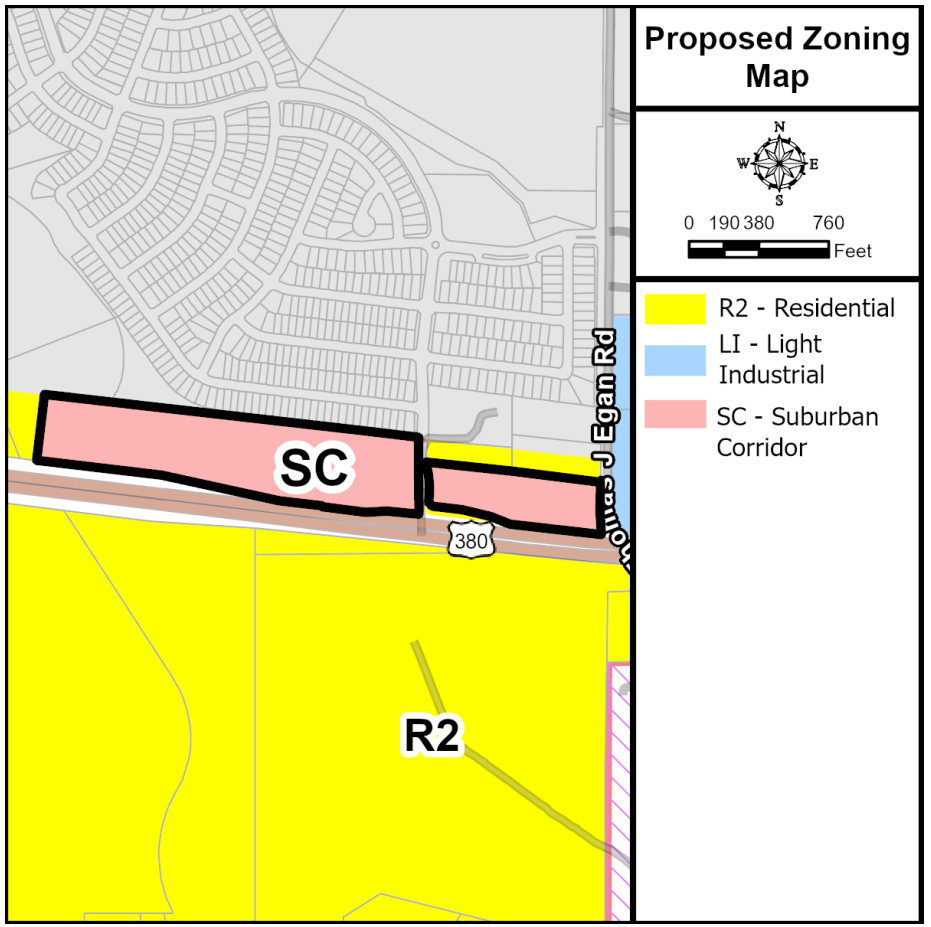
The Planning and Zoning Commission recommended **approval (5-1)** of the request.

Current Zoning (R2)



- **Single family residential**
- Min. 16,000 sf
- 40’ height

Requested Zoning (SC)



- **Commercial**
- Min. 10,000 sf
- Height transitions - Max 55’ height

Criteria for Approval – DDC 2.4.5E and 2.7.2D

Summary:

- ✓ Proposal intended to allow property to develop according to prior approvals
- ✓ Proposal intended to allow development compatible with surrounding development in City ETJ
- ✓ Generally consistent with the goals and policies and the proposed Future Land Use Map Amendment
- ✓ Regional growth reflects the need to allow for retail and commercial services within this corridor

General Approval Criteria for All Applications (Sec. 2.4.5E)

1. General Criteria
2. **Prior Approvals**
3. **Consistent with the Comprehensive Plan and Other Applicable Plans**
4. Compliance with this DDC
5. Compliance with other regulations
6. Consistent with Interlocal and Development Agreements
7. Minimizes Adverse Environmental Impacts
8. Minimizes Adverse Impacts on surrounding Property
9. **Minimizes Adverse Fiscal Impacts**
10. Compliance with Utility, Service, and Improvement Standards
11. Provides Adequate Road Systems
12. Provides Adequate Public Services and Facilities
13. **Rational Phasing Plan**

Zoning Criteria for Approval (Sec 2.7.2.D)

- **a. The proposed rezoning is consistent with the Future Land Use Map designation. [IF APPROVED]**
- b. The proposed rezoning is consistent with relevant Small Area Plan(s).
- **c. The proposed rezoning is consistent with the purpose statement of the proposed zoning district, as provided in Subchapter 3, Zoning Districts.**
- **d. There have been or will be significant changes in the area to warrant a zoning change.**
- **e. The intensity of development in the new zoning district is not expected to create significantly adverse impacts to surrounding properties or the neighborhood.**
- f. Public facilities and services are available to adequately serve the subject property while maintaining adequate level of service to existing development.
- g. There was an error in establishing the current zoning district.

Suburban Corridor (SC)

- The SC District is intended to provide **moderate- to high-intensity commercial**, office, and retail uses **along high-traffic corridors**

- The SC district provides **elevated building and landscape design**, buildings oriented to the street, and **appropriate buffering from adjacent neighborhoods**

- While the SC district is **primarily auto-oriented**, it provides a **safe environment for pedestrians and cyclists**

Zoning Districts Compared

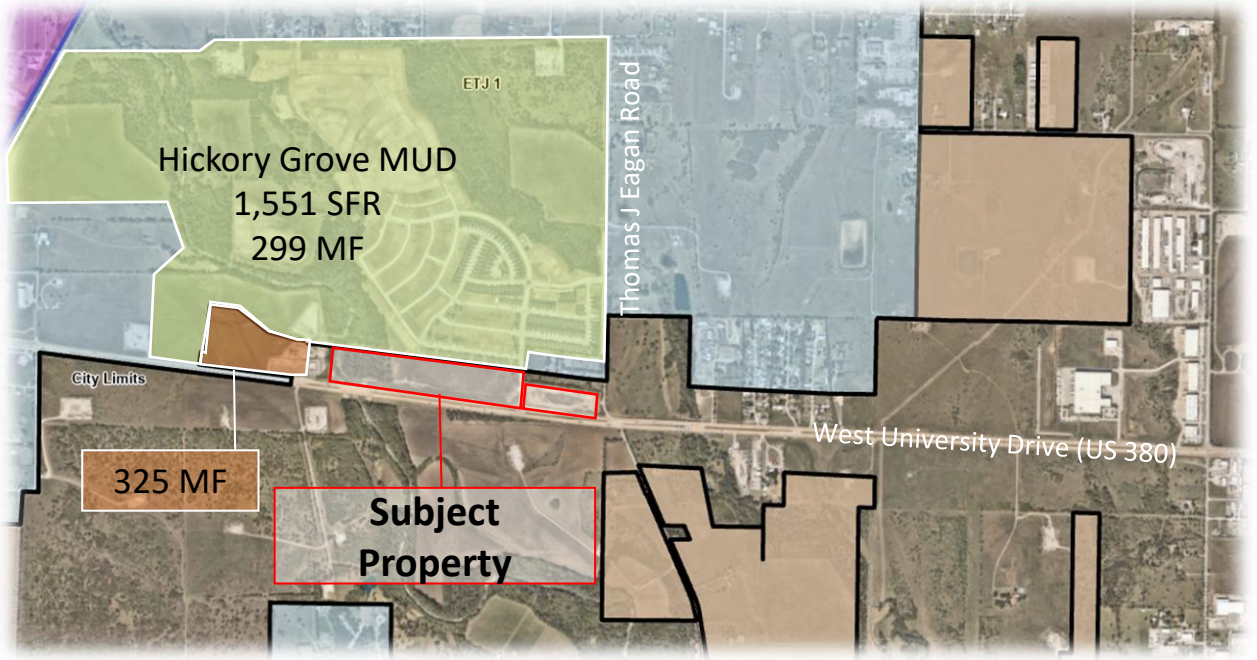
	R2	MR	HC	SC
Dimensional	16,000 sf	None	10,000 sf	10,000 sf
	20’ front, 10’ side, 10’ rear	None	20’ front, 10’ side, 15’ rear	20’ front, 5’ side, 10’ rear
	Max 40% coverage	Max 90% coverage	Max 80% coverage	Max 80% coverage
Site & Building Design	50% landscape area 50% tree canopy	25% landscape area 30% tree canopy	30% landscape area 30% tree canopy	20% landscape area 30% tree canopy
	Max 40’ height	**Max 100’ height**	**Max 100’ height**	**Max 55’ height**
Compatibility Requirements		Max 40’ height within 50’ of R2; max 55’ between 50’ & 100’ of R2; **max height with SUP**		Max 40’ height within 50’ of R2; max 55’ between 50’ & 100’ of R2
	15’ wide landscape buffer for developing commercial			
Permitted Uses	**Primarily residential and agriculture**	**Residential, commercial; urban scale and form**	**Primarily commercial, light industrial uses; SUP for MF**	**Primarily commercial; SUP for MF**

Prior Approvals & Compatibility

Hickory Grove Municipal Utility District

- *Special-purpose district created to provide essential services such as water, wastewater, and drainage to areas outside city limits.*

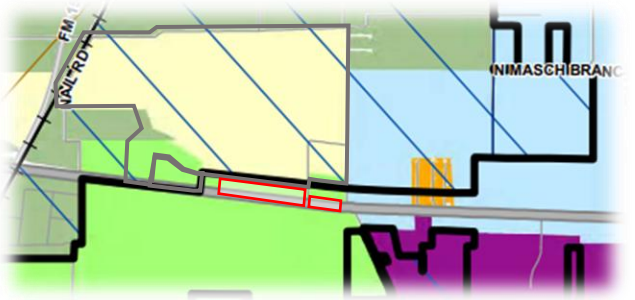
- 2022 - Creation of MUD to include 1,551 SFR & 625 MF
- August 2024 - Amendment agreement to include additional multifamily units and partial annexation
- Dec. 2025 – Feb. 2026: Multifamily entitlements



Site Location – South of Hickory Grove / Legends Ranch MUD



Denton 2030 - Rural Areas



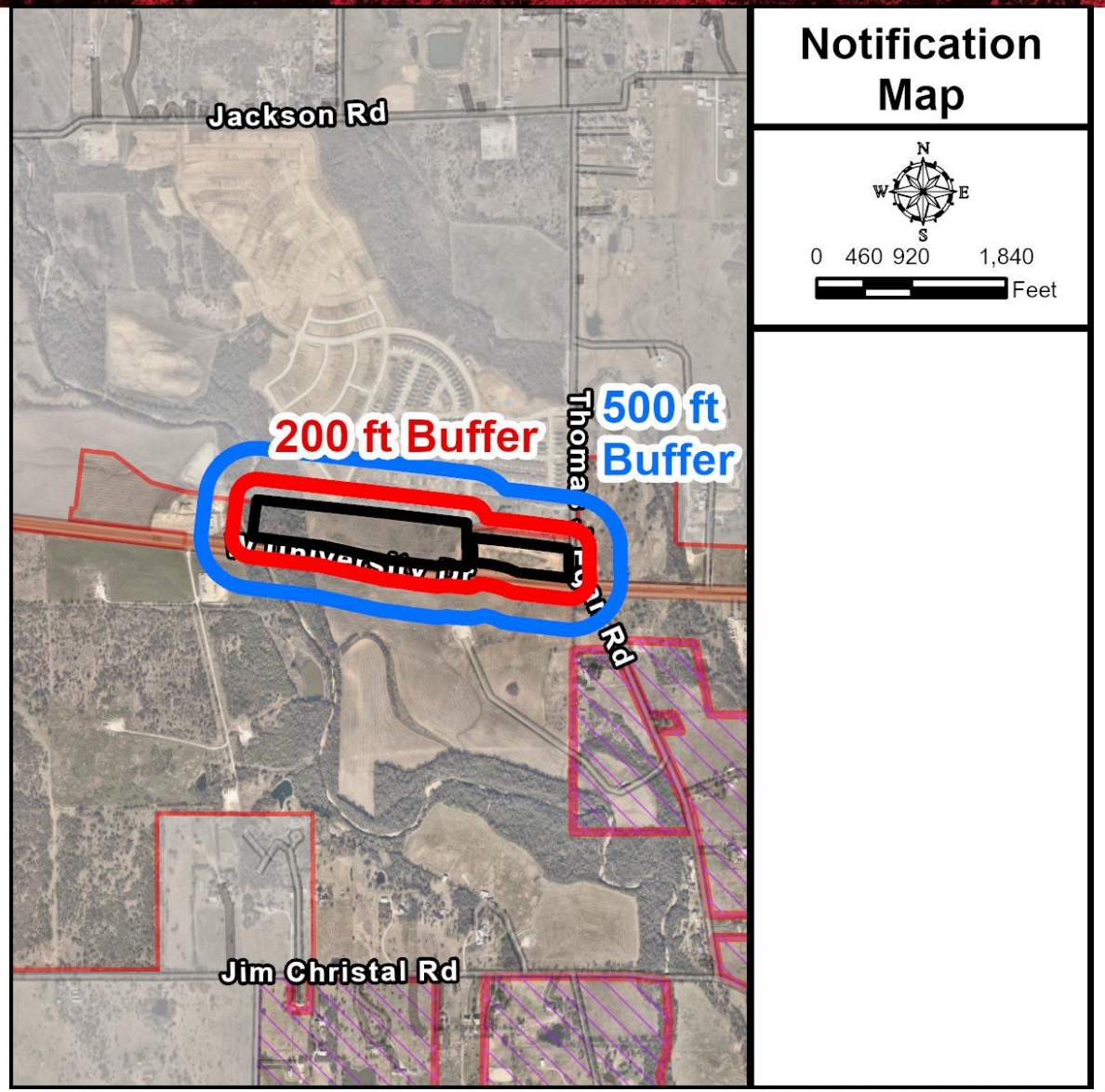
Denton 2040 - Agriculture & Low Residential

Notification

City website notice posed: December 19, 2025
Newspaper notice posted: December 27, 2025
Property notice posted: January 2, 2026
Mailed notices

- 200 ft. Public Hearing Notices mailed: 9
- 500 ft. Courtesy Notices mailed: 5

Staff has received no public responses regarding these requests.



Recommendation

Staff recommends **approval** of the **Rezoning** request, in conjunction with the Comprehensive Plan, as it complies with the criteria in Section 2.4.5E of the Denton Development Code for approval of all applications, and Section 2.7.3E of the DDC for approval of a rezone to a Planned Development.

The Planning and Zoning Commission recommended **approval (5-1)** of the request.

Action Needed

PH-5B. Comprehensive Plan Amendment

- *Agriculture & Low Residential FLUM → Regional Mixed Use FLUM*

PH-5C. Zoning Change

- *Residential 2 (R2) → Suburban Corridor (SC)*

QUESTIONS?

Mia Hines, AICP
Senior Planner
Development Services

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2026

SUBJECT

Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, regarding a change in the zoning district and use classification from Residential 2 (R2) District to Suburban Corridor (SC) District on approximately 24.941 acres of land generally located at the northwest and northeast corner of the intersection of West University Drive (US 380) and Golden Hoof Drive, in the City of Denton, Denton County, Texas; adopting an amendment to the City's Official Zoning Map; providing for a penalty in the maximum amount of $2,000.00 for violations thereof; providing a severability clause and an effective date. The Planning and Zoning Commission voted (5-1) to recommend approval of the request. Motion for approval by Commissioner Ketchersid and second by Commissioner Riggs. (Z25-0022a, Hickory Grove Commercial, Mia Hines) https://dentontx.new.swagit.com/videos/372131?ts=3596

BACKGROUND

The request is for a rezoning from the Residential 2 (R2) District to the Suburban Corridor (SC) District. The subject property includes two tracts of land adjacent to the intersection of West University (US 380) and Golden Hoof Drive: an approximately 18.948-acre tract located at the northwest corner of the intersection (Tract 1) and an approximately 5.993-acre tract located at the northeast corner of the intersection (Tract 2). This is one of two concurrent applications associated with the Hickory Grove Commercial development on this agenda. Details regarding the history of Hickory Grove and the request are provided below.

HISTORY

The 24.941 subject property was annexed into the City of Denton in 1974 along with several tracts of land along both the north and south sides of West University Drive (US 380) between North Masch Branch Road and the North Hickory Creek Tributary. As shown on the inset map, the Hickory Grove (also known as Legends Ranch) Municipal Utility District (MUD) Development Agreement called for the development of single-family residences in the City's ETJ just north of the subject property, multifamily residences in both the City limits and the City's ETJ west of the subject property, and unspecified "future commercial" development compliant with the standards and regulations applicable to the Highway Corridor (HC) District within the subject property. As discussed within the Staff Analysis (Exhibit 2) the development standards and regulations of the requested SC Zoning is consistent with those applicable to the HC District and further limits otherwise permitted in the HC District but may not be compatible with the adjacent single-family residences. Accordingly, the phased construction of the single-family residential subdivision began in 2023 and the City is currently reviewing civil engineering plans for the multifamily units being developed within the City's ETJ. Additionally, the developers voluntarily annexed the property intended for the development of the in-City multifamily residences and applied for a Comprehensive Plan Amendment and Rezoning to entitle the property for the anticipated multifamily

development. The Planning and Zoning Commission considered and recommended approval of these applications at their December 17, 2025 meeting. City Council approved the applications on January 13, 2026.

The subject property is adjacent to the North Hickory Creek Tributary and associated floodway and is partially encumbered by floodplain along the western boundary of Tract 1. Additionally, an approved Environmentally Sensitive Area (ESA) field assessment reflects the existence of undeveloped floodplain ESA within this floodway corridor. Should the applicant propose to adjust the limits of the floodplain or ESA for the purpose of development, an updated ESA assessment and Alternative ESA plan may be required. Future developments would be subject to the Denton Development Code requirements for development within ESA.

In addition to this requested Zoning Change, the applicant also submitted a proposal for a Comprehensive Plan Amendment to change the Future Land Use Designation from Agriculture and Low Residential to Regional Mixed Use to facilitate this zoning change and to allow for the anticipated commercial development. The request to amend the Comprehensive Plan is also on the February 17, 2026 City Council agenda for separate consideration (item CA25-0005a).

A full Staff Analysis is provided in Exhibit 2.

OPTIONS

1. Approve
2. Deny
3. Postpone Item.

PLANNING AND ZONING COMMISSION

At their January 14, 2026 meeting, the Planning and Zoning Commission recommended approval [5-1] of the Rezoning request. There was no significant discussion specifically related to the requested rezoning from R2 to SC.

RECOMMENDATION

Staff recommends approval of the request as the request complies with the criteria in Subsection 2.4.5.E of the Denton Development Code (DDC) for approval of all applications and the criteria in Subsection 2.7.2.D of the DDC for approval of a zoning change.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

Date	Council, Board, Commission	Request	Action
September 3, 1974	City Council	Annexation	Approved
June 28, 2022	City Council	Legends Ranch (Hickory Grove) MUD Development Agreement	Approved
August 23, 2024	City Council	Amended Hickory Grove MUD Development Agreement	Approved
January 14, 2026	Planning and Zoning Commission	Comprehensive Plan Amendment – Agriculture and Low	Recommend Approval

		Residential FLUM to Mixed Use Regional FLUM	
January 14, 2026	Planning and Zoning Commission	Rezoning R2 to SC	Recommend Approval

PUBLIC OUTREACH:

Nine (9) notices were sent to the property owners within 200 feet of the subject boundary. As of the writing of this report, no responses have been received by the City.

Five (5) notices were sent to residents within 500 feet of the subject boundary. As of the writing of this report, no responses have been received by the City.

A notice was published in the Denton Record Chronicle on Sunday, December 27, 2025 and March 1, 2026.

A notice was published on the City's website on December 19, 2025 and January 29, 2026.

Five (5) signs were posted on the property by January 2, 2026.

The applicants have not hosted any community meetings related to this request.

A map showing the notification boundaries as well as documentation regarding the sign posting is provided in Exhibit 9.

DEVELOPER ENGAGEMENT DISCLOSURES

No developer contact disclosures have been provided to staff from members of this body as of the issuance of this report.

EXHIBITS

Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Staff Analysis
Exhibit 3 - Site Location Map
Exhibit 4 - Existing Zoning Map
Exhibit 5 - Proposed Zoning Map
Exhibit 6 - Future Land Use Map
Exhibit 7 - Project Narrative
Exhibit 8 - Comparison of Permitted Uses
Exhibit 9 - Notification Map and Sign Posting
Exhibit 10 - Fiscal Impact Summary
Exhibit 11 - Draft Ordinance
Exhibit 12 - LLC Members List
Exhibit 13 - Presentation

Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Mia Hines, AICP
Senior Planner

Planning Staff Analysis
Z25-0022a/Hickory Grove Commercial
City Council District #3

REQUEST:
Request by Kimley-Horn, on behalf of Double R Devco, LLC to rezone approximately 24.941 acres of land from Residential 2 (R2) District to Suburban Corridor (SC) District generally located at the northwest and northeast corner of the intersection of West University Drive (US 380) and Golden Hoof Drive.

STAFF RECOMMENDATION:
Staff recommends approval of the request contingent upon the requested Comprehensive Plan Amendment as it complies with the criteria in Subsection 2.4.5.E of the Denton Development Code (DDC) for approval of all applications and the criteria in Subsection 2.7.2.D of the DDC for approval of a Zoning Map Amendment (Rezoning).

SITE DATA:
The subject property includes two tracts of land adjacent to the intersection of West University (US 380) and Golden Hoof Drive: an approximately 18.948-acre tract located at the northwest corner of the intersection (Tract 1) and an approximately 5.993-acre tract located at the northeast corner of the intersection (Tract 2). The subject property is adjacent to the North Hickory Creek Tributary and associated floodway and is partially encumbered by floodplain along the western boundary of Tract 1. An approved Environmentally Sensitive Area (ESA) field assessment reflects the existence of undeveloped floodplain ESA within this floodway corridor.

Between the two tracts, Golden Hoof Drive is a Residential Collector, most of which is in the ETJ. As Golden Hoof Drive is the main entrance into the Hickory Grove single-family residential subdivision, the section of the roadway adjacent to the subject property is currently constructed with 4 lanes partially divided by a landscaped median with designated right and left turn lanes onto West University Drive (US 380), which abuts the subject area to the south. West University Drive (US 380) is a Texas Department of Transportation (TXDOT) east/west roadway classified as a Freeway in the Denton 2022 Mobility Plan. This corridor of West University Drive (US 380) is currently constructed with 6 lanes divided by a landscaped median, a deceleration right-turn lane onto Golden Hoof Drive, and designated left turn lanes at major intersections. Additionally, the right-of-way contains 5-foot-wide sidewalks on both the north and south side of the roadway. This is generally consistent with the standard street section for a Freeway per the Mobility Plan.

In accordance with the Hickory Grove Municipal Utility District (MUD) and Development Agreement, the subject property is intended for commercial development. Abutting Tract 1, to the north, is Phase 1 of the Hickory Grove MUD single-family residential subdivision and, to the west, a lift station constructed to serve the Hickory Grove MUD and surrounding developments. Abutting Tract 2 to the north are two tracts of land, one tract is developed with a single-family residence while the other tract is undeveloped. Further detail regarding the surrounding zoning, land uses, and roadways are provided in the table below.

SURROUNDING ZONING AND USES:

Northwest: Extraterritorial Jurisdiction 1 (ETJ 1) Zoning: None (ETJ 1) Use: Undeveloped; North Hickory Creek Tributary	North: ETJ 1 Zoning: None (ETJ 1) Use: Single-family residential (Hickory Grove MUD)	Northeast: Golden Hoof Drive; ETJ 1 Zoning: None (ETJ 1) Use: Single-family residence
West: ETJ 1 Zoning: Residential 2 (R2) Use: North Hickory Creek Tributary; lift station	**SUBJECT PROPERTY (Tract 1)**	East: Golden Food Drive Zoning: R2 (Tract 2) Use: Undeveloped
Southwest: West University Drive (US 380) Zoning: R2 Use: Undeveloped; North Hickory Creek Tributary	South: West University Drive (US 380) Zoning: R2 Use: Undeveloped/agriculture; gas well drilling and production	Southeast: West University Drive (US 380) & Golden Hoof Drive Zoning: R2 Use: Undeveloped and gas well drilling and production

Northwest: Zoning: R2 Use: Single-family residence	North: Zoning: R2 Use: Single-family residence	Northeast: Thomas J Eagan Road Zoning: Light Industrial (LI) Use: Undeveloped
West: Zoning: Residential 2 (R2) (Tract 1) Use: Undeveloped;	**SUBJECT PROPERTY (Tract 2)**	East: Thomas J Eagan Road Zoning: LI Use: Undeveloped
Southwest: West University Drive (US 380) & Golden Hoof Drive Zoning: R2 Use: Undeveloped/agriculture; gas well drilling and production	South: West University Drive (US 380) Zoning: R2 Use: Undeveloped/agriculture; gas well drilling and production	Southeast: West University Drive (US 380) & Thomas J Eagan Road Zoning: R2 Use: Undeveloped

CONSIDERATIONS:

A. Section 2.4.5.E of the DDC provides approval criteria applicable to all applications.

1. *General Criteria*

a. Unless otherwise specified in this DDC, City review and decision-making bodies must review all development applications submitted pursuant to this subchapter for compliance with the general review criteria stated below.
The review criteria were applied as required.

b. The application may also be subject to additional review criteria specific to the type of application, as set forth in sections 2.5 through 2.9.

Subsection 2.7.2.D of the DDC applies to this rezoning request. An analysis of this request per those criteria can be found below in Consideration B.

c. *If there is a conflict between the general review criteria in this section and the specific review criteria in sections 2.5 through 2.9, the applicable review criteria in sections 2.5 through 2.9 controls*.
There are no conflicts between the general criteria and the criteria specific for zoning requests.

2. *Prior Approvals*
Per the Hickory Grove Municipal Utility District (MUD), the subject property was identified for "future commercial" development compliant with the standards and regulations of the Highway Corridor (HC) District. The development standards and regulations of the requested SC Zoning is consistent with those applicable to the HC District and further prohibits or limits the development of some land uses which are permitted in the HC District but may not be compatible with the adjacent single-family residences including industrial laundry facility, automotive sales or leasing, equipment sales and rentals, travel plaza, and warehouse and wholesale facility. Additionally, many of the commercial land uses permitted within both districts are subject to use specific standards that limit the building size when developed in the SC District. Further, the maximum building height permitted within the SC district is 55 feet, which is more compatible to the surrounding context than the 100 feet maximum building height permitted within the HC District. The applicant has concurrently submitted a Comprehensive Plan Amendment. These are separate requests, but the simultaneous consideration of these applications is intended to provide the Commission with a transparent and comprehensive look at the intended development of the property.

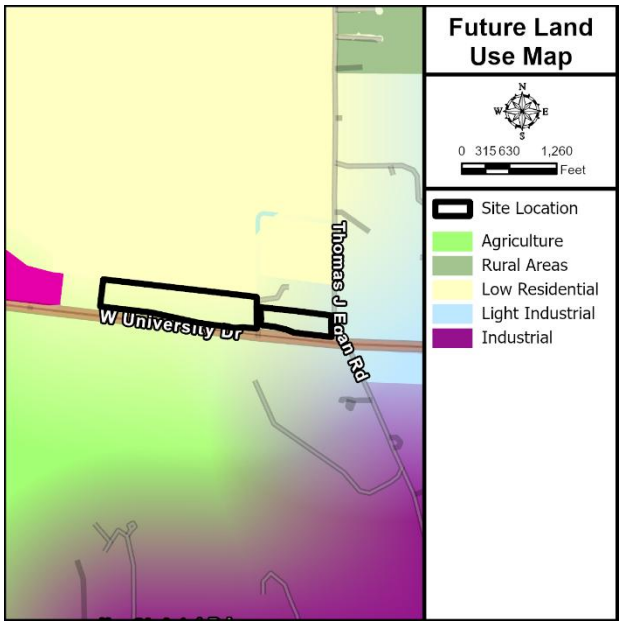
3. *Consistent with the Comprehensive Plan and Other Applicable Plans*
The decision–making authority:
   a. Shall weigh competing goals, policies, and strategies.
      - Goal LU-6: Grow with Balance: Establish land use designations that respond to the growing needs and character specifications of the Denton community.

[Continue on next page]

- The above-stated goal establishes the policy that the desired pattern of future land uses is depicted in the Future Land Use Map of the Denton 2040 Comprehensive Plan. The proposed SC zoning does not align with the existing Agriculture and Low Residential FLUM designation. However, the applicant is concurrently seeking an amendment to change the Agriculture and Low Residential FLUM designation to the Regional Mixed Use FLUM designation. As discussed with the criterion below, the requested SC zoning district generally aligns with the Regional Mixed Use Future Land Use Designation and achieves other goals of the Comprehensive Plan. Given the increased growth and interest within this region of the City over the last several years, the zoning change to SC allows for a mix of commercial uses to meet the needs of this portion of the Denton community.

May approve an application that furthers the overall goals of the Comprehensive Plan even if the development does not match the future land use designation in the Comprehensive Plan.

Future Land Use



As shown on the inset map, the Denton 2040 Comprehensive Plan Future Land Use Map indicates an Agriculture future land use designation for most of the subject property and Low Residential for a significantly smaller area of land located along the northern border of the subject property. The Agriculture category denotes areas that have large tracts of land in active agriculture uses for preservation, including ranchland, field crops, and other similar agricultural areas, but the Denton 2040 Comprehensive Plan acknowledges that some of the land categorized as Agriculture represents "growing room" when considering the City's capacity to accommodate future growth. The Low Residential category includes the city's predominantly single-family neighborhoods, with lot sizes ranging from one acre or more in rural fringe areas up to five units per acre gross density throughout many of the City's suburban subdivisions.

The proposed Regional Mixed Use Future Land Use designation applies to areas that serve as regional destinations within Denton. Development within these areas may include residential, commercial, office, entertainment and other uses except industrial, at the highest levels of scale and density within the City. Future development in these areas will complement and embrace existing, viable uses, and raise the standard of design to increase their regional draw, accommodate greater connectivity and mobility options, and create a sense of place. As noted above, the subject area has a FLUM designation of Agriculture and Low Residential but the applicant is concurrently requesting to change the Agriculture FLUM designation to the Regional Mixed Use FLUM designation (CA25-0005).

The proposed SC Zoning is consistent with the Regional Mixed Use Future Land Use Designation. While the applicant has stated that the intent is to develop 5-10 pad sites for commercial land uses on the subject property, the requested zoning change could facilitate the development of a variety of residential and commercial land uses by right and with the approval of a Specific Use Permit (SUP) consistent with this proposed Mixed Use Regional FLUM (see Exhibit 8 for a comparison of permitted land uses).

Further, the request is consistent with other Goals of the Denton 2040 Comprehensive Plan, including:

- Goal LU-1: *Grow Compactly: Achieve sound sustainable growth in compact development patterns with balanced land uses planned in coordination with transportation and infrastructure*.

  While Staff acknowledges that the location of this development is beyond the compact core of the City, given regional growth trends seen along the West University Drive (US 380) corridor west of Denton, the requested proposal to change the FLUM designation from Agriculture and Low Residential to the Regional Mixed-Use designation would provide flexibility with regard to permitted land uses, contributing to a balanced mix of residential and nonresidential land uses along a rapidly developing corridor. Currently, the properties between West University Drive (US 380) and FM 156 are either undeveloped with industrial or residential zoning, creating an approximately 4.3 mile stretch of West University Drive (US 380) not entitled for commercial and retail services. The proposed amendment would facilitate the development of commercial and retail services needed to serve the new residences within this area of the Denton community.

- Goal LU-4: *Grow Resourcefully: Manage growth for wise use of land resources with staged, contiguous, and compatible development*.

[Continue on next page]

With regard to utilities, the development of the Hickory Grove MUD anticipated commercial development within the subdivision and planned for the provision of public utility lines and services with capacities needed for this intended mix of residential and commercial development. Golden Hoof Drive includes street and driveway stubs for the anticipated development of the subject area and West University Drive (US 380), a highway, is constructed to support traffic volumes and speeds associated with this type of mixed-use corridor.

- Goal FEV-1: *Ensure the long-term financial stability of the city with fiscally responsible policies and actions.*
- Goal FEV-2: *Improve the City's job-to-worker ratio by increasing the number of jobs available to the resident workforce and local graduates.*
- Goal FEV-5: *Design a fiscally advantageous land use pattern paired with fiscally responsible infrastructure management and investment.*

  The proposed zoning would facilitate commercial development in close proximity to residences within the City's ETJ, ultimately providing for employment opportunities and commercial and retail services that are not currently available within the surrounding area. This would help achieve the goal of creating a well-rounded, self-sustaining local economy of diverse live/work/play development opportunities. Additionally, commercial development would allow for the City to capture tax revenue from the market created by the residential development occurring within the City's ETJ without necessitating significant City investment towards the development of those residential subdivisions, which typically nets deficit.

4. *Compliance with this DDC*
   a. *The proposed development shall comply with all applicable standards in this DDC, unless the standard is to be lawfully modified.*
      This request is for a rezoning of the subject site. All subsequent development or redevelopment on this site will comply with applicable standards in the DDC, including, but not limited to, minimum lot size and dimensions, building coverage, access, parking, tree preservation, and landscaping.

   b. *Compliance with these standards is applied at the level of detail required for the subject submittal.*
      Typically, a rezoning to one of the DDC's established districts does not include a full review of all development standards. If the proposed rezoning is approved and a new use and/or redevelopment is proposed, a detailed review of all required plat, zoning compliance plans, engineering plans, tree preservation plans, and building permit submittals is required prior to development.

5. *Compliance with Other Applicable Regulations*

This proposed rezoning complies with all other applicable regulations.

6. *Consistent with Interlocal and Development Agreements*
   As discussed above and in Exhibit 1, the Hickory Grove MUD and the associated Development Agreement anticipated "future commercial" for the subject property. The proposed amendment is intended to facilitate commercial development. There are no other interlocal or development agreements for the subject property.

7. *Minimizes Adverse Environmental Impacts*
   The proposed rezoning is not anticipated to create adverse environmental impacts. As discussed above, the subject property is adjacent to the floodway and partially encumbered by floodplain along the western boundary of Tract 1. All future development activity would have to occur outside the limits of the floodplain and buildings within the floodplain buffer would have to be constructed at the appropriate elevation. Additionally, an approved Environmentally Sensitive Area (ESA) field assessment reflects the existence of undeveloped floodplain ESA within the subject property and the City's regulations regarding development within the ESA, tree preservation, landscaping, and stormwater management will also apply to any future development.

8. *Minimizes Adverse Impacts on Surrounding Property*
   The proposed rezoning is not anticipated to have an adverse impact on surrounding property. Per the applicant, the marketing program for the Hickory Grove single-family residential subdivision to the north reflected commercial development occurring on the subject property to make new and future property owner aware of the anticipated commercial development. Additionally, DDC requirements for land-use compatibility buffering would apply to any future development on the subject property. Specifically, the development would have to adhere to DDC Subsection 7.7.6 Compatibility Landscape Buffer Requirements and DDC Subsection 7.10.6 Building Height in Transition Areas and design the site to mitigate any adverse impacts.

9. *Minimizes Adverse Fiscal Impacts*
   While the proposed rezoning would allow for the development of any land use permitted within the SC District, the applicant has stated that their intent is to develop 5-10 commercial pad sites.

   Staff used the Fiscal Impact Tool to analyze the proposed rezoning under this assumption to generate the overall projected General Fund revenues and expenses, including property tax payments, sales tax capture, roadway maintenance costs, utility usage, solid waste costs, public safety costs, and neighborhood service costs. The Fiscal Impact Summary indicates that the commercial development would result in a net $10,948,600 gain in revenue to the General Fund over a 40-year project duration. The results of this analysis may vary based upon the ultimate combination of uses selected for the future pad sites.

10. *Compliance with Utility, Service, and Improvement Standards*
    This proposed rezoning will not affect utilities, services, or improvements. If the site is developed, it will be reviewed to ensure compliance with all applicable standards, and utilities have been extended to the area to support the Hickory Creek MUD and are able to serve the subject property.

11. *Provides Adequate Road Systems*
    Surrounding roadways include Thomas J Eagan Road, Golden Hoof Drive, and West University Drive (US 380). These roadways are adequate to support the anticipated commercial development. Future developments may be required to submit analyses of the traffic they intend to generate and future improvements to adjacent roadways may be required to ensure the continued provision of adequate road systems.

12. *Provides Adequate Public Services and Facilities*
    There are adequate public facilities in the region to adequately serve the development.

13. *Rational Phasing Plan*
    The Hickory Grove MUD development is being developed in accordance with a rational phasing plan with phases of the single-family land uses to the north proceeding the development of the multifamily residences planned for the tract of land west of the subject property. This request is to facilitate the development of the commercial uses anticipated by this MUID.

B. Section 2.7.2.D of the DDC states that an application for a rezoning may be approved based on the following conditions:

a. *The proposed rezoning is consistent with the Comprehensive Plan.*
   As discussed in Consideration A.3.b above, the proposed zoning of SC is not consistent with the existing Agriculture and Low Residential FLUM designations, but it is consistent with the proposed Regional Mixed Use FLUM designation and achieves other goals of the Comprehensive Plan.

b. *The proposed rezoning is consistent with relevant Small Area Plan(s).*
   There is no small area plan approved for this site.

c. *The proposed rezoning is consistent with the purpose statement of the proposed zoning district, as provided in Subchapter 3, Zoning Districts.*
   Per Subsection 3.4.1.A, "The SC district is intended to provide moderate- to high-intensity commercial, office, and retail uses along high-traffic corridors. The SC district provides elevated building landscape design, buildings oriented to the street, and appropriate buffering from adjacent neighborhoods. While SC is primarily auto-oriented, it provides a safe environment for pedestrians and cyclists"

   The proposed SC zoning district in this location is consistent with the purpose statement as the section West University Drive (US 380) is a high-traffic corridor, serving as one of the City's main points of regional access for people traveling

towards Denton from the west. Additionally, this rezoning could be catalytic for more regional commercial development given that the intended development of the subject property, the adjacent Hickory Creek MUD, and the recent and ongoing development of multiple single-family residential and mixed-density subdivisions within the City's ETJ 1 and ETJ 2 will continue to add to regional demand for commercial and retail sales and services within this corridor.

d. There have been significant changes in the area to warrant a zoning change.

The western region of the City and its ETJ has experienced significant residential and commercial growth and development since the adoption of the Denton 2040 Plan. Specifically, the corridor of West University Drive (US 380), starting at North IH-35 and stretching west toward the limits of the City's ETJ 2. This is evident by the additional warehousing and industrial commerce facilities west of North IH-35 and south of West University Drive (US 380), the Hickory Grove MUD north and west of the subject property, the Meadows MUD at the southwest and northwest corners of the intersection of West University Drive (US 380) and FM 156 North, as well as multiple other approved MUDs for properties in the vicinity that are currently under City review. In addition to the approved MUDs, the City has been informed of additional upcoming MUDs that are under review for areas south of West University Drive (US 380) in the City's ETJ 2. This area of the City is expected to see continued growth and development.

e. The intensity of development in the new zoning district is not expected to create significantly adverse impacts to surrounding properties or the neighborhood.

Adjacent Zoning & Land Use

As discussed above, Staff does not anticipate that the land uses permitted with SC zoning would create a significant adverse impact to the adjacent neighborhood. Rather, this zoning change would allow the property the opportunity for development that meets the commercial and retail service needs of the developing residences to the north and west of the subject property.

Transportation Related to the Proposal

Prior to the development of the subject property, the applicant will be required to submit traffic counts based on their proposed land use. The developer would be responsible for making improvements that may be identified in the TIA to accommodate any additional trips generated by the use(s). The details of any needed improvements will be reviewed as part of the site planning, platting, and/or civil engineering plans for any future development. Furthermore, roadway improvements would be evaluated in accordance with the City's 2022 Mobility Plan.

f. Public facilities and services are available to adequately serve the subject property while maintaining adequate level of service to existing development.

Schools
For commercial developments, there is no anticipated impact to schools. Should the property develop as a residential use, staff would coordinate with DISD regarding capacity and level of service.

Water and Wastewater
Public water and wastewater services are available to the site. Future development proposals will be responsible for connecting to the water and wastewater facilities that have been recently extended to the area to serve the subject property as needed.

Roadway Impact Fees
Roadway impact fees, paid at the time of development, are determined using a proportionality calculation based on the proposed uses and projected vehicle trips. These fees will be assessed based on plans submitted and are used to make roadway system improvements related to the Mobility Plan.

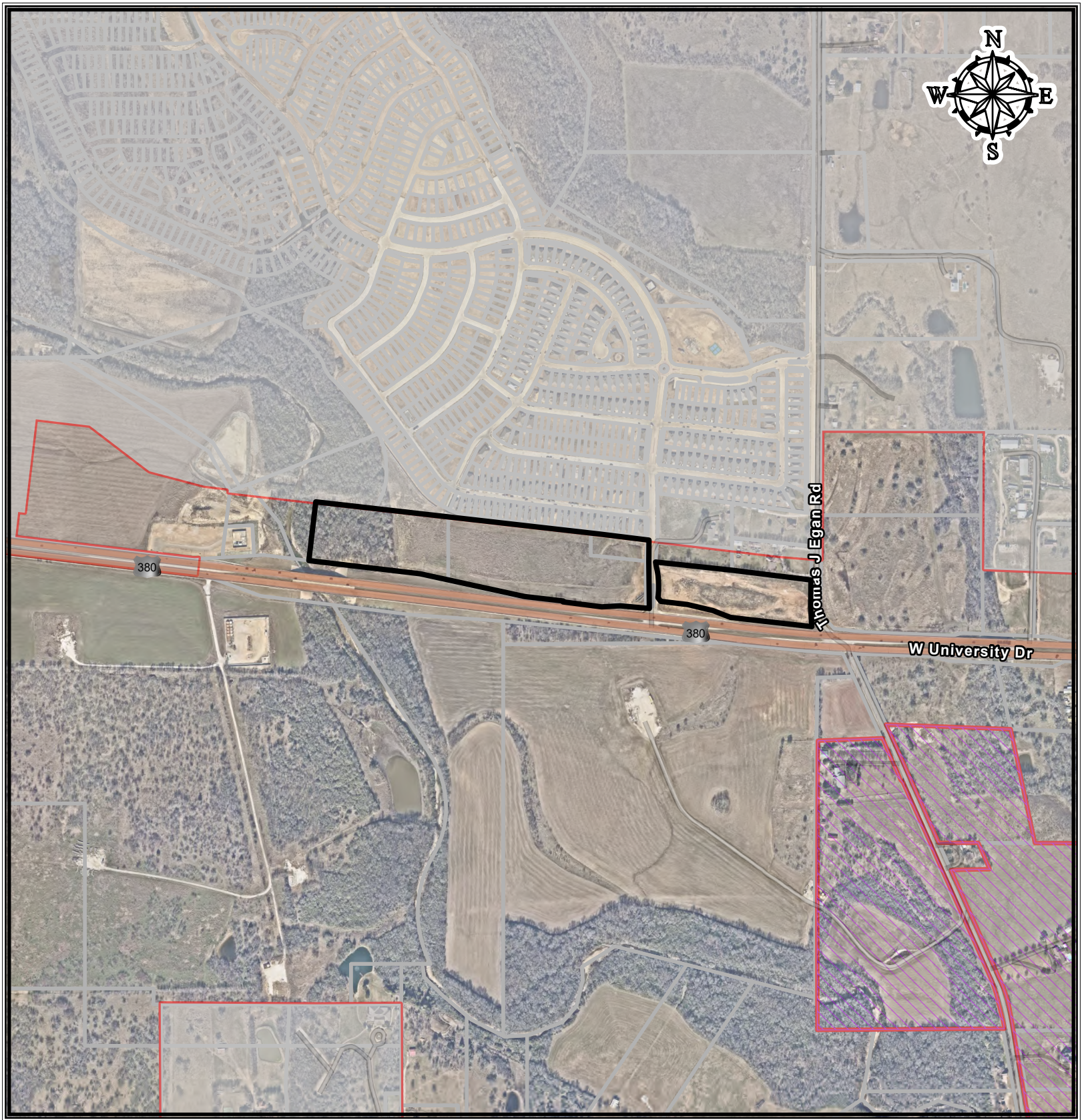
Nearest Fire Station
The subject property is approximately 5.2 miles from Fire Station #9 (4990 Airport Rd), within the eight minute or less response time boundary. Additionally, the Hickory Grove MUD Development Agreement requires the dedication of land for the construction of a new fire station along Thomas J Eagan Road, approximately 1.4 miles away from the subject property.

Parks
Should the property develop with a residential use, payment of park dedication and development fees will be required.

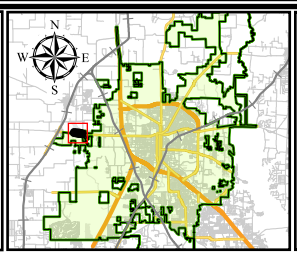
g. *There was an error in establishing the current zoning district.*

There was not an error in the assignment of the current zoning districts. As described herein, the current R2 is a result of placeholder zoning designations and transitions since the property's 1974 annexation. However, the current zoning combination is not appropriate in the context of a freeway nor in an area experiencing the significant growth that is being seen in the western parts of the City and ETJ.

Z25-0022
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40

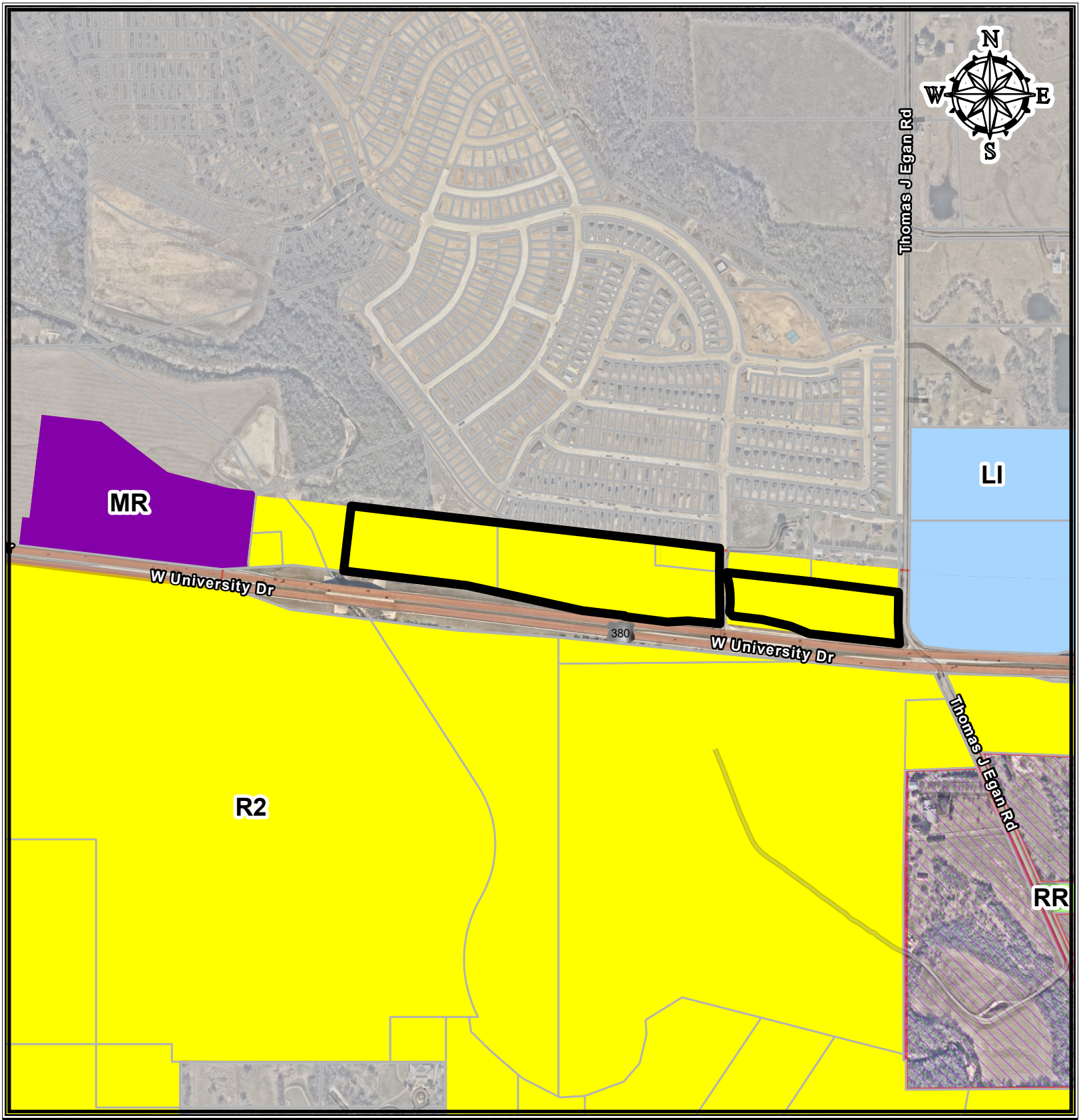


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CITY OF DENTON
Development Services · GIS
Date: 2/6/2026

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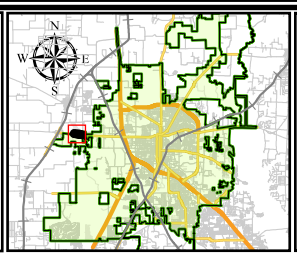
Z25-0022
Current Zoning Map



RR - Residential Rural
R2 - Residential
MR - Mixed-Use Regional
LI - Light Industrial

COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40

Z25-0022

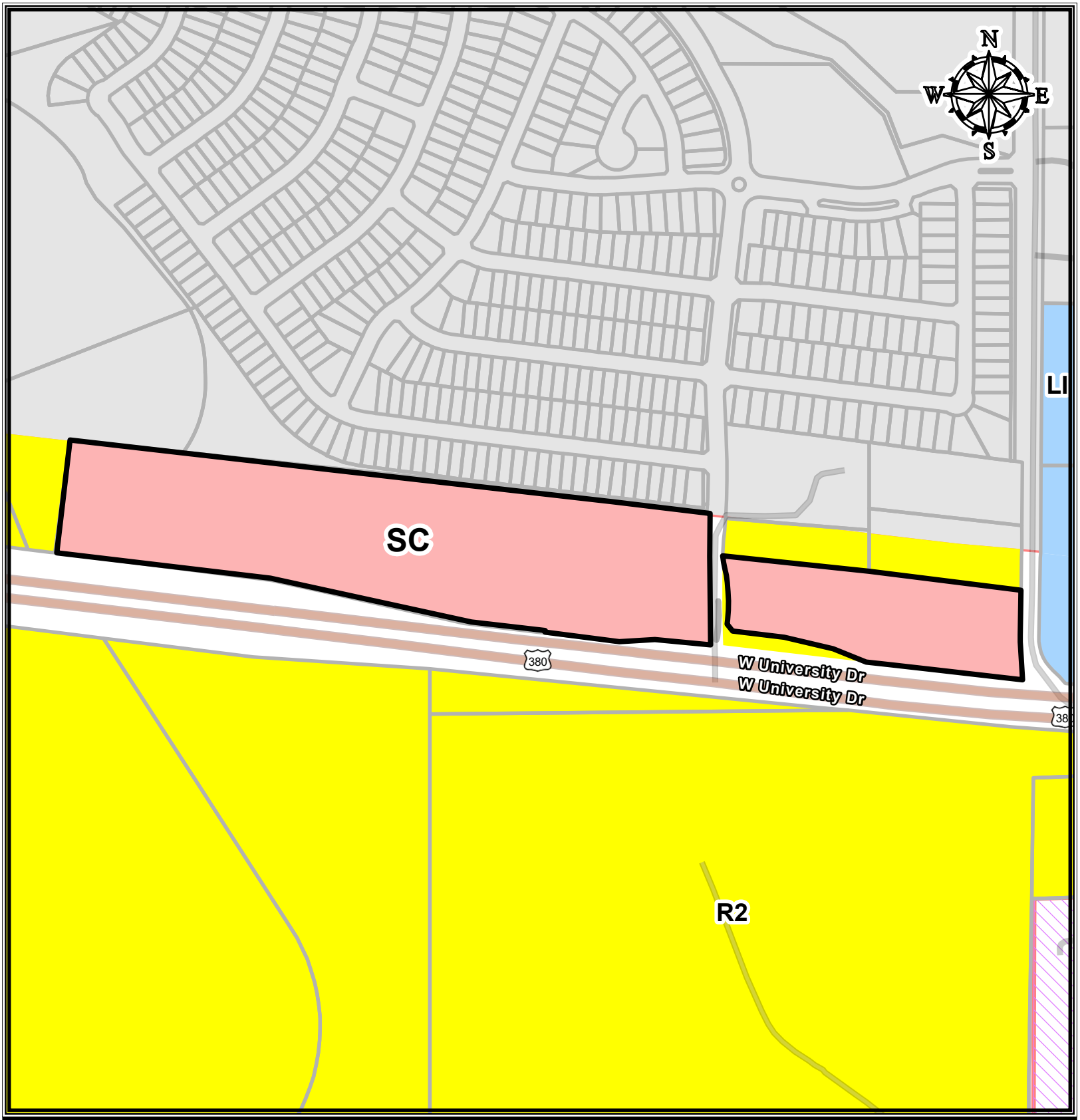


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CITY OF DENTON
Development Services · GIS
Date: 2/6/2026

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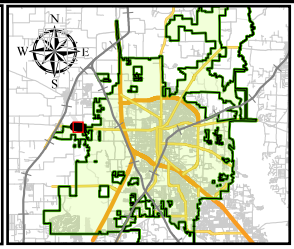
Z25-0022
Proposed Zoning Map



Roads

Current Zoning

- RR - Residential Rural
- R1 - Residential
- R2 - Residential
- R3 - Residential
- R4 - Residential
- R6 - Residential
- R7 - Residential
- MN - Mixed-Use Neighborhood
- MD - Mixed-Use Downtown Core
- MR - Mixed-Use Regional
- HC - Highway Corridor
- SC - Suburban Corridor
- GO - General Office
- LI - Light Industrial
- HI - Heavy Industrial
- PF - Public Facilities
- PD - Planned Development
- MPC
- OVERLAY

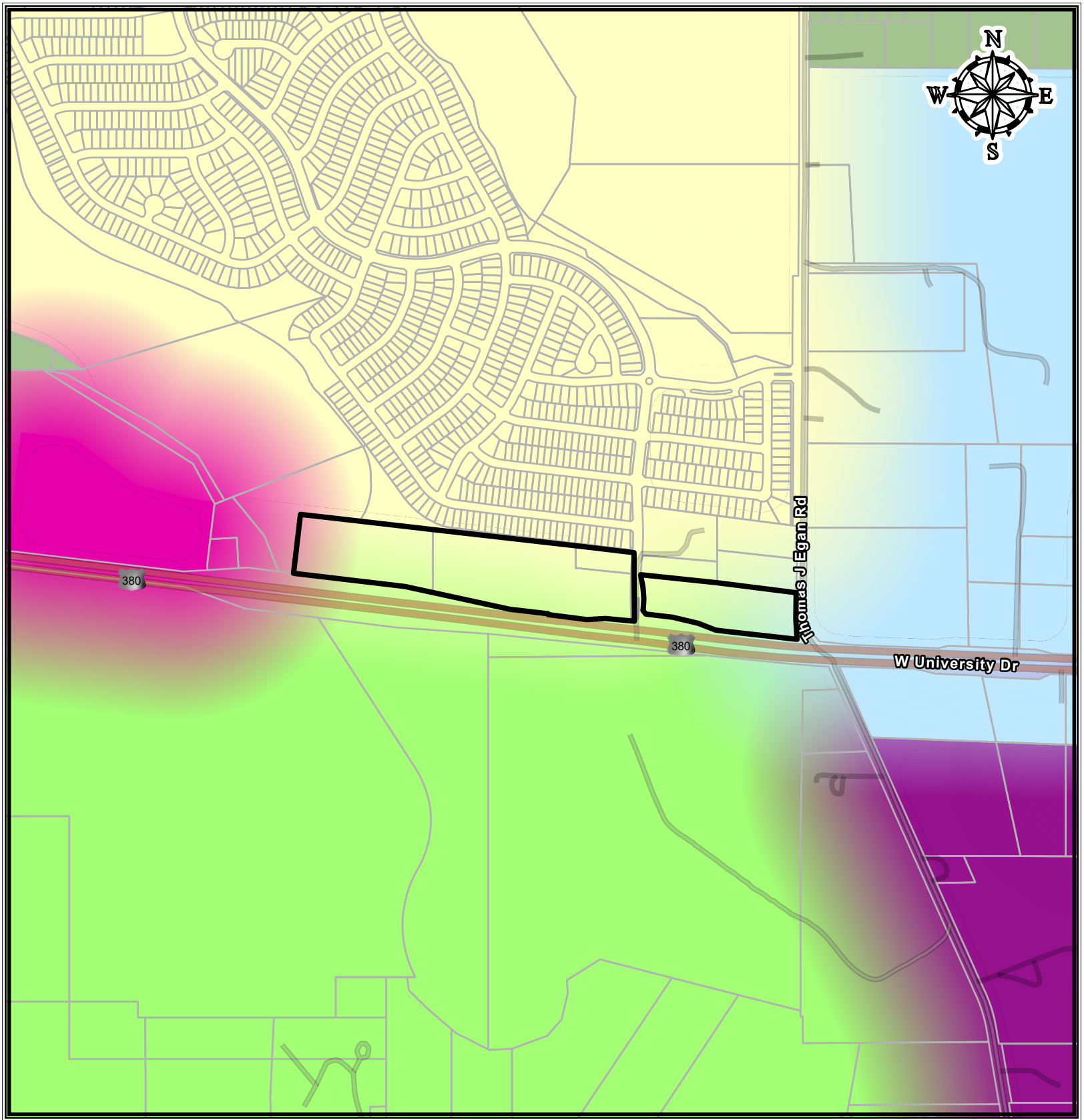


0 120 240 480 Feet

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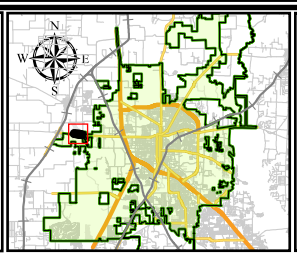
"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

Z25-0022
Future Land Use Map



Future Land Use 2040

- Agriculture
- Rural Areas
- Low Residential
- Moderate Residential
- Master Planned Community
- Downtown Denton
- Regional Mixed Use
- Community Mixed Use
- Neighborhood Mixed Use
- Neighborhood / University Compatibility Area
- Business Center
- Light Industrial
- Industrial Commerce
- Government / Institutional
- Parks / Open Space
- Site Location



0 237.5 475 950 Feet

CITY OF DENTON
Development Services · GIS
Date: 2/6/2026

"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

Comprehensive Plan Amendment
Project Narrative
Legends Ranch Development, LLC
Commercial Tract 1 & Tract 2
Z25-0022

Project Description/Summary:

Location:

The Legends Ranch Development, LLC Commercial Tract 1 is located northwest of the intersection of Golden Hoof Drive and US Highway 380. The western portion of the tract is adjacent to North Hickory Creek. This tract has approximately 2,095-feet of frontage on US 380. Tract 1 is a total of 18.95-acres. Commercial Tract 2 is located north of US Highway 380 and between Golden Hoof Drive and Thomas J Egan Road. Tract 2 has approximately 927-feet of frontage on US 380. Tract 2 is a total of 5.99-acres. Golden Hoof Drive divides Tract 1 and Tract 2.

Purpose/Project Description:

The purpose of the zoning submittal is to change the property zoning of both tracts from R2 to SC per the development agreement. The properties are currently annexed into the city and under R2 zoning classification. The proposed zoning of SC is consistent with the Denton Development Code to provide moderate- to high-intensity commercial, office, and retail uses along high-traffic corridors while providing appropriate buffering from adjacent neighborhoods.

Site History:

Both tracts are currently unplatted and within the City of Denton city limits. Both have always been vacant. The west portion of Commercial Tract 1 contains undeveloped floodplain ESA.

Surrounding Property Use:

Hickory Grove Development, formerly Legends ranch, is adjacent to the property to the north. To the west is Hickory Grove Multi-Family Phase 1. To the south is US 380.

Existing and Proposed Land Use:

Existing Zoning: R2

Proposed Zoning: SC

Existing Plat(s): No Plats exist for the property.

Acreage: Commercial Tract 1 is approximately 18.95-acres, and Commercial Tract 2 approximately 5.99-acres. The total acreage is approximately 24.94-acres.

Land Characteristics: Tract 1 contains trees on the western portion adjacent to and along North Hickory Creek and undeveloped floodplain ESA. There is approximately 21' of fall across Tract 1 from the northeast corner to the southwest corner. Per City maps, a portion of Tract 1 is within FEMA floodplain that is also located within an ESA, but there is no riparian buffer ESA onsite. Tract 2 contains trees along the boundary to the north. There is approximately 9' of fall from the north central portion of Tract 2 the southwest corner, and approximately 5' of fall from the north central portion to the east boundary.

Existing Uses: Both tracts are vacant.

Proposed Uses: This development will consist of various use commercia. The proposed development will have multiple points of connection to US 380, Golden Hoof Drive, and Thomas J Egan Road.

Phasing and Traffic Access: At this time, it is assumed that the proposed development will be constructed as commercial/retail pad sites. Construction access will be from Golden Hoof Drive.

Existing Utilities: Utilities in the form of City water, sanitary sewer and electric exist to the property. City water has been stubbed to Tract 1 with a 12-inch water main and Tract 2 with a 8-inch waterline, both constructed with Legends Ranch Phase 1A. City sewer service has been stubbed to Tract 1 with an 8-inch sewer main constructed with Legends Ranch Phase 1B and Tract 2 with an 8-inch sewer main constructed with Phase 1A. Both sewer stubs tie into an existing lift station west of North Hickory Creek.

Proposed Utilities: Water will be provided by connections with the existing stubs. The 12-inch stub in Tract 1 will be extended west along US 380. The internal water lines will create a looped system for the proposed development. Sewer will be provided by connecting to the existing stubs at the northwest corner of Tract 1 and the west of Tract 2.

Existing Topography and Drainage: Tract 1 falls from the northeast to the southwest towards North Hickory Creek. There is approximately 21' of fall across Tract 1 from the northeast corner to the southwest corner. There is approximately 9' of fall from the north central portion of Tract 2 the southwest corner, and approximately 5' of fall from the north central portion to the east boundary. The existing slopes are moderate and are suited for the proposed project.

Proposed Topography (Grading) and Drainage: Onsite cut-fill is proposed to grade the site for commercial site planning uses. The proposed grades will conform generally to existing slopes and patterns. The proposed hydrology will be paved or covered consistently with uses and intensity of development within SC zoning districts. Drainage systems will be enclosed conduits out-falling into the existing floodplain.

Public Benefit:

The following benefits are provided by this development to the public using the SC Zoning District:

The SC district is intended to support compatibility between moderate to higher-intensity commercial, office, and retail uses along high-traffic corridors. This zoning district will ensure appropriate buffering for adjacent neighborhoods is provided while also serving as a transition area between established single-family neighborhoods and high-traffic corridors such as US Highway 380. Having the SC zoning district adjacent to an existing residential neighborhood and along a highly visible corridor US 380 will increase regional draw, accommodate greater mobility options, and create a sense of place.

Community Amenities:

Within the SC development there will be open spaces and amenities typical to commercial development and will provide a safe environment for pedestrians and cyclists.

Proposed Mitigation Measures for Nuisance Abatement:

Control of noise, odor, fumes, dust, and lighting, and sufficient landscaping and screening created by the development will be accomplished with required, and if necessary, enhanced techniques and methods to be determined at the time of platting and design. Nuisances, if any, are not anticipated to be exacerbated or significantly different from the existing zoning as a result of the proposed zoning change.

Consistency with the requirements of the Denton Development Code (DDC):

It is anticipated that the proposed uses and development on the tract will be consistent with and in accordance with all requirements of the DDC and other applicable regulations.

Impact of the Proposed Change On:

a. The Goals and Objectives of The Denton 2040 Comprehensive Plan: The 2040 Comprehensive Plan Future Land Use Plan for this area is Agriculture. As this does not follow the Comprehensive Plan an amendment is being submitted to instead be for Suburban Corridor development. This proposed designation is consistent with the development along the US 380 corridor.

b. The Future Land Use Element of The Denton 2040 Comprehensive Plan: The proposed zoning district change meets the intent of the Development Agreement for the Legends Ranch Development Master Plan Community.

c. The Balance of Land Uses in the City: The balance of Land Uses in the City will not be altered because of the proposed zoning district change.

d. Adequate Public Facility Elements and How the Change Will Effect the Provision of Services Anticipated by The City**:** The proposed zoning change will have a negligible impact on the services provided by the City, DME, the D.I.S.D., and other services and infrastructure anticipated in the Denton 2040 Comprehensive Plan.

Further Evaluation of the Proposed Zoning Change Under the Following Factors:

a. *The existing land use pattern surrounding the property and the possible impact on existing or future development or uses are in accordance with existing regulations:* The surrounding mix of uses is compatible with the proposed use on the tract. Furthermore, the change of zoning does not materially alter, compound, diminish, or exacerbate any perceived adjacency issues that might already be present with the existing zoning.

b. *The possible creation of an isolated district unrelated to adjacent and nearby districts:* This will not occur as the proposed zoning is compatible with the surrounding uses. Furthermore, the proposed development will enhance the overall development to the north.

c. *The population density in order to facilitate the adequate provision of transportation, water, sewer, schools, parks, public convenience, and other public requirements:* The area of proposed change is not large enough, and the change in allowed density will not increase the population enough, to create negative impacts on the provision of services related to population. Development will generate impact fees for the City for services provided.

d. *The cost to the city and other governmental entities in providing, improving, increasing, or maintaining public utilities, schools, streets and other public safety measures:* The area of proposed change is not large enough, and will not increase the population enough, to create negative impacts on the provision of services related to population. Development will generate additional tax revenue for the City services provided.

e. *The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quantity:* The proposed commercial development will plant trees and additional landscaping. Layout will provide connectivity with adjacent open spaces.

f. *Whether there are substantial reasons why the property cannot be used in accordance with existing zoning or that proposed by the Future Land Use Map:* The proposed zoning and comprehensive plan amendment will match the uses of the surrounding properties.

Zoning Map Amendment Approval Criteria:

a. *The proposed rezoning is consistent with the Comprehensive Plan. T*he proposed zone district change is not consistent with the 2040 Comprehensive Plan, and an amendment is being submitted.
b. *The proposed rezoning is consistent with the relevant Small Area Plan(s):* N/A
c. *The proposed rezoning is consistent with the purpose statement of the proposed zoning district, as provided in Subchapter 3: Zoning Districts:* The rezoning is consistent with the purpose statement for the SC district on the FLUP. When developed, the commercial development will be within walking distance of residential homes and auto accessible to the US 380 corridor.
d. *There have been significant changes to the area to warrant a zoning change:* The development of Hickory Grove, formerly Legends Ranch, and the Meadows, and future land for commercial corridors projects have caused significant changes in the area. SC zoning is consistent with these developments.
e. *The intensity in the new zoning district is not expected to create significantly adverse impacts to surrounding properties or the neighborhood:* As shown above, this zoning change will have negligible impact on the surrounding properties.
f. *Public facilities and services are available to adequately serve the subject property while maintaining adequate level of service to existing development:* Adequate public facilities are available, and this development will not have a negative impact on existing service.
g. *There was an error in establishing the current zoning:* There was not an error in establishing the current zoning.

cross-referenced in the last column of Table 5.2-A: *Table of Allowed Uses*. Uses marked with a "+" following the "P" or "S" in a zoning district indicates that use-specific standards apply to that use type in that zoning district. For example, "P+" indicates that a use is permitted by-right, but that additional standards apply in that zoning district.

5.2.2 Organization of Table

In Table 5.2-A: *Table of Allowed Uses*, land uses are classified into general use categories and specific uses based on common functional, product, or physical characteristics such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and site conditions. This classification provides a systematic basis for assigning present and future land uses into appropriate zoning districts.

5.2.3 Table of Allowed Uses

Table 5.2-A: Table of Allowed Uses

P = permitted S = specific use permit required Blank cell = use prohibited + = use-specific standards apply

	Residential							Mixed-Use			Corridor		Other Nonresidential				Use-Specific Standards
	RR	R1	R2	R3	R4	R6	R7	MN	MD	MR	SC	HC	GO	LI	HI	PF	
Residential Uses																	
HOUSEHOLD LIVING																	
Single-Family Detached Dwelling	P+	P+	P+	P+	P+	P+	P+	P+									5.3.3A
Townhome					S+	P+	P+	P+	P+	P+							5.3.3B
Duplex					S+	P+	P+	P+	P+	P+							5.3.3C
Triplex						P+	P+	P+	P+	P+							5.3.3C
Fourplex						P+	P+	P+	P+	P+							5.3.3C
Multifamily Dwelling							S+	P+	P+	P+	S+	S+	S+				5.3.3D
Tiny Home Development	Subject to approval of a planned development (PD); see 5.3.3E																
Work/Live Dwelling	P+						P+	P+	P+	P+	P+	S+	S+				5.3.3F
Manufactured Home Development (HUD Code)						S+	S+										5.3.3G
GROUP LIVING																	
Chapter House							S	S								P	
Community Home	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+							5.3.3I
Dormitory							S	S	P								
Elderly Housing						S+	S+	P+	P+	P+	S+	S+					5.3.3H
Group Home	S+	S+	S+	S+	S+	S+	S+	S+	S+	S+							5.3.3IJ
Public, Institutional, Religious, and Civic Uses																	
COMMUNITY AND CULTURAL FACILITIES																	
Airport, City-Owned																P	
Cemetery, City-Owned																P	

Table 5.2-A: Table of Allowed Uses

P = permitted S = specific use permit required Blank cell = use prohibited + = use-specific standards apply

	Residential							Mixed-Use			Corridor		Other Nonresidential				Use-Specific Standards
	RR	R1	R2	R3	R4	R6	R7	MN	MD	MR	SC	HC	GO	LI	HI	PF	
Cemetery, Privately-Owned	S+		S+							S+	S+	S+	S+	S+		S+	5.3.4I
Club or Lodge	P	S	S	S	S	S	S+	P+	P	P+	P	P	P	P+	P+		5.3.4A
Community Service	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Day Care, Adult or Child	P	S	S	S	S	S	P	P	P	P	P	P	P	P+			5.3.4B
Funeral and Internment Facility									S	S	P	P	P	P			
Homeless Shelter	S+						S+	S+	S+	S+						P+	5.3.4C
Landfill, City-Owned																P	
Park, Playground, Open Space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Religious Assembly	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	5.3.4D
EDUCATIONAL FACILITIES																	
Business or Trade School								P+	P+	P+	P+	P	P	P	P		5.3.4E
College or University									P	P			P				
School, Private	P	S	S	S	S	S	S	P	P	P	P	P	P			P	
School, Public	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
School, Charter	P	P+	P+	P+	P+	P+	P+	P	P	P	P	P	P	P+	P+	P	5.3.4J
HEALTHCARE FACILITIES																	
Hospital Services										P+	P+	P	P				5.3.4F
Medical Clinic								S+	S+	P+	P+	P	P	P			5.3.4G
Medical Office							P+	P+	P+	P	P+	P	P	P			5.3.4H
Commercial Uses																	
AGRICULTURAL AND ANIMAL USES																	
General Agriculture	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	5.3.5A
Commercial Stable	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	5.3.5B
Community Garden	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Kennel	P+	S+	S+								P+	P+	S+	P+	P+		5.3.5C
Urban Farm	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Veterinary Clinic	P	S	S					P	P+	P	P	P	P	P			5.3.5D
RECREATION AND ENTERTAINMENT																	
Amenity Center	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Indoor Recreation Facility	P							P	P	P	P	P	P	P			
Outdoor Recreation Facility	P	P	P	P	P	P	P	S	S	S	P	P	P	P			
RV Park	S+		S+	S+	S+	S+	S+							S+	P+		5.3.5E
FOOD AND BEVERAGE SERVICES																	
Bar, Tavern, or Lounge								S+	P	P	P	P	P	P			5.3.5F
Mobile Food Court								S+	S+	S+	S+	S+	S+	S+	S+		5.3.5G

Table 5.2-A: Table of Allowed Uses

P = permitted S = specific use permit required Blank cell = use prohibited + = use-specific standards apply

	Residential							Mixed-Use			Corridor		Other Nonresidential				Use-Specific Standards
	RR	R1	R2	R3	R4	R6	R7	MN	MD	MR	SC	HC	GO	LI	HI	PF	
Private Club	P+							P+	P+	P+	P+			P+	P+		5.3.5H
Restaurant								P+	P	P	P	P	P	P			5.3.5I
Restaurant, with Drive-Through								S+	S+	P+	P+	P+	P+	P+			5.3.5J
OFFICE, BUSINESS, AND PROFESSIONAL SERVICES																	
Administrative, Professional, and Government Office				S+	S+	S+	P+	P+	P+	P	P	P	P	P	P	P	5.3.5K
Bank or Financial Institution							S+	P+	P+	P	P	P	P	P			5.3.5L
Musician Studio								P+	P+	P+	P+	P+	P+	P+	P+		5.3.5M
Credit Access Business								S+	P+	P	P	P	P	P			5.3.5N
Printing, Copying, and Publishing Establishment								S	P	P	P	P	P	P	P		
PERSONAL SERVICES																	
Laundry Facility, Industrial												S	S	P	P		
Laundry Facility, Self-Service							S+	P+	P+	P+	P	P	P	P	P		5.3.5O
Personal Service, General								P	P	P	P	P	P	P			
Tattoo and Body Piercing Parlor								P+	P+	P+	P+	P+					5.3.5P
RETAIL SALES																	
Building Materials and Supply Store											S	P		P	P		
General Retail Unless Otherwise Specified, Less than 5,000 Square Feet							S+	P	P	P	P	P	P	P	P	P	5.3.5Q
General Retail Unless Otherwise Specified, Between 5,000 Square Feet and 15,000 Square Feet								P	P	P	P	P	P	P	P		
General Retail Unless Otherwise Specified, More than 15,000 Square Feet								S	S	P	P	P	P	P+	P+		5.3.5R
Smoke Shop									P	P	P	P					
LODGING FACILITIES																	
Bed and Breakfast	P+				S+	S+	S+	P+	P+	P+	P+						5.3.5S
Boarding or Rooming House								S	P	P	P						
Hotel								P	P	P	P	P	P	P			
Motel										P	P	P	P	P			
Short-Term Rental	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+				5.3.5T
VEHICLES AND EQUIPMENT																	
Auto Wash										P	P	P	P	P	P		
Automotive Fuel Sales								S+	S+	P+	P+	P+	P+	P+	P+		5.3.5U

Table 5.2-A: Table of Allowed Uses

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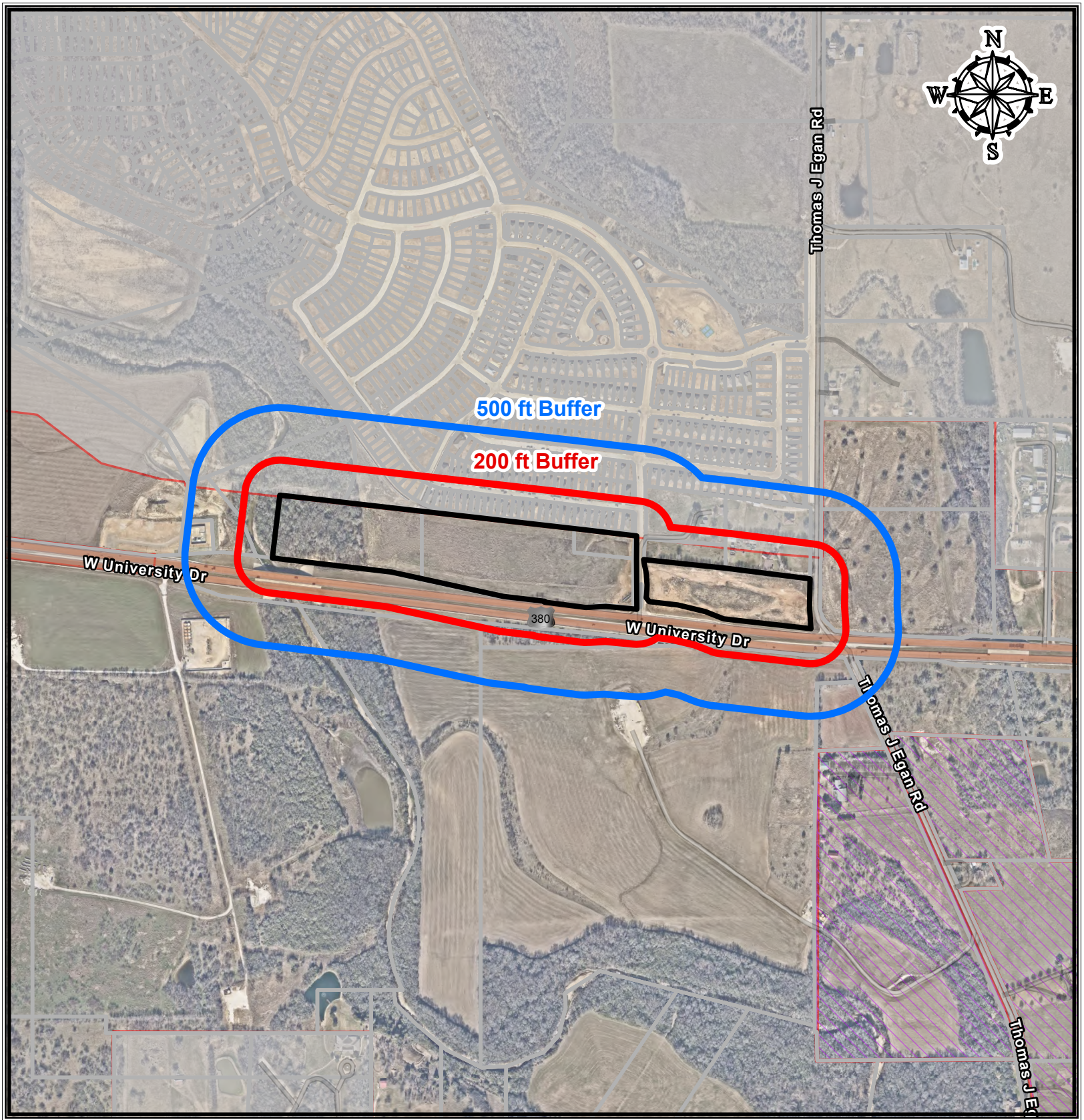
	Residential							Mixed-Use			Corridor		Other Nonresidential				Use-Specific Standards
	RR	R1	R2	R3	R4	R6	R7	MN	MD	MR	SC	HC	GO	LI	HI	PF	
Automotive Repair Shop, Major										P+	P+	P+	S+	P+	P+		5.3.5V
Automotive Repair Shop, Minor								S+		P+	P+	P+	P+	P+	P+		5.3.5W
Automotive Sales or Leasing												P					
Automotive Wrecking Service, Impound Lot, Junkyard, and Salvage Yard														S+	P+		5.3.5X
Equipment Sales and Rental												S+		S+	P+		5.3.5Y
Parking Lot as a Principal Use									P	P	P	P	P	P	P		
Travel Plaza												P		P	P		
ADULT ENTERTAINMENT ESTABLISHMENTS																	
Sexually Oriented Business															S+		5.3.5Z
Industrial Uses																	
MANUFACTURING AND PROCESSING																	
Craft Alcohol Production								S	P+	P+	P+	P	P	P	P		5.3.6A
Feedlot, Slaughterhouse, or Packaging Plant	S														S		
Food Processing, Less than 2,500 Square Feet								P+	P+	P+	P+	P+	P+	P+	P+		5.3.6B
Food Processing, More than 2,500 Square Feet								S+	S+	P+	P+	P+	P+	P+	P+		5.3.6C
Gas Well	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	Subchapter 6: *Gas Wells*
Manufacturing, Artisan								P+	P+	P	P	P	P	P	P		5.3.6D
Manufacturing, Low-Impact									S+	P+	P+	P+	P+	P	P		5.3.6E
Manufacturing, Medium-Impact													S	S	P		
Manufacturing, High-Impact															S		
Commercial Incinerator, Transfer Station															S		
Data Center, Modular														S+	S+	S+	5.3.6I
Data Center, Warehouse										S+	S+	S+	P+	P+	P+	P+	5.3.6J
STORAGE AND WAREHOUSING																	
Outdoor Storage (as a Primary Use)														S+	S+	S+	5.3.6F
Self-Service Storage								S+	S+	S+	P+	S+	P+	P+	P+		5.3.6F.1
Storage of Hazardous Materials															S		
Warehouse and Wholesale Facility										S+	S+	P	P	P	P		5.3.6G.4.a

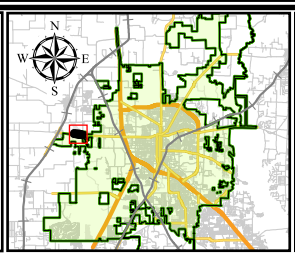
Table 5.2-A: Table of Allowed Uses

P = permitted S = specific use permit required Blank cell = use prohibited + = use-specific standards apply

	Residential							Mixed-Use			Corridor		Other Nonresidential				Use-Specific Standards
	RR	R1	R2	R3	R4	R6	R7	MN	MD	MR	SC	HC	GO	LI	HI	PF	
Public and Semi-Public Utility Uses																	
Basic Utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Power Stations, Electric Substations, Interchanges, and Switch Stations	P+							P+	P+	P+	P+	P+	P+	P+	P+	P+	5.3.7A
Solar Collector as Principal Use	S+												S+	S+	S+	P+	5.3.7B
Wind Energy Conversion System (WECS)															S+	S+	5.3.7C
Wireless Telecommunications	See Section 5.6: *Wireless Telecommunications Facilities*																
Accessory Uses																	
Accessory Dwelling Unit	P+	P+	P+	P+	P+	P+	P+	P+									5.4.4A
Donation Box	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	5.4.4B
Home Occupation	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+						5.4.4C
Outdoor Storage, Accessory												P+	P+	P+	P+	P+	05.4.4D
Sale of Produce and Plants Raised on Premises	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	5.4.4D.1
Solar Collector, (Ground- or Building-Mounted)	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	5.4.4F
Wind Energy Conversion System (WECS), Small (Ground-Mounted)	P+	S+	S+	S+	S+	S+	S+	S+	S+	S+	S+	S+	S+	P+	P+	P+	5.4.4G
Wind Energy Conversion System (WECS), Small (Building-Mounted)	P+	S+	S+	S+	S+	S+	S+	S+	S+	S+	S+	S+	S+	P+	P+	P+	0
Temporary Uses																	
Temporary Storage Containers and Other Portable Storage Units	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	5.5.6A
Concrete or Asphalt Batching Plant, Temporary	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	5.5.6B
Farmer's Market or Open-Air Market								P+	P+	P+	P+	P+	P+	P+	P+	P+	5.5.4
Field or Construction Office	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	5.5.6C
Seasonal Sales								P+	P+	P+	P+	P+	P+	P+	P+		5.5.4
Special Event								P+	P+	P+	P+	P+	P+	P+	P+	P+	5.5.4
Portable Wireless Telecommunications Facility	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	P+	5.5.4

Z25-0022
Notification Map





0 220 440 880 Feet

CITY OF DENTON
Development Services · GIS
Date: 2/6/2026

"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

DEPARTMENT OF DEVELOPMENT SERVICES

Development Services Center – 401 N. Elm Street – Denton, Texas 76201 voice: (940) 349-8600 www.cityofdenton.com

PUBLIC HEARING NOTIFICATION SIGN AFFIDAVIT OF SIGN POSTING

Project No. CA25-0005 / Z25-0022

Date of Planning and Zoning Commission Meeting: January 14, 2026

I hereby certify that I have posted or caused to be posted Public Hearing Notification sign(s) on the property subject to Project Name/Number Legends Ranch Retail Center CA25-0005 / Z25-0022,

located at _____

Said sign(s) have been obtained through a sign contractor of choice and meet the specifications as stated in the City of Denton Public Hearin« Sign Criteria Sheet.

Posting of said signs was accomplished on Jan. 02, 2026, 2025 Said signs have been posted in a manner that provides an unobstructed view and allows clear reading from the public right(s)of-way along HWY 380 & Thomas Egan Rd.

Said signs will be maintained on the property throughout the entire public hearing process and will be removed within three (3) calendar days subsequent to the final decision by the approving body. I further certify that this affidavit was filed with the Planning Department of the City of Denton within the time provisions specified in the City of Denton Public Hearing Sign Criteria Sheet.

Executed this the 2nd day of January 20 26

Matthew K. Hall

Signature of Applicant or Authorized Representative for Project No.

MATT K. HALL / SUPERIOR SIGNS - CA25-0005 / Z25-0022

Printed Name of Applicant or Authorized Representative for Project No.

STATE OF TEXAS COUNTY OF DENTON BEFORE ME, a Notary Public, on this 01/02/26 day personally appeared (printed owner's name) the above signed, who, under oath, stated the following: "I hereby certify that I am the owner, for the purposes of this application; that all information submitted herein is true and correct."

SUBSCRIBED AND SWORN TO before me, this the 2nd day of January, 20 26.

Taryn Blair Watson

Notary Signature

TARYN BLAIR WATSON
Notary ID # 130465520
My Commission Expires
July 17, 2027

PLEASE NOTE: ***Failure to post the notification sign(s) on the property by the close of business (5 pm) on the tenth (10th) day prior to the first public hearing shall result in the postponement of consideration by the Board or Commission.***

STAFF USE ONLY:

Date/Time submitted: _____ Verified by: _____

GRAPHIC SCALE IN FEET
0 50 100 200
1"=100' @ 22x34

HICKORY GROVE SINGLE FAMILY

GOLDEN HOOF DRIVE

EXISTING TREE LINE

EXISTING POWER POLE

TRACT 1

PROPOSED SIGN LOCATION

EXISTING POWER POLE

TRACT 2

EXISTING POWER POLE

EXISTING POWER POLE

EXISTING POWER POLE

EXISTING POWER POLE

US HIGHWAY 380

PROPOSED SIGN LOCATION

PROPOSED SIGN LOCATION

PROPOSED SIGN LOCATION

Legends Ranch Development, LLC Commercial Tracts 1 & 2

Denton, Texas

DWG NAME K:\FRI_CIVIL\063246400-LEGENDS RANCH\CAD\EXHIBITS\PLANSHEETS\LEGENDS RANCH COMMERCIAL\PLANSHEETS\LEGENDS RANCH COMMERCIAL CP.DWG
LAST SAVED 11/4/2025 1:07 PM, BY: STANG, TYLER

Kimley»Horn
6160 Warren Parkway, Suite 210
Frisco, Texas 75034
P 972-335-3580
State of Texas Registration No. F-928

November 2025

Jan 2, 2026 at 5:09:54 PM
8774–8804 W University Dr
Denton TX 76249
United States
M



Jan 2, 2026 at 5:17:43 PM
Golden Hoof Dr
Denton TX 76249
United States
M

CITY OF DENTON

Notice of Public Hearing

Project Numbers: CA25-0005 & Z25-0022

Project Name:Legends Ranch Retail Center

Request: From Rural Residential, to Suburban Corridor

For more information:
www.cityofdenton.com/public-meetings
CALL: (940) 329-8600

Jan 2, 2026 at 5:23:26 PM
Golden Hoof Dr
Denton TX 76249
United States
M

CITY OF DENTON

Notice of Public Hearing

Project Numbers: CA25-0005 & Z25-0022

Project Name: Legends Ranch Retail Center

Request: From Rural Residential, to Suburban Corridor

For more information:
www.cityofdenton.com/public-meetings
CALL: (940) 329-8600

Jan 2, 2026 at 5:28:57 PM
W University Dr
Denton TX 76249
United States
M

CITY OF DENTON

Notice of Public Hearing

Project Numbers: CA25-0005 & Z25-0022

Project Name: Legends Ranch Retail Center

Request: From Rural Residential, to Suburban Corridor

For more information:
www.cityofdenton.com/public-meetings
CALL: (940) 329-8600

Jan 2, 2026 at 5:34:55 PM
W University Dr
Denton TX 76249
United States
M

CITY OF DENTON

Notice of Public Hearing

Project Numbers: **CA25-0005 & Z25-0022**

Project Name: **Legends Ranch Retail Center**

Request: **From Rural Residential, to Suburban Corridor**

For more information:

www.cityofdenton.com/public-meetings

CALL: (940) 329-8600

FISCAL SUMMARY

CITY OF **DENTON**

GENERAL FUND IMPACTS

Revenues	40 Year Total
AD VALOREM TAXES	$6,590,500
RETAIL SALES TAX	
Direct Project Retail Sales Tax Revenue	$3,414,000
Net New Resident + New Commuters Retail Sales Tax Revenue	$0
OTHER TAXES (Mixed Beverage)	$3,049,900
LICENSE & PERMITS	
Zoning Fees	$25,200
Building Permits	$11,300
Certificate of Occupancy	$0
Beer & Wine Permits	$186,700
SERVICE FEES	
Restaurant Inspections	$93,500
Grocery Store Inspections	$16,700
Swimming Pool Inspections	$100
Electrical Inspections	$0
Plumbing Inspections	$0
Development Fees	$26,400
Plan Review Fees	$9,100

Expenses	40 Year Total
Neighborhood	($641,100)
Public Safety	($1,242,500)
Transportation	($53,500)
Admin & Community Services	($537,500)

OTHER FUND REVENUES

TOURISM & CONVENTION SALES TAX	$0
ENTERPRISE UTILITY FUNDS	
Electric Charge	$8,837,200
Water Charge	$904,900
Wastewater Charge	$1,360,900
Drainage Charge	$678,400
Solidwaste Charge	$2,562,300
WATER IMPACT FEE	$135,600
WASTEWATER IMPACT FEE	$84,300
TOTAL ROADWAY IMPACT FEE	$2,800
TOTAL PARKS LAND DEDICATION & DEV. TRUST	$0
TREE MITIGATION	$0

ROADWAY MAINTENANCE

ROADWAY MAINTENANCE	$0

New Residents From Residential



0

New Workers From Non-Residential *

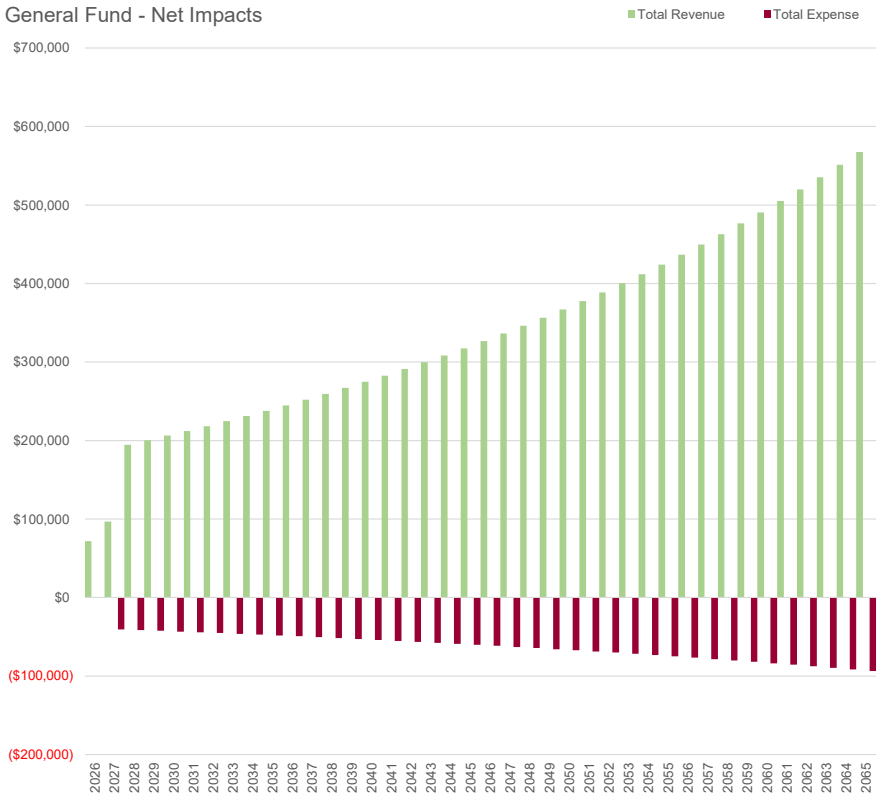


57

* Calculations based on new commuters not total new workers in order to not double count with new residents

General Fund Impact Summary

General Fund - Total Revenue	General Fund - Total Expenses	General Fund - Net Impact
$13,423,300	-$2,474,700	$10,948,600



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, REGARDING A CHANGE IN THE ZONING DISTRICT AND USE CLASSIFICATION FROM RESIDENTIAL 2 (R2) DISTRICT TO SUBURBAN CORRIDOR (SC) DISTRICT ON APPROXIMATELY 24.941 ACRES OF LAND GENERALLY LOCATED AT THE NORTHWEST AND NORTHEAST CORNER OF THE INTERSECTION OF WEST UNIVERSITY DIRVE (US 380) AND GOLDEN HOOF DRIVE, IN THE CITY OF DENTON, DENTON COUNTY, TEXAS; ADOPTING AN AMENDMENT TO THE CITY'S OFFICIAL ZONING MAP; PROVIDING FOR A PENALTY IN THE MAXIMUM AMOUNT OF $2,000.00 FOR VIOLATIONS THEREOF; PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE. (Z25-0022a)

WHEREAS, Kimley-Horn, on behalf of the property owner, Double R Devco, LLC, requested to rezone approximately 24.941 acres of land from Residential 2 (R2) to Suburban Corridor (SC) District, legally described in **Exhibit "A"** attached hereto and depicted as **Exhibit "B"** and incorporated herein by reference (hereinafter, the "Property"); and

WHEREAS, on January 14, 2026, the Planning and Zoning Commission, in compliance with the laws of the State of Texas, have given the requisite notices by publication and otherwise, and have held due hearings and afforded full and fair hearings to all property owners interested in this regard, and have recommended approval (5-1) of the request; and

WHEREAS, on February 17, 2026, the City Council likewise conducted a public hearing as required by law, and finds that the request meets and complies with all substantive and procedural standards set forth in Section 2.7.2 of the Denton Development Code, and is consistent with the Denton 2040 Comprehensive Plan and the Denton Development Code; and

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Denton, in considering the application for a zoning district change for the Property, have determined that the proposed zoning district is in the best interest of the health, safety, and general welfare of the City of Denton, and accordingly, the City Council of the City of Denton is of the opinion and finds that said zoning change is in the public interest and should be granted as set forth herein; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference and found to be true.

SECTION 2. The zoning district and use classification for the Property is hereby changed to Suburban Corridor (SC) District.

SECTION 3. The City's official zoning map is hereby amended to show the established zoning district and use classification.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by any court, such invalidity shall not affect the validity of the provisions or applications, and to this end the provisions of this ordinance are severable.

SECTION 5. Any person, firm, partnership or corporation violating any provision of this ordinance shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by fine in a sum not exceeding $2,000.00 for each offense. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

SECTION 6. In compliance with Section 2.09(c) of the Denton Charter, this ordinance shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, a daily newspaper published in the City of Denton, Texas, within ten (10) days of the date of its passage.

The motion to approve this ordinance was made by _____ and seconded by _____, the 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 _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Hilary McMahon _____

Exhibit A
Legal Description

TRACT 1

BEING a tract of land situated in the Thomas J. Egan Survey, Abstract No. 406, and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 1470, City of Denton, Denton County, Texas and being a portion of a called 565.364-acre tract of land described in a deed to Legends Ranch Development, LLC, recorded in Instrument No. 2019-146384, Official Records, Denton County, Texas, and being a portion of Lot 1, Block B, Golden Hoof Ranchettes, an Addition to the City of Denton, Texas, according to the plat thereof recorded in Volume 4, Page 8, Plat Records, Denton County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod with plastic cap stamped “RPLS 4561” found for the westernmost corner of a tract of land described as Parcel 5 - Tract 2 in a deed to the State of Texas, recorded in Instrument No. 2009-116573, said Official Records, common to an angle point in the southerly line of said 565.364-acre tract, same being on the northerly right-of-way line of U.S. 380 (variable width public right-of-way);

THENCE in a westerly direction along the common line of said 565.364-acre tract and said U.S. 380 the following courses and distances:

North 82°39'34" West, a distance of 238.81 feet to a 1/2-inch iron rod with plastic cap stamped “RPLS 4561” found for corner;

North 07°20'26" East, a distance of 5.00 feet to an aluminum TXDot Monument found for corner;

North 83°19'32" West, a distance of 236.23 feet to a 1/2-inch iron rod with plastic cap stamped “RPLS 4561” found for the easternmost corner of a tract of land described as Parcel 5 - Tract 1 In a deed to the State of Texas, recorded in Instrument No. 2009-116573, said Official Records;

North 77°42'04" West, a distance of 655.45 feet to a 1/2-inch iron rod with plastic cap stamped “RPLS 4561” found for corner;

North 83°15'19" West, a distance of 685.77 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for the southernmost southeast corner of Hickory Grove, Phase 1B, an addition to the City of Denton, Texas, according to the final plat thereof recorded in Document No. 2024-94 of the Plat Records of Denton County, Texas;

THENCE departing said common line and along the southerly line of said Hickory Grove, Phase 1B, the following courses and distances:

North 06°44'41" East, a distance of 361.74 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 83°28'14" East, a distance of 193.43 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 83°31'06" East, a distance of 637.92 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 83°31'07" East, a distance of 908.19 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 83°10'56" East, a distance of 312.71 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for the easternmost southeast corner of said Hickory Grove, Phase 1B, same being on the westerly right-of-way line of Golden Hoof Drive, a variable width right-of-way, as dedicated in Hickory Grove, Phase 1A, an addition to the City of Denton, Texas, according to the amending plat thereof recorded in Document No. 2024-183;

THENCE along the westerly right-of-way line of said Golden Hoof Drive, the following courses and distances:

South 00°26'45" West, a distance of 136.46 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a tangent curve to the left with a radius of 432.50 feet, a central angle of 05°13'40", and a chord bearing and distance of South 02°10'05" East, 39.45 feet;

In a southerly direction, with said tangent curve to the left, an arc distance of 39.46 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a reverse curve to the right with a radius of 237.00 feet, a central angle of 09°57'23", and a chord bearing and distance of South 00°11'46" West, 41.13 feet;

In a southerly direction, with said reverse curve to the right, an arc distance of 41.18 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a reverse curve to the left with a radius of 261.00 feet, a central angle of 09°57'23", and a chord bearing and distance of South 00°11'46" West, 45.30 feet;

In a southerly direction, with said reverse curve to the left, an arc distance of 45.35 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 04°46'55" East, a distance of 29.49 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a tangent curve to the right with a radius of 360.00 feet, a central angle of 11°31'46", and a chord bearing and distance of South 00°58'58" West, 72.32 feet;

In a southerly direction, with said tangent curve to the right, an arc distance of 72.44 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

South 06°44'51" West, a distance of 30.00 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for on the north end of a corner clip at the intersection of the westerly right-of-way line of said Golden Hoof Drive, with the northerly right-of-way line of said U.S. 380;

THENCE South 51°59'21" West, along said corner clip, a distance of 28.40 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found on the south end of said corner clip, same being on the southerly line of said 565.364 acre tract;

THENCE North 83°15'09" West, departing said corner clip, along the northerly right-of-way line of said U.S. 380 and along the southerly line of said 565.364 acre tract, a distance of 143.54 feet to a 1/2 inch iron rod with plastic cap stamped “RPLS 4561” found for corner;

THENCE South 83°20'00" West, continuing along the northerly right-of-way line of said U.S. 380 and the southerly line of said 565.364 acre tract, a distance of 122.85 feet to the **POINT OF BEGINNING** and containing 18.948 acres (825,357 square feet) of land, more or less.

TRACT 2

BEING a tract of land situated in the Thomas J. Egan Survey, Abstract No. 406, City of Denton and City of Denton Extra Territorial Jurisdiction (E.T.J.), Denton County, Texas, and being a portion of a called 565.364 acre tract of land described in a deed to Legends Ranch Development, LLC as recorded in Instrument No. 2019-146384 of the Official Records of Denton County, Texas (O.R.D.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found in the westerly right-of-way line of Thomas J. Egan Road, a 22.50 feet-wide right-of-way, according to the plat of Golden Hoof Ranchettes, an addition to Denton County, recorded in Volume 4, Page 8 of the Plat Records of Denton County, Texas (P.R.D.C.T.), at the southeast corner of a 10 feet-wide right-of-way dedication according to the plat of Lot 1R1 and 1R2 of Golden Hoof Ranchettes, an addition to Denton County, recorded in Document No. 2015-319 P.R.D.C.T., being on the easterly line of said 565.364 acre tract;

THENCE South 00°26'20" West, along the westerly right-of-way line of said Thomas J. Egan Road and along the easterly line of said 565.364 acre tract, a distance of 280.07 feet to a 1/2 inch iron rod with plastic cap stamped “RPLS 4561” found for the southeast corner of said 565.364 acre tract, being on the northerly right-of-way line of U.S. Highway 380, a variable width right-of-way;

THENCE North 83°31'12" West, along the northerly right-of-way line of said U.S. Highway 380 and along the southerly line of said 565.364 acre tract, a distance of 540.31 feet to a 1/2 inch iron rod with plastic cap stamped “RPLS 4561” found for corner;

THENCE North 83°15'09" West, continuing along the northerly right-of-way line of said U.S. Highway 380 and the southerly line of said 565.364 acre tract, a distance of 3.35 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

THENCE North 78°01'51" West, departing the southerly line of said 565.364 acre tract and continuing along the northerly right-of-way line of said U.S. 380, a distance of 164.81 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

THENCE North 83°15'10" West, continuing along the northerly right-of-way line of said U.S. 380, a distance of 219.00 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found on the south end of a corner clip at the intersection of the northerly right-of-way line of said U.S. 380, with the easterly right-of-way line of Golden Hoof Drive, a variable width right-of-way, as dedicated in Hickory Grove, Phase 1A, an addition to the City of Denton, Texas, according to the amending plat thereof recorded in Document No. 2024-183 of the Plat Records of Denton County, Texas;

THENCE North 38°15'09" West, along said corner clip, a distance of 28.28 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found on the north end of said corner clip;

THENCE departing said corner clip and along the easterly right-of-way line of said Golden Hoof Drive, the following courses and distances:

North 06°44'51" East, a distance of 15.00 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a tangent curve to the left with a radius of 440.00 feet, a central angle of 11°31'46", and a chord bearing and distance of North 00°58'58" East, 88.39 feet;

In a northerly direction, with said tangent curve to the left, an arc distance of 88.54 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found for corner;

North 04°46'55" West, a distance of 29.49 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a tangent curve to the left with a radius of 261.00 feet, a central angle of 09°57'23", and a chord bearing and distance of North 09°45'37" West, 45.30 feet;

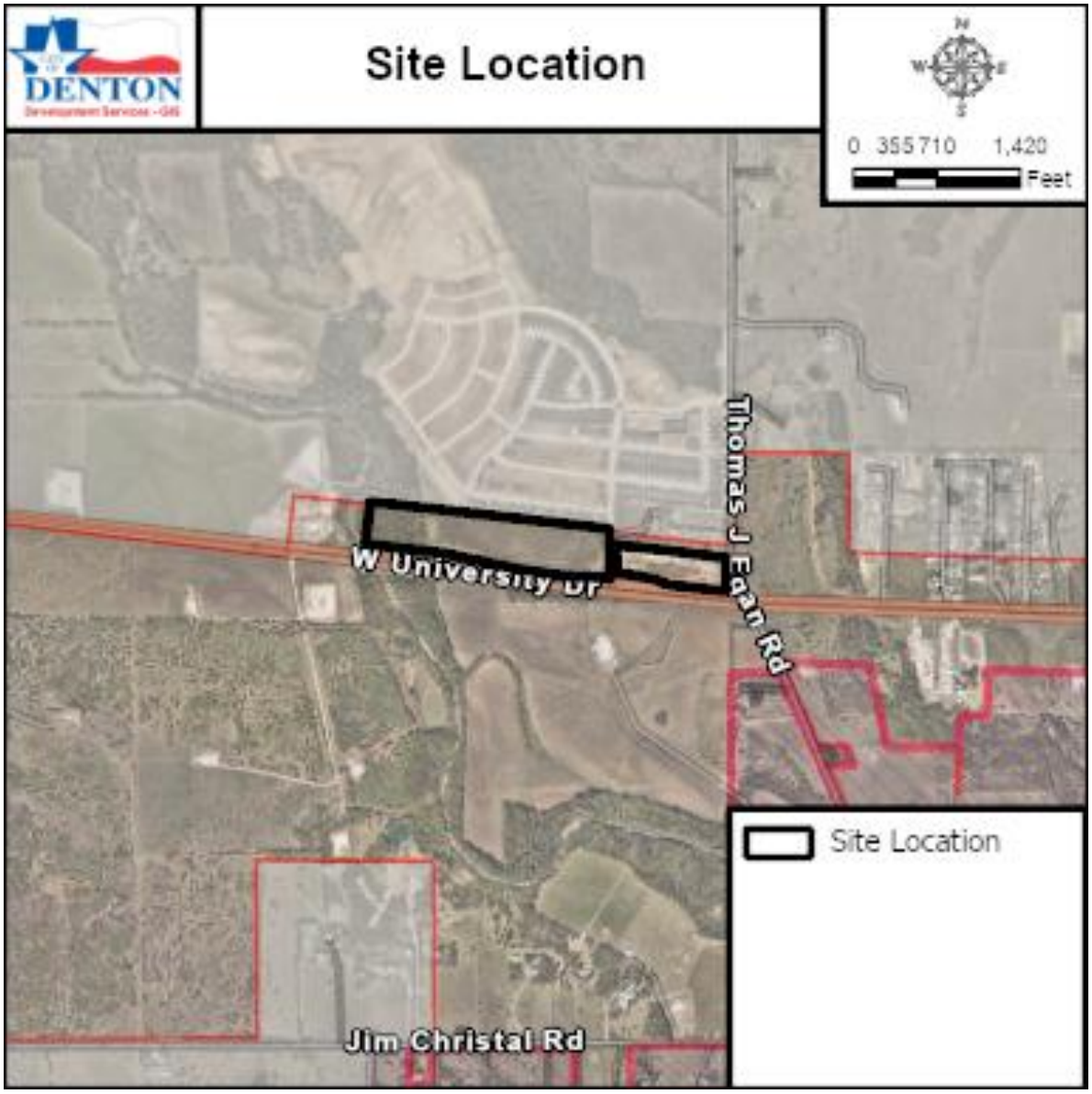
In a northerly direction, with said tangent curve to the left, an arc distance of 45.35 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a reverse curve to the right with a radius of 237.00 feet, a central angle of 09°57'23", and a chord bearing and distance of North 09°45'37" West, 41.13 feet;

In a northerly direction, with said reverse curve to the right, an arc distance of 41.18 feet to a 5/8 inch iron rod with plastic cap stamped “KHA” found at the beginning of a compound curve to the right with a radius of 367.50 feet, a central angle of 05°13'40", and a chord bearing and distance of North 02°10'05" West, 33.52 feet;

In a northerly direction, with said compound curve to the right, an arc distance of 33.53 feet to a 1/2 inch iron rod found for the southwest corner of Lot 6, Block A of said Golden Hoof Ranchettes;

THENCE South 83°08'15" East, departing the easterly right-of-way line of said Golden Hoof Drive, along the southerly line of said Lot 6, Block A of said Golden Hoof Ranchettes and along the southerly line of Lot 1R2 of said Lot 1R1 and 1R2 of Golden Hoof Ranchettes, a distance of 960.54 feet to a point for corner; to the **POINT OF BEGINNING** and containing 5.993 acres (261,043 square feet) of land, more or less

Exhibit B
Site Location



TEXAS SECRETARY of STATE
JANE NELSON

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:	803822054	**Entity Type:**	Domestic Limited Liability Company (LLC)
Original Date of Filing:	November 6, 2020	**Entity Status:**	In existence
Formation Date:	N/A		
Tax ID:	32076598922	**FEIN:**	
Duration:	Perpetual		

Name: Double R DevCo, LLC
Address: 1501 ALTA DR
FORT WORTH, TX 76107-1569 USA

REGISTERED AGENT | FILING HISTORY | NAMES | MANAGEMENT | ASSUMED NAMES | ASSOCIATED ENTITIES | INITIAL ADDRESS

Name	Address	Inactive Date
DOUGLAS REAGAN HORTON	1501 Alta Dr Fort Worth, TX 76107-1569 USA	

Order | Return to Search

Instructions:

- To place an order for additional information about a filing press the 'Order' button.

Hickory Grove Commercial
CA25-0005a / Z25-0022a

Mia Hines, AICP

Senior Planner

February 17, 2026

CITY OF DENTON

Overview

Requests

- Comprehensive Plan Amendment
- Rezoning

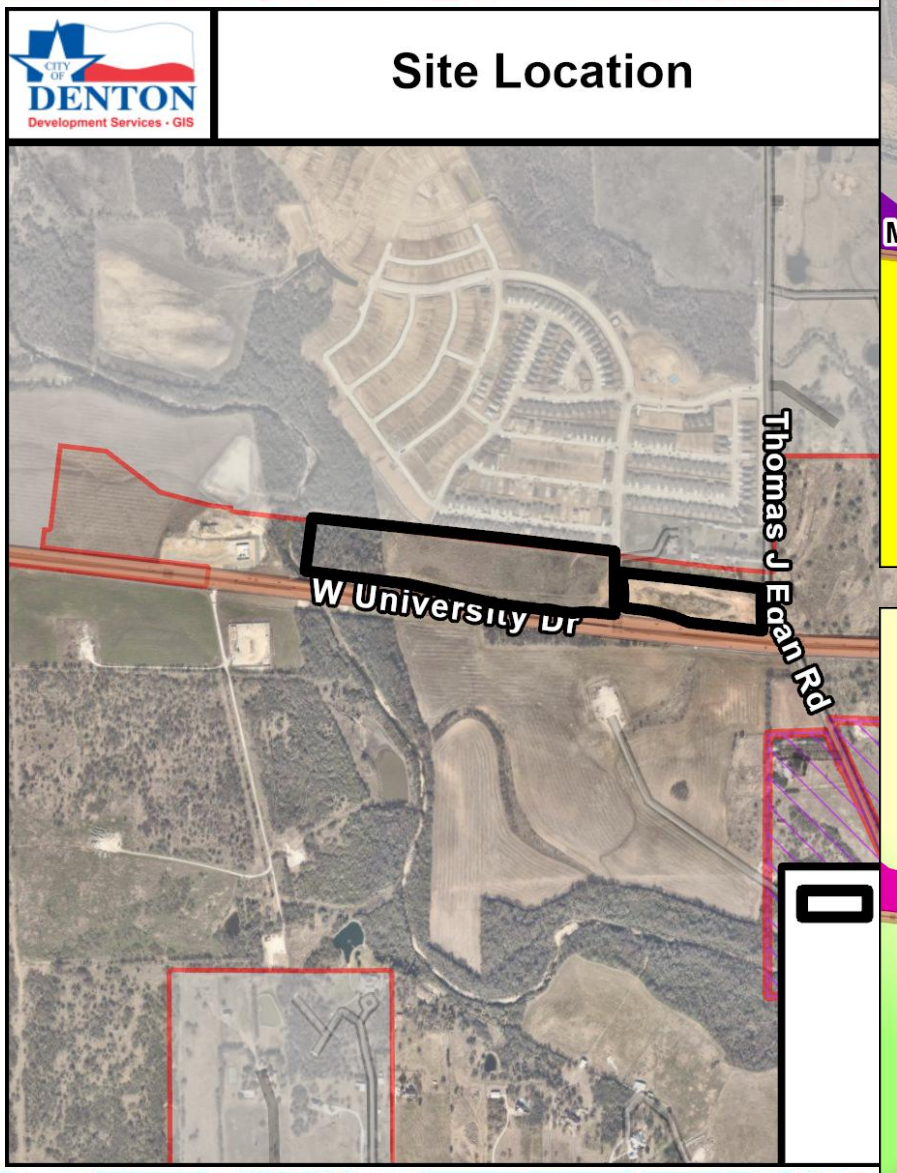
Property

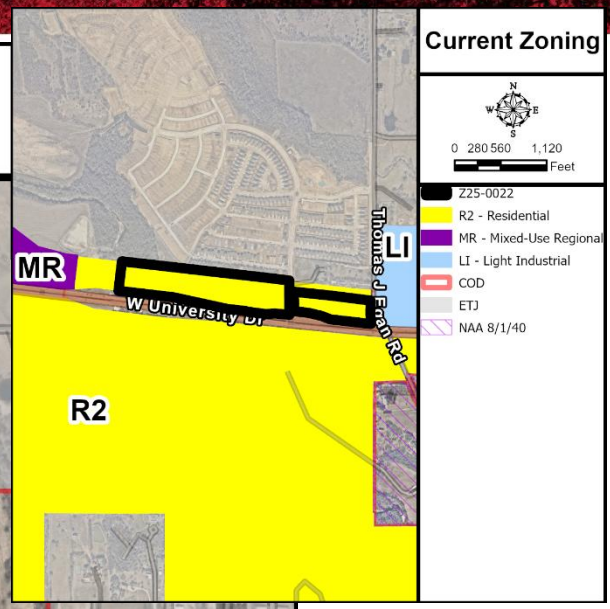
- 24.941 acres

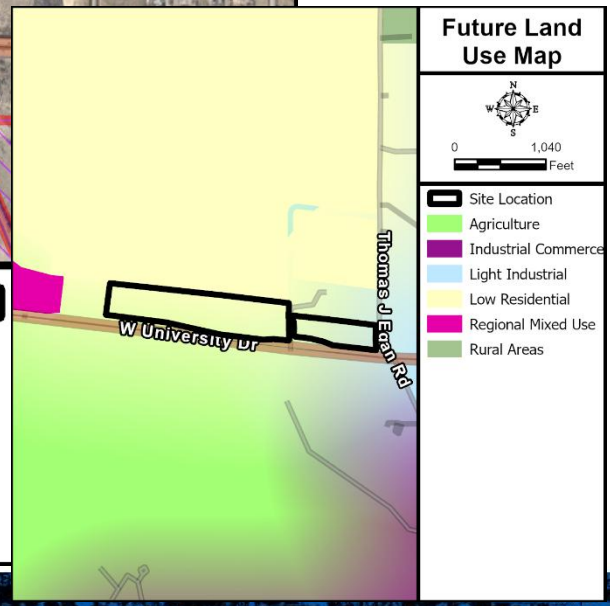
- Existing FLUM: Agriculture & Low Residential
- Proposed FLUM: Regional Mixed Use

- Existing Zoning: Residential 2 (R2)
- Proposed Zoning: Suburban Corridor (SC)

Purpose – to entitle the property for anticipated commercial development







History

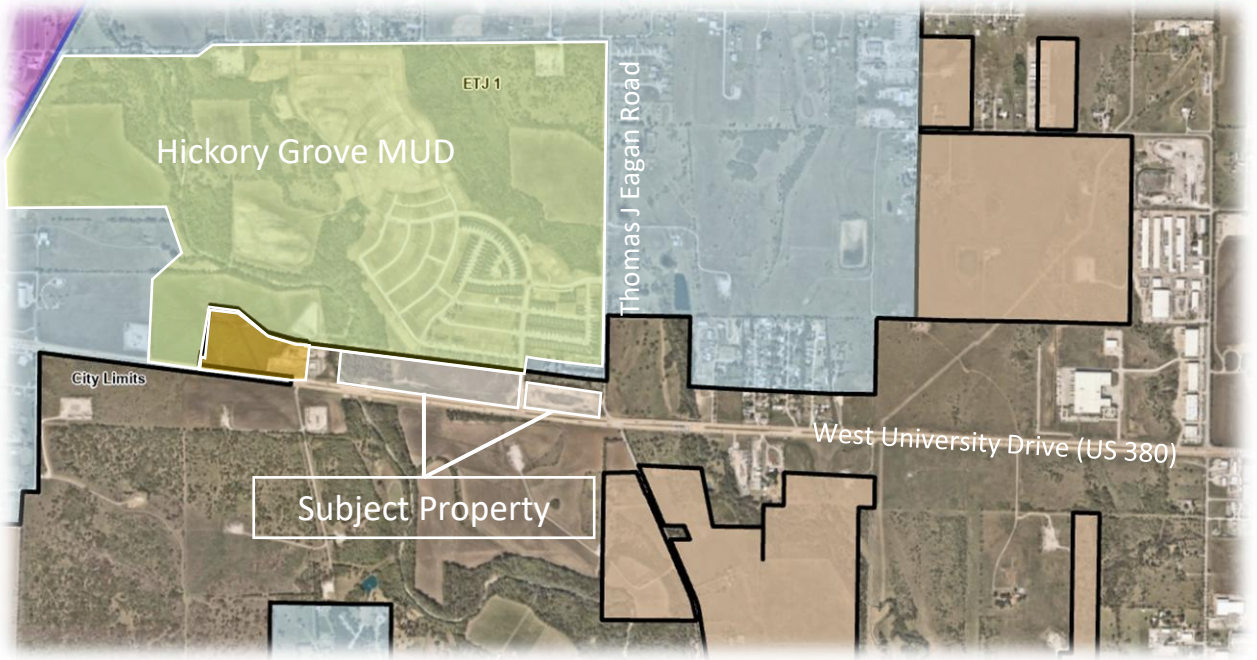
- Existing Land Use: Undeveloped

- Denton Plan 2030 – all Rural Areas
- Denton 2040 (minor update) – Agriculture FLUM
  - (Low Residential FLUM for Hickory Grove SFR)

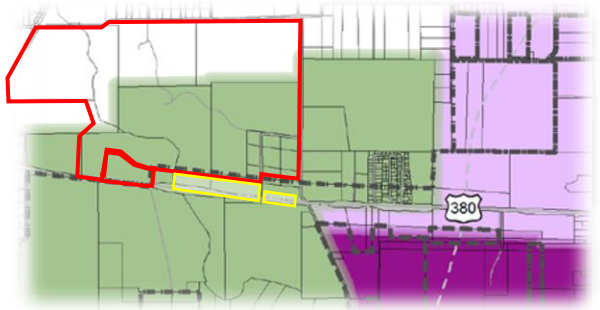
Hickory Grove Municipal Utility District (MUD)

- *Special-purpose district created to provide essential services such as water, wastewater, and drainage to areas outside city limits.*

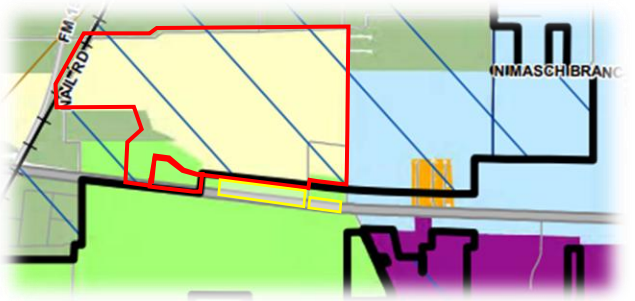
- 2022 - Creation of MUD to include 1,551 SFR & 625 MF
- August 2024 - Amendment agreement to include additional multifamily units and partial annexation
- Dec. 2025 – Feb. 2026: Multifamily



Site Location – north of US 380, south of Hickory Grove / Legends Ranch MUD



Denton 2030 - Rural Areas

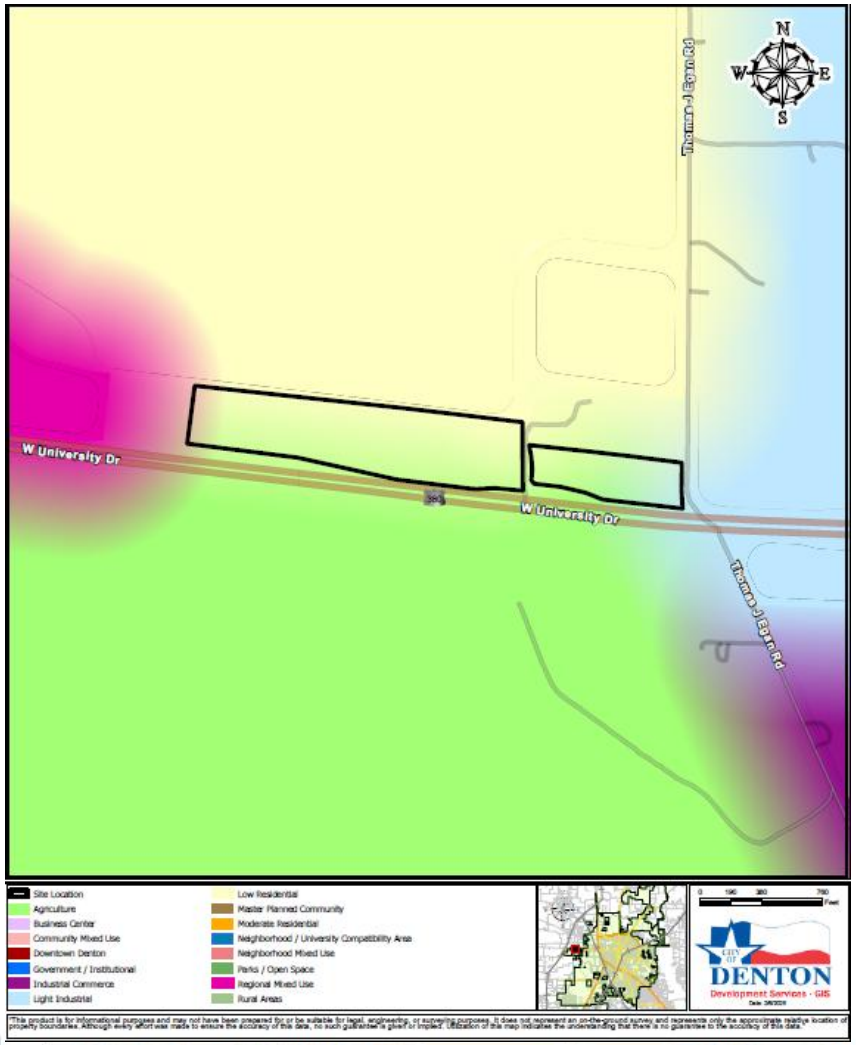


Denton 2040 - Agriculture & Low Residential

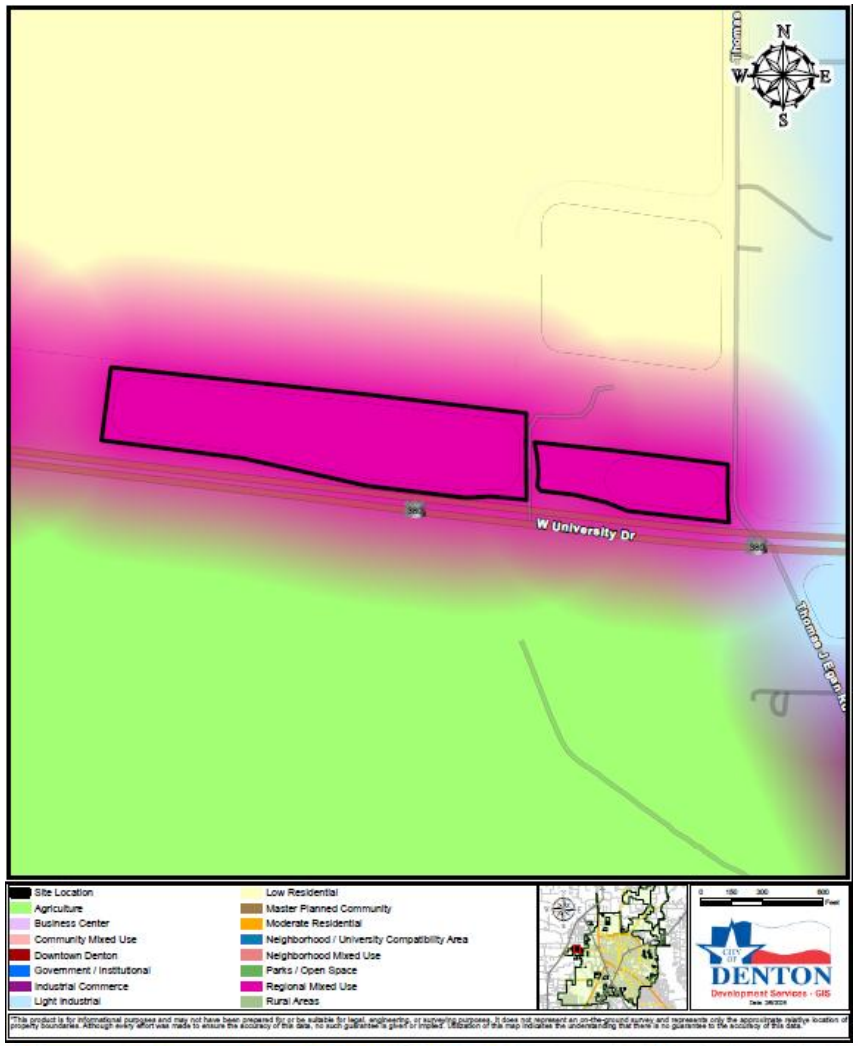
Comprehensive Plan Amendment

(CA25-0005)

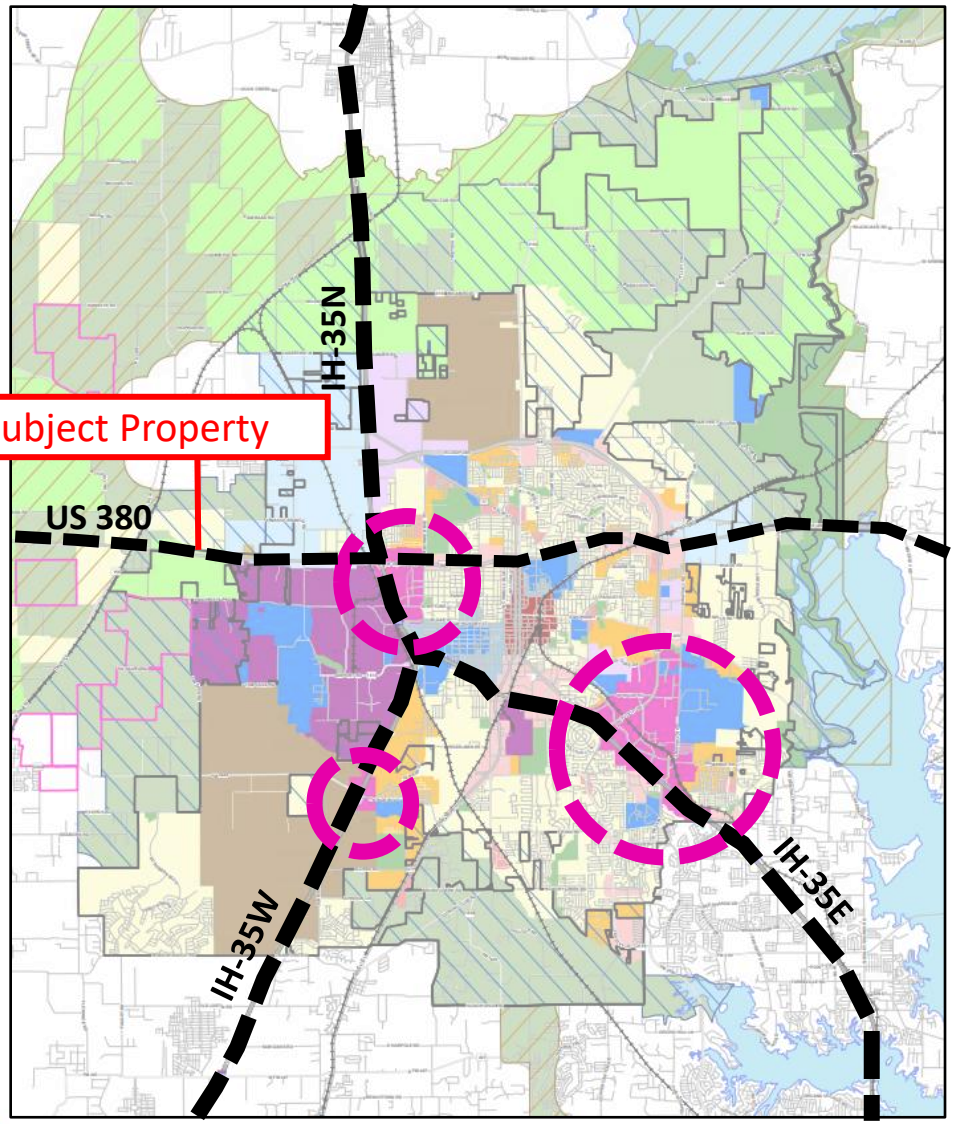
Existing FLUM: Agriculture & Low Residential



Proposed FLUM: Regional Mixed Use



Regional Mixed Use FLUM



- Applies to areas that serve as regional destinations within Denton
- May include residential, commercial, office, entertainment and other uses except industrial, at the highest levels of scale and density within the city
- Future development in Regional Mixed-use areas will complement and embrace existing, viable uses, and raise the standard of design to increase their regional

City Limits
ETJ Division 1
ETJ Division 2
Lakes
Potential Municipal Utility Districts (MUDs) (petitioning for state approval)

Future Land Use

Agriculture
Rural Areas
Low Residential
Moderate Residential
Master Planned Community (refer to approved development plans)
Downtown Denton
Regional Mixed Use
Community Mixed Use
Neighborhood Mixed Use
Neighborhood / University Compatibility Area
Business Center
Light Industrial
Industrial Commerce
Government / Institutional
Parks / Open Space

Criteria for Approval

Summary:

- ✓ Regional planning & development trends reflect a need to plan for the development of this area beyond agriculture
- ✓ Compatible with existing and proposed development occurring within the City and in the City's ETJ
- ✓ Regional Mixed Use is intended to encourages development at high density along regional corridors, such as US 380

Comprehensive Plan Amendment Approval Criteria (Sec. 2.7.1D1)

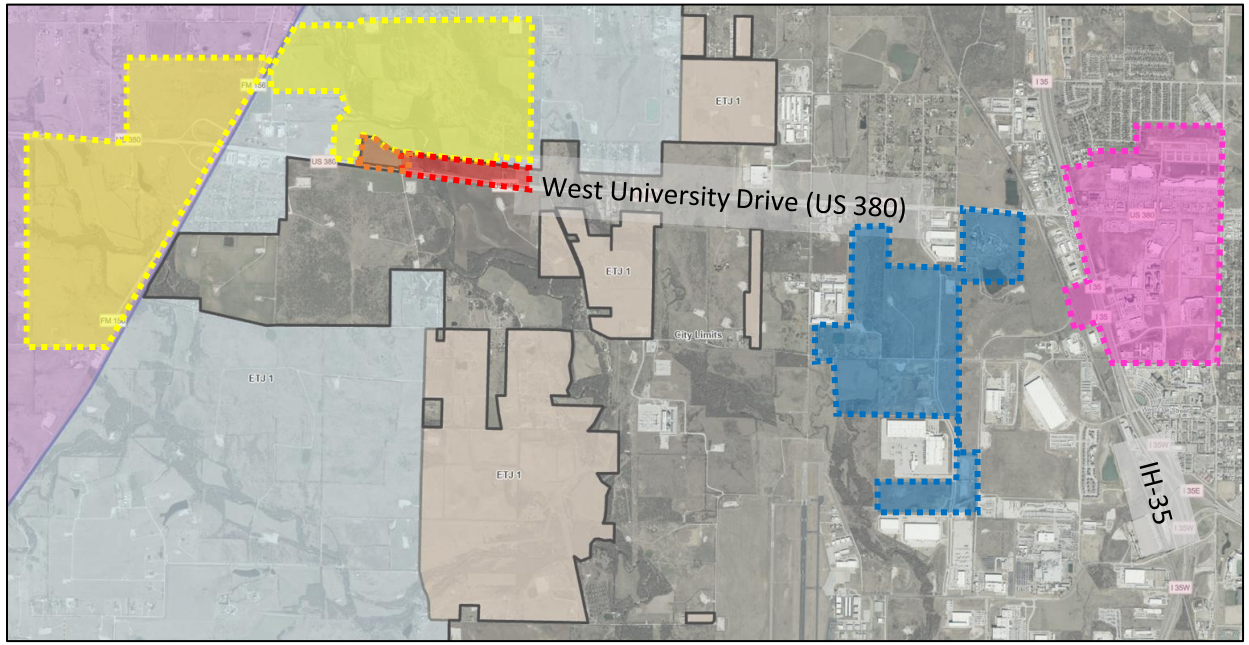
1. Is consistent with the overall purpose and intent of the Comprehensive Plan and that any one of the following criteria has been met:
   a. There was an error in the original Comprehensive Plan adoption;
   b. The City Council failed to take into account then-existing facts, projections, or trends that were reasonably foreseeable to exist in the future;
   c. Events, trends, or facts after adoption of the Comprehensive Plan have changed the City Council's original findings made upon plan adoption
   d. Events, trends, or facts after adoption of the Comprehensive Plan have changed the character or condition of an area so as to make the proposed amendment necessary

Comprehensive Plan Amendment Approval Criteria (Sec 2.7.1.D2)

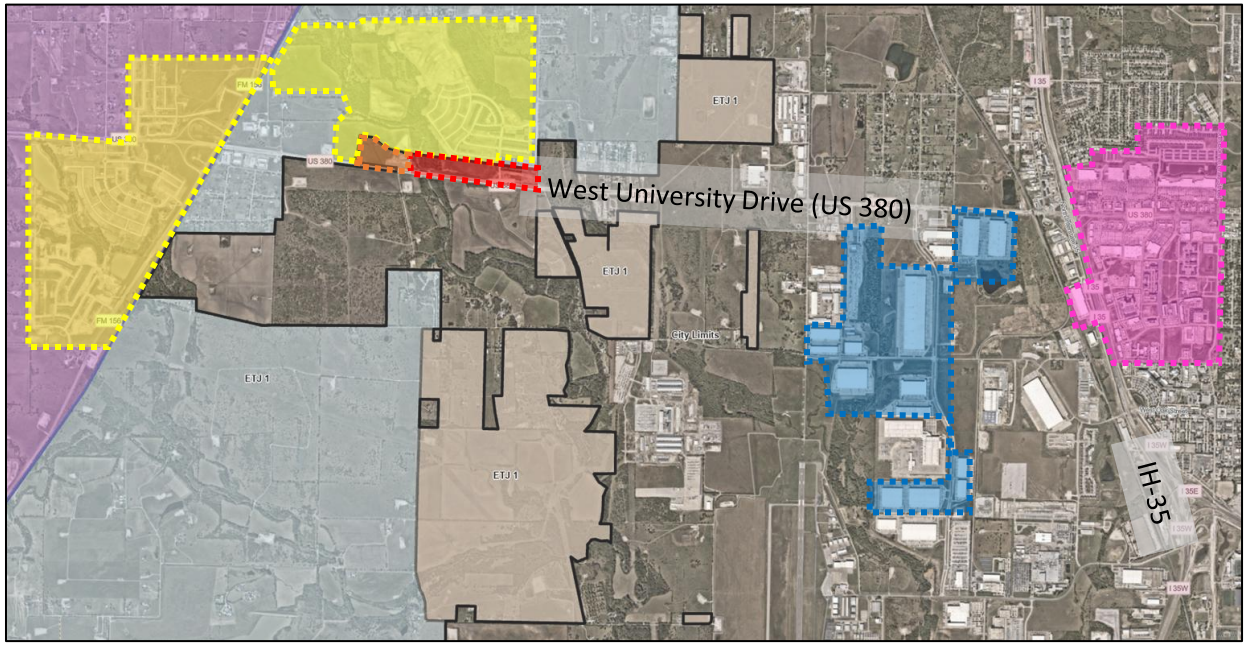
a. That the amendment is not in conflict with any portion of the goals and policies of the plan.
b. That the amendment constitutes a substantial benefit to the city and is not solely for the good or benefit of a particular landowner or owners at a particular point in time.
c. The extent to which the proposed amendment and other amendments in the general area are compatible with the land use goals of the plan and that they avoid creation of isolated uses that will cause incompatible community form and a burden on public services and facilities.
d. That the development pattern contained in the existing plan does not provide adequate and appropriate optional sites for the use or change being proposed in the amendment.
e. That the impact of the amendment, when considered cumulatively with other applications and development in the general area, will not adversely impact the city or a portion of the city by.
f. That site conditions, including but not limited to topography, utility corridors/easements, drainage patterns, noise, odors, or environmental contamination, would make development under the current plan designation inappropriate.

Regional Development

2021 Aerial - undeveloped



2025 Aerial - developed



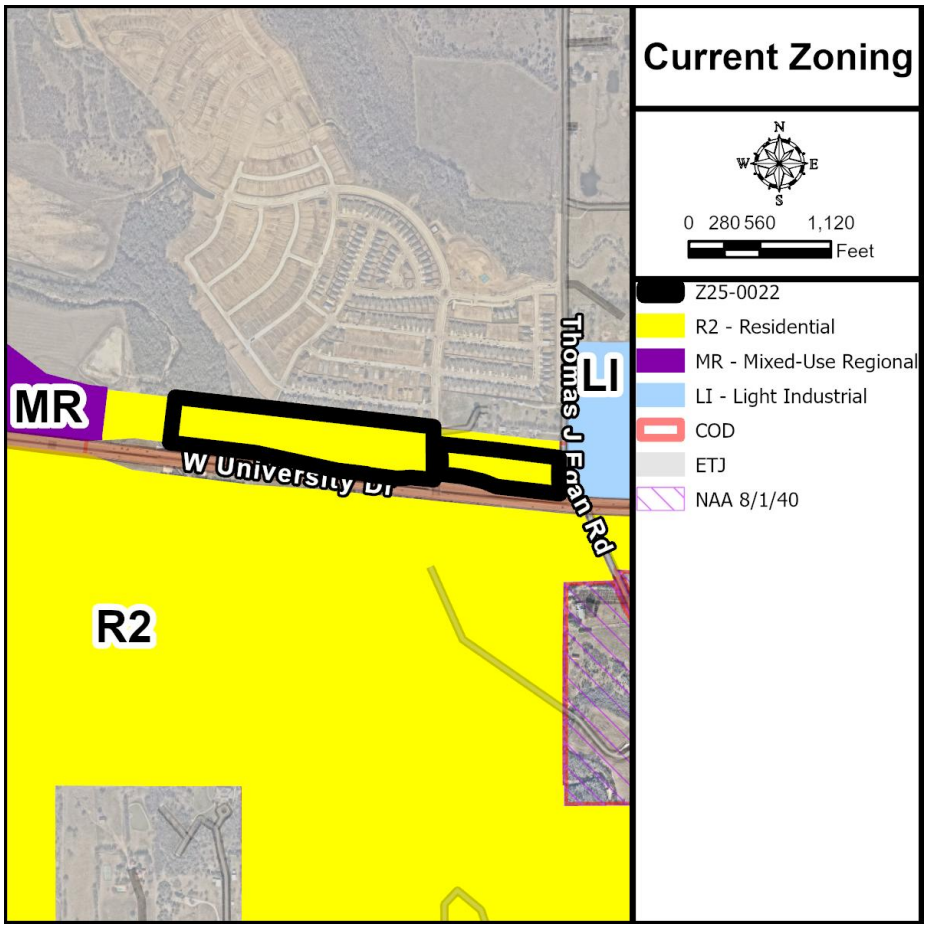
- Rayzor Ranch, East of IH-35 – residential, commercial, medical
- Industrial & Commercial West of IH-35, south of US 380
- MUD residential in ETJ 1 & 2
- Anticipated residential in City
- Subject Property - anticipated commercial north of US 380, South of Hickory Grove / Legends Ranch MUD

Recommendation

Staff recommends **approval** of the **Comprehensive Plan Amendment** request as it complies with the criteria in Section 2.4.5E of the Denton Development Code for approval of all applications, and Section 2.7.1D of the DDC for approval of a Comprehensive Plan Amendment.

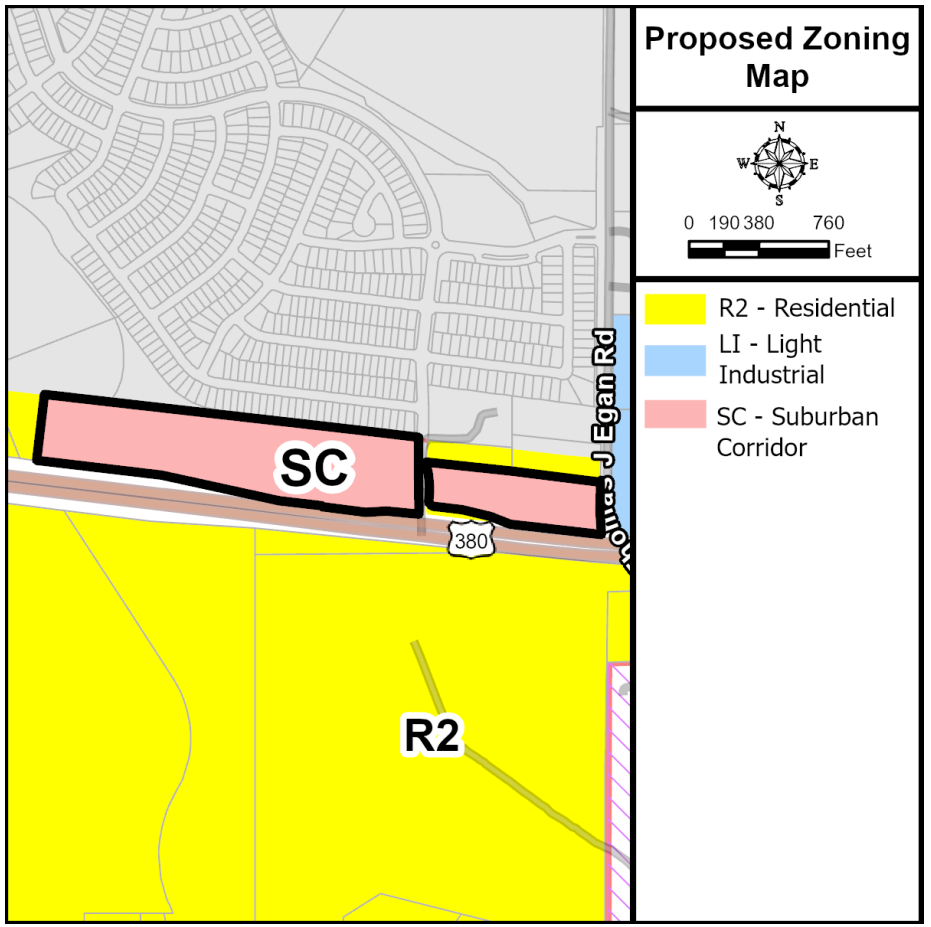
The Planning and Zoning Commission recommended **approval (5-1)** of the request.

Current Zoning (R2)



- **Single family residential**
- Min. 16,000 sf
- 40’ height

Requested Zoning (SC)



- **Commercial**
- Min. 10,000 sf
- Height transitions - Max 55’ height

Criteria for Approval – DDC 2.4.5E and 2.7.2D

Summary:

- ✓ Proposal intended to allow property to develop according to prior approvals
- ✓ Proposal intended to allow development compatible with surrounding development in City ETJ
- ✓ Generally consistent with the goals and policies and the proposed Future Land Use Map Amendment
- ✓ Regional growth reflects the need to allow for retail and commercial services within this corridor

General Approval Criteria for All Applications (Sec. 2.4.5E)

1. General Criteria
2. **Prior Approvals**
3. **Consistent with the Comprehensive Plan and Other Applicable Plans**
4. Compliance with this DDC
5. Compliance with other regulations
6. Consistent with Interlocal and Development Agreements
7. Minimizes Adverse Environmental Impacts
8. Minimizes Adverse Impacts on surrounding Property
9. **Minimizes Adverse Fiscal Impacts**
10. Compliance with Utility, Service, and Improvement Standards
11. Provides Adequate Road Systems
12. Provides Adequate Public Services and Facilities
13. **Rational Phasing Plan**

Zoning Criteria for Approval (Sec 2.7.2.D)

- **a. The proposed rezoning is consistent with the Future Land Use Map designation. [IF APPROVED]**
- b. The proposed rezoning is consistent with relevant Small Area Plan(s).
- **c. The proposed rezoning is consistent with the purpose statement of the proposed zoning district, as provided in Subchapter 3, Zoning Districts.**
- **d. There have been or will be significant changes in the area to warrant a zoning change.**
- **e. The intensity of development in the new zoning district is not expected to create significantly adverse impacts to surrounding properties or the neighborhood.**
- f. Public facilities and services are available to adequately serve the subject property while maintaining adequate level of service to existing development.
- g. There was an error in establishing the current zoning district.

Suburban Corridor (SC)

- The SC District is intended to provide **moderate- to high-intensity commercial**, office, and retail uses **along high-traffic corridors**

- The SC district provides **elevated building and landscape design**, buildings oriented to the street, and **appropriate buffering from adjacent neighborhoods**

- While the SC district is **primarily auto-oriented**, it provides a **safe environment for pedestrians and cyclists**

Zoning Districts Compared

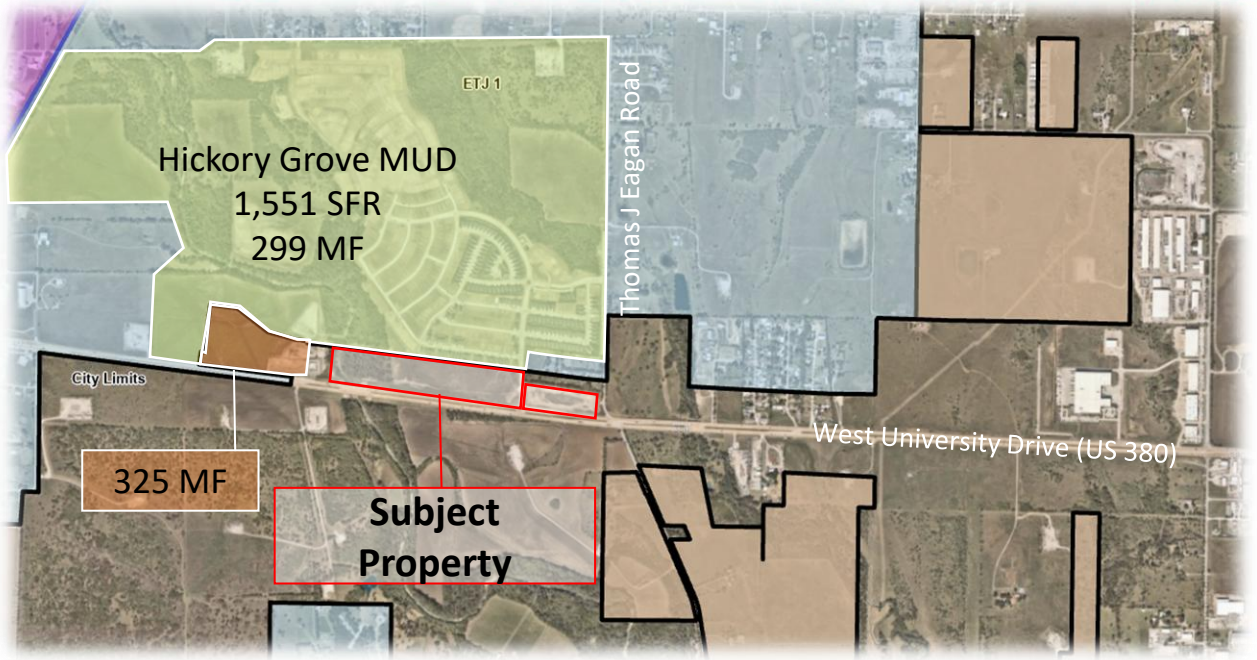
	R2	MR	HC	SC
Dimensional	16,000 sf	None	10,000 sf	10,000 sf
	20’ front, 10’ side, 10’ rear	None	20’ front, 10’ side, 15’ rear	20’ front, 5’ side, 10’ rear
	Max 40% coverage	Max 90% coverage	Max 80% coverage	Max 80% coverage
Site & Building Design	50% landscape area 50% tree canopy	25% landscape area 30% tree canopy	30% landscape area 30% tree canopy	20% landscape area 30% tree canopy
	Max 40’ height	**Max 100’ height**	**Max 100’ height**	**Max 55’ height**
Compatibility Requirements		Max 40’ height within 50’ of R2; max 55’ between 50’ & 100’ of R2; **max height with SUP**		Max 40’ height within 50’ of R2; max 55’ between 50’ & 100’ of R2
	15’ wide landscape buffer for developing commercial			
Permitted Uses	**Primarily residential and agriculture**	**Residential, commercial; urban scale and form**	**Primarily commercial, light industrial uses; SUP for MF**	**Primarily commercial; SUP for MF**

Prior Approvals & Compatibility

Hickory Grove Municipal Utility District

- *Special-purpose district created to provide essential services such as water, wastewater, and drainage to areas outside city limits.*

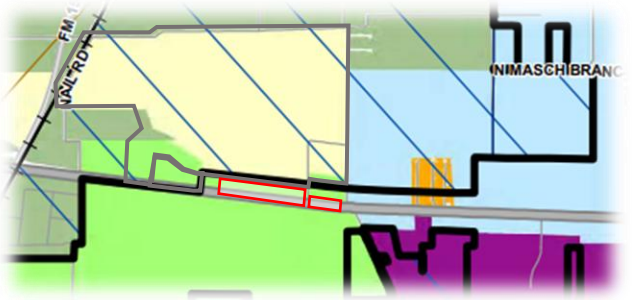
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- August 2024 - Amendment agreement to include additional multifamily units and partial annexation
- Dec. 2025 – Feb. 2026: Multifamily entitlements



Site Location – South of Hickory Grove / Legends Ranch MUD



Denton 2030 - Rural Areas



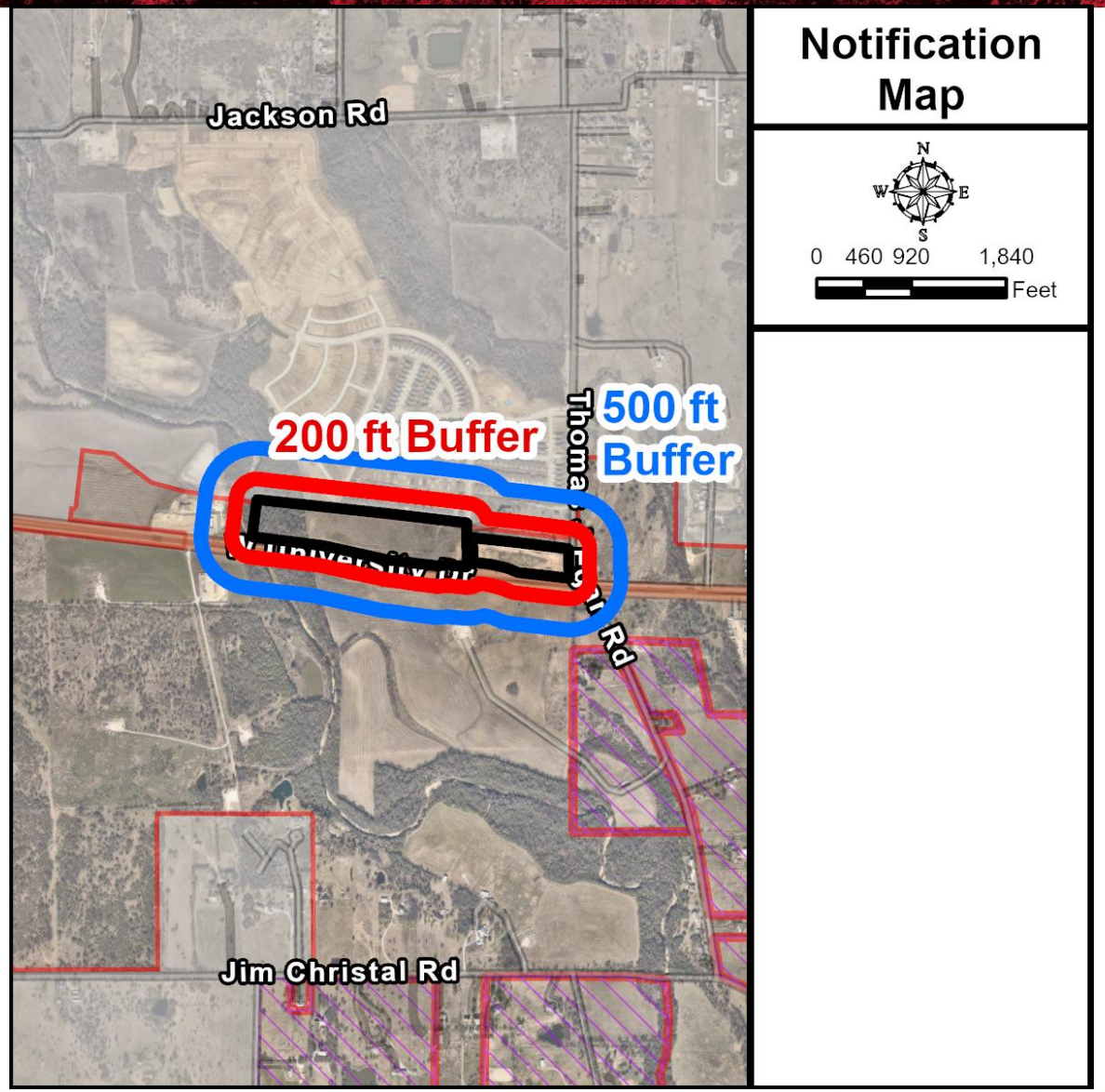
Denton 2040 - Agriculture & Low Residential

Notification

City website notice posed: December 19, 2025
Newspaper notice posted: December 27, 2025
Property notice posted: January 2, 2026
Mailed notices

- 200 ft. Public Hearing Notices mailed: 9
- 500 ft. Courtesy Notices mailed: 5

Staff has received no public responses regarding these requests.



Recommendation

Staff recommends **approval** of the **Rezoning** request, in conjunction with the Comprehensive Plan, as it complies with the criteria in Section 2.4.5E of the Denton Development Code for approval of all applications, and Section 2.7.3E of the DDC for approval of a rezone to a Planned Development.

The Planning and Zoning Commission recommended **approval (5-1)** of the request.

Action Needed

PH-5B. Comprehensive Plan Amendment

- *Agriculture & Low Residential FLUM → Regional Mixed Use FLUM*

PH-5C. Zoning Change

- *Residential 2 (R2) → Suburban Corridor (SC)*

QUESTIONS?

Mia Hines, AICP
Senior Planner
Development Services

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2025

SUBJECT

Conduct the first of two readings of an ordinance of the City of Denton, Texas annexing approximately 2.00 acres of land, approximately located 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road; approving a schedule of annexation; authorizing the City Manager to execute the agreement; and providing an effective date. (A25-0005b, 5811 Mills Rd Annexation, Angie Manglaris)

BACKGROUND

The owners, Victor and Leticia Lopez, (hereafter referred to as "Owner"), had a non-annexation agreement (ordinance 2012-263), which expired on August 1, 2020. Pursuant to Council direction, the City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded. By operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of approximately 2.00 acres approximately located 300.77 feet north of Mills Road and approximately 1,453 feet west of South Trinity Road (hereafter referred to as "Subject Property").

In accordance with State Law, non-annexation agreements (NAAs) were initially offered to property owners between 2010 and 2016 when the City was in the process of annexing land area within the Extra-Territorial Jurisdiction (ETJ). Texas Local Government Code Section 43.016 requires municipalities to offer NAA agreements to property owners of land area the City is interested in annexing if that land area is appraised for tax purposes as having agricultural, wildlife management, or timber use. In addition, the City also offered NAAs to properties used as single-family residences. NAAs entered into during this initial time period had an original expiration date of August 2020. In 2020, City Council directed staff to offer extensions of the NAAs to August 2040. In accordance with State Law, the total duration of the NAA shall not exceed 45 years.

The general requirements of the NAAS are as follows:

- The property may only be used for single-family residential, agricultural, wildlife, timber, or related uses.
- City of Denton regulations apply to proposed development.
- Development applications and building permits must be submitted and approved through the City of Denton.
- Land may be subdivided into smaller parcels via plating, provided the minimum lot size is at least 5 acres.
- Notification must be provided to the City if the property is sold.
- Properties with agriculture, wildlife management, or timberland exemptions are required to provide notice to the City if there is a change in exemption status.

- If the property owner does not abide by these requirements, or if the NAA expires, the City may proceed with annexation of the property.

Following Council direction in 2020, staff began engaging with property owners with expired NAAs in an effort to enter into new agreements with 2040 expiration dates. Between 2020 and 2021 a majority of property owners with expired NAAs entered into new agreements; however, 18 NAAs remained expired.

In 2024, staff revisited the topic of expired NAAs with City Council. Direction was given to contact the property owners of the 18 expired agreements to extend the NAAs and pursue annexation for any remaining expired NAAs. Initial letters offering NAA extensions were mailed in May 2024 with follow-up letters in June prior to the initial response deadline of June 21, 2024. Additional letters were mailed in September 2024, and a final letter was sent to the property owner on December 11, 2025. Currently, 7 of the 18 property owners with expired NAAs have entered into new agreements with the City. 11 NAAs remain expired and the City has begun the process of annexing these areas. Given the number of expired NAAs, staff will bring forward the annexation cases in groups based on parcel size, beginning with the smallest parcels.

The first reading of the annexation ordinance is the third of several steps required for a voluntary annexation based upon the requirements of TXLGC Sec. 43.0672 and the City's Charter as outlined below:

1. Approval of a Municipal Services Agreement
2. Annexation Public Hearing
3. **First Reading of Annexation Ordinance**
4. Publication of Annexation Ordinance
5. Second Reading and Adoption of Annexation Ordinance

The first three of these items are on this agenda, with this being the third required step in the process. Following the first reading of the annexation ordinance, the ordinance must be published in the newspaper, and the second reading is required to occur at least 30 days following ordinance publication.

The subject property is situated approximately 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road. The property to the south of the subject property is situated within the City of Denton's Extraterritorial Jurisdiction (ETJ) and is under the same ownership as the subject property. This property also has an expired non-annexation agreement. The property to the east is situated within the City's ETJ. The property to the west and north of the Subject Property is situated within the City limits and zoned Rural Residential (RR). Mills Road, south of the Subject Property, is a two-lane roadway, classified as a Secondary Arterial per the 2022 Mobility Plan and Thoroughfare Map.

The Future Land Use designation for the subject property is Low Residential. The description for this Future Land Use category is provided below:

> This category includes the city's predominantly single-family neighborhoods, with lot sizes ranging from one acre or more in rural fringe areas up to five units per acre gross density throughout many of the city's suburban subdivisions. Dwellings in this land use district are generally one to two stories with private driveways and open space, consisting of privately maintained tree canopy and front, back and side yards. Building and driveway orientation, the locations of private garages, building material, and the presence of sidewalks vary by neighborhood and the era of neighborhood development. Generally, these types of single-family neighborhoods are developed as distinct subdivisions that are linked by internal circulation systems with limited access to local and connector roads. This category may also include land uses that support residential neighborhoods, such as appropriately scaled commercial at arterial and collector street corners, and appropriately scaled public and quasi-public uses, such as religious and educational institutions.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)
The previously approved NAA (Ordinance 2012-363) expired on August 1, 2020.

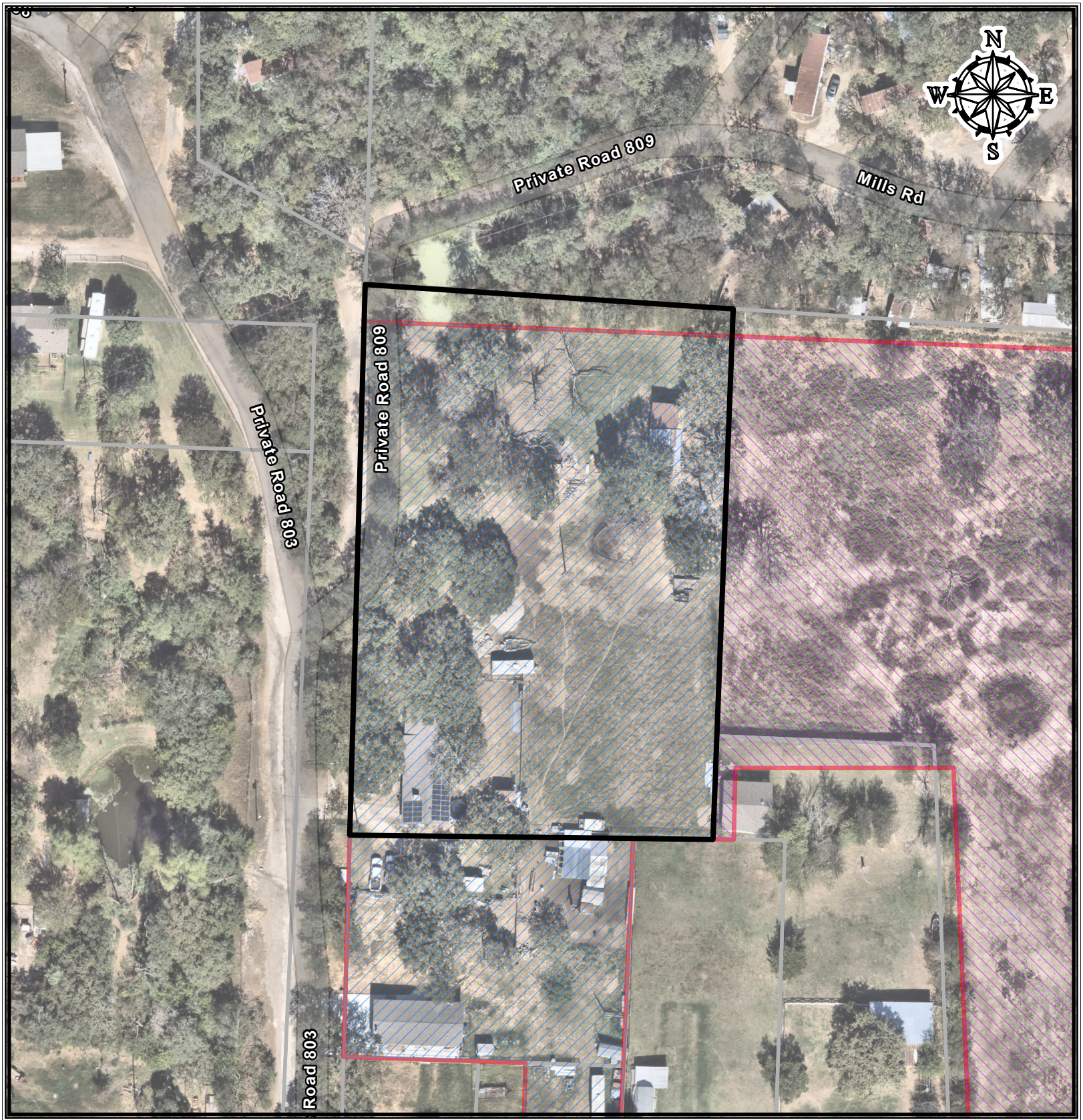
OPTIONS
No action is required for the first reading of the annexation ordinance.

EXHIBITS
Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Draft Annexation Ordinance
Exhibit 6 - Presentation

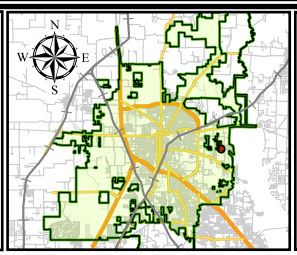
Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Angie Manglaris, AICP
Assistant Planning Director

A25-0005
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40

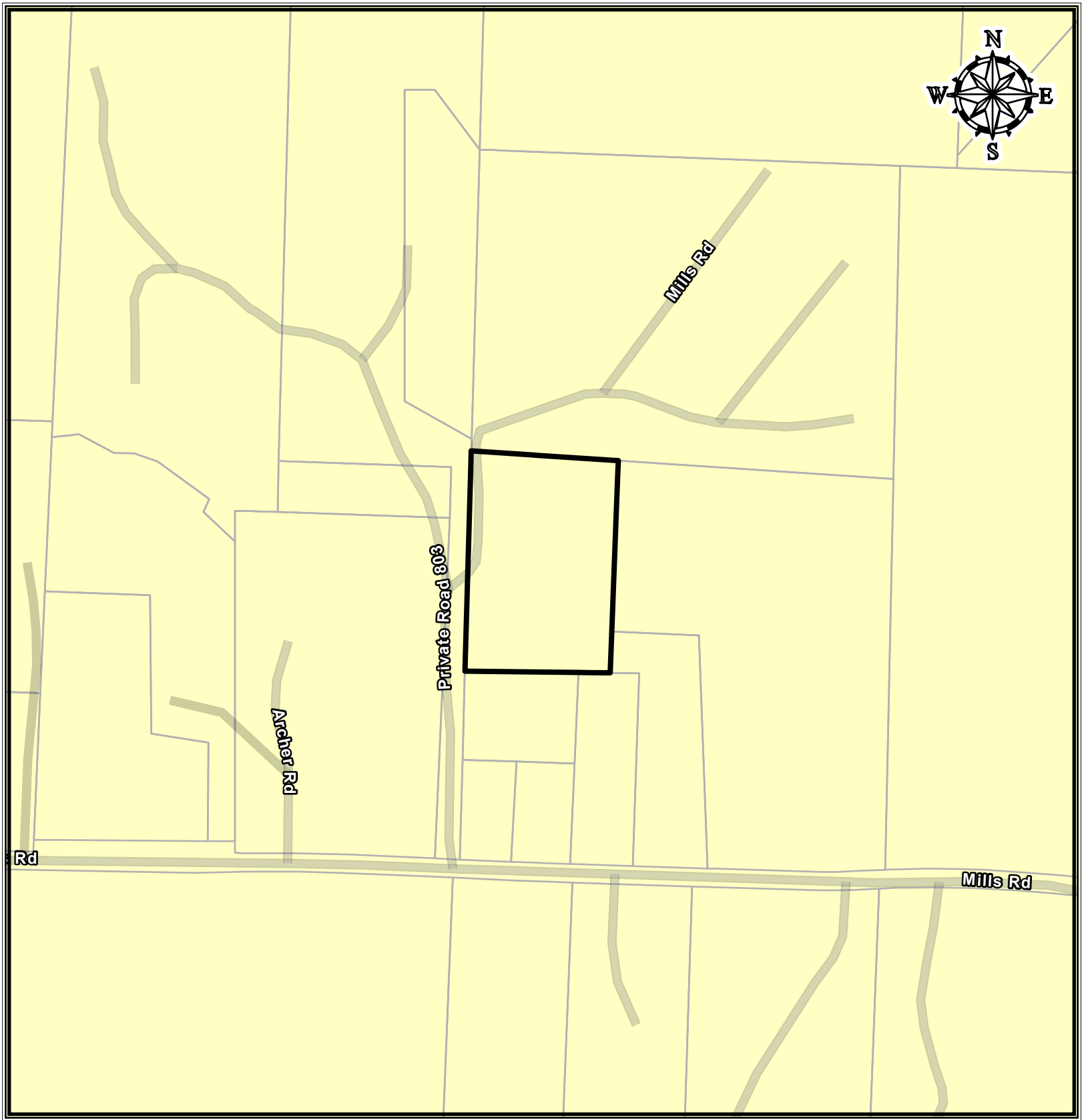


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CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

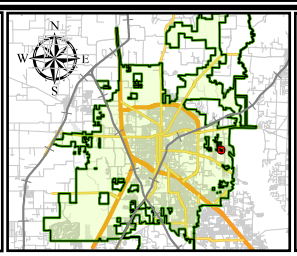
"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

A25-0005
Future Land Use Map



Future Land Use 2040

- Agriculture
- Rural Areas
- Low Residential
- Moderate Residential
- Master Planned Community
- Downtown Denton
- Regional Mixed Use
- Community Mixed Use
- Neighborhood Mixed Use
- Neighborhood / University Compatibility Area
- Business Center
- Light Industrial
- Industrial Commerce
- Government / Institutional
- Parks / Open Space
- Site Location

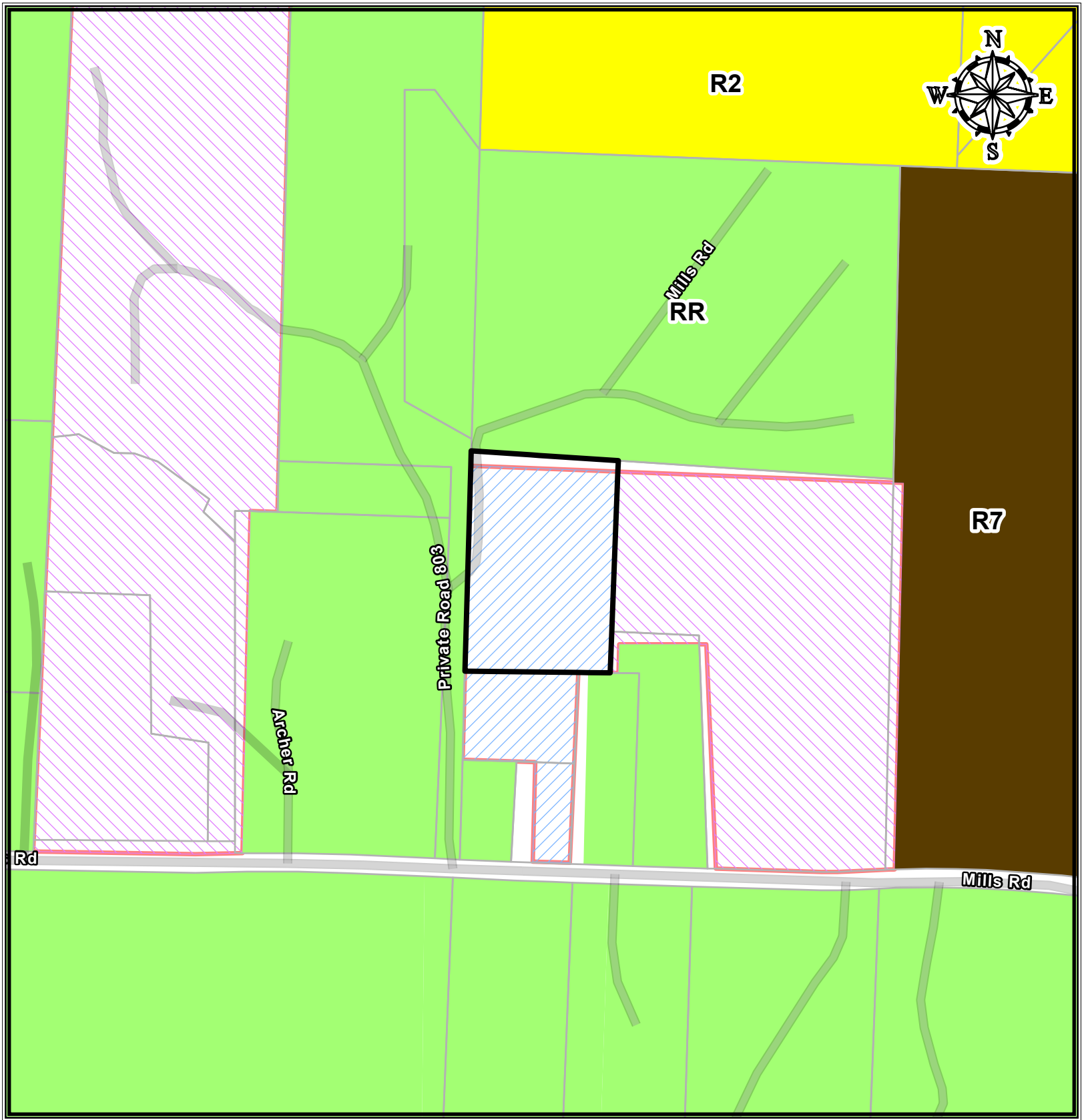


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Development Services · GIS
Date: 12/30/2025

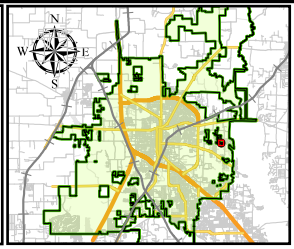
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A25-0005
Current Zoning Map



Current Zoning

- RR - Residential Rural
- R1 - Residential
- R2 - Residential
- R3 - Residential
- R4 - Residential
- R6 - Residential
- R7 - Residential
- MN - Mixed-Use Neighborhood
- MD - Mixed-Use Downtown Core
- MR - Mixed-Use Regional
- HC - Highway Corridor
- SC - Suburban Corridor
- GO - General Office
- LI - Light Industrial
- HI - Heavy Industrial
- PF - Public Facilities
- PD - Planned Development
- MPC
- OVERLAY



0 62.5 125 250 Feet

CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ANNEXING APPROXIMATELY 2.00 ACRES OF LAND, APPROXIMATELY LOCATED 300.77 FEET NORTH OF MILLS ROAD, APPROXIMATELY 1,453 FEET WEST OF SOUTH TRINITY ROAD; APPROVING A SCHEDULE OF ANNEXATION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. (A25-0005c)

WHEREAS, pursuant to Subchapter C-3, Chapter 43, Texas Local Government Code, a municipality may annex an area if the property owner requests the annexation; and

WHEREAS, the property owner Victor & Leticia Lopez (hereafter referred to as "Owner"), had a non-annexation agreement, ordinance 2012-363, which expired on August 1, 2020 and said non-annexation agreement provides that upon expiration of the agreement, the Property will be annexed; and

WHERAS. pursuant to Council direction, City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded; and

WHEREAS, the City of Denton and Owner have entered into a written Municipal Services Agreement for the provision of full municipal services to the Property to be annexed, in accordance with Tex. Loc. Gov't. Code Sec. 43.0672, and said agreement was approved by the City Council on February 17, 2026; and

WHEREAS, on February 17, 2026, the City Council held a public hearing to provide persons interested in the annexation the opportunity to be heard and to adopt an ordinance annexing the area, pursuant to Sec. 43.0673 of the Tex. Loc. Gov't. Code; and

WHEREAS, annexation proceedings were instituted for the Property upon the **first reading** of the ordinance at the City Council meeting on February 17, 2026; and

WHEREAS, this ordinance has been published in full one time in the official newspaper of the City of Denton after annexation proceedings were instituted, and 30 days prior to City Council taking final action, as required by Sec. 1.03 of the City Charter; and

WHEREAS, a **second reading** of the ordinance was conducted and final action on the annexation was taken at the City Council meeting on March 24, 2026; and

WHEREAS, the Denton City Council hereby deems it to be in the best interests of the citizens of the City of Denton to approve the annexation of the Property; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

DRAFT

SECTION 1. The findings and recitations in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The real property described in **Exhibit A** and depicted on **Exhibit B**, attached hereto and incorporated herein by reference, is annexed into the City of Denton, Texas.

SECTION 3. A service agreement approved by Ordinance No. _____, is attached as **Exhibit C** and made a part hereof for all intents and purposes.

SECTION 4. The newly annexed property shall be included within the corporate limits of the City of Denton, Texas, thereby extending the City's corporate limits and granting to all inhabitants of the newly annexed property all of the rights and privileges of other citizens and bringing the inhabitants to all of the ordinances, resolutions, acts, and regulations of the City. A copy of this Ordinance shall be filed in the real property records of the Denton County Clerk and within the Denton County Appraisal District.

SECTION 5. The City Manager is hereby authorized and directed to immediately correct the map of the City of Denton by adding thereto the additional territory annexed by this Ordinance, indicating on the map the date of annexation and the number of this Ordinance, and the ETJ resulting from such boundary extensions.

SECTION 6. Should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall be affected thereby.

SECTION 7. This ordinance shall be effective immediately upon its passage.

AND IT IS SO ORDERED

The motion to approve this ordinance was made by _____ and seconded by _____, the 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:	_____	_____	_____	_____

DRAFT

PASSED AND APPROVED this, the _____ day of _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:_____

DRAFT

EXHIBIT A
LEGAL DESCRIPTION

Being a 2.0 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed with Vendor's Lien dated December 4, 1971, from B.B. Mills, et al, to Jimmie D. Brown and wife, Reba Brown, filed for record on December 9, 1971, and recorded in Volume 634, Page 579, of the Real Property Records of Denton County, Texas. Said 2.0 acre tract of land is commonly known as DCAD Property ID 37223.

DRAFT

EXHIBIT B
LOCATION MAP

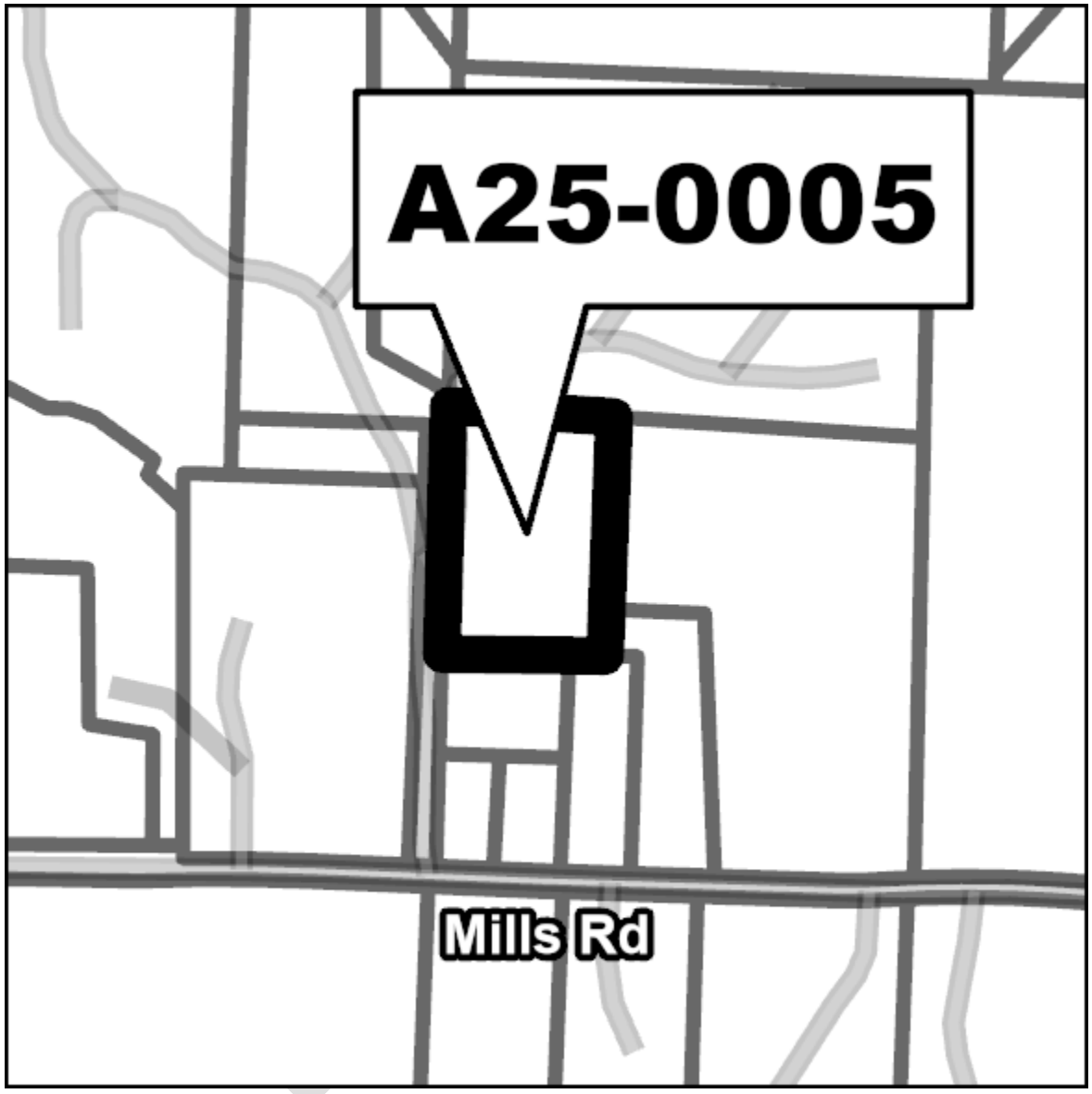


EXHIBIT C
MUNICIPAL SERVICES AGREEMENT

DRAFT

A25-0005b
5811 Mills Road Annexation
First Reading

Angie Manglaris, AICP

Assistant Planning Director

February 17, 2026

CITY OF DENTON

Request

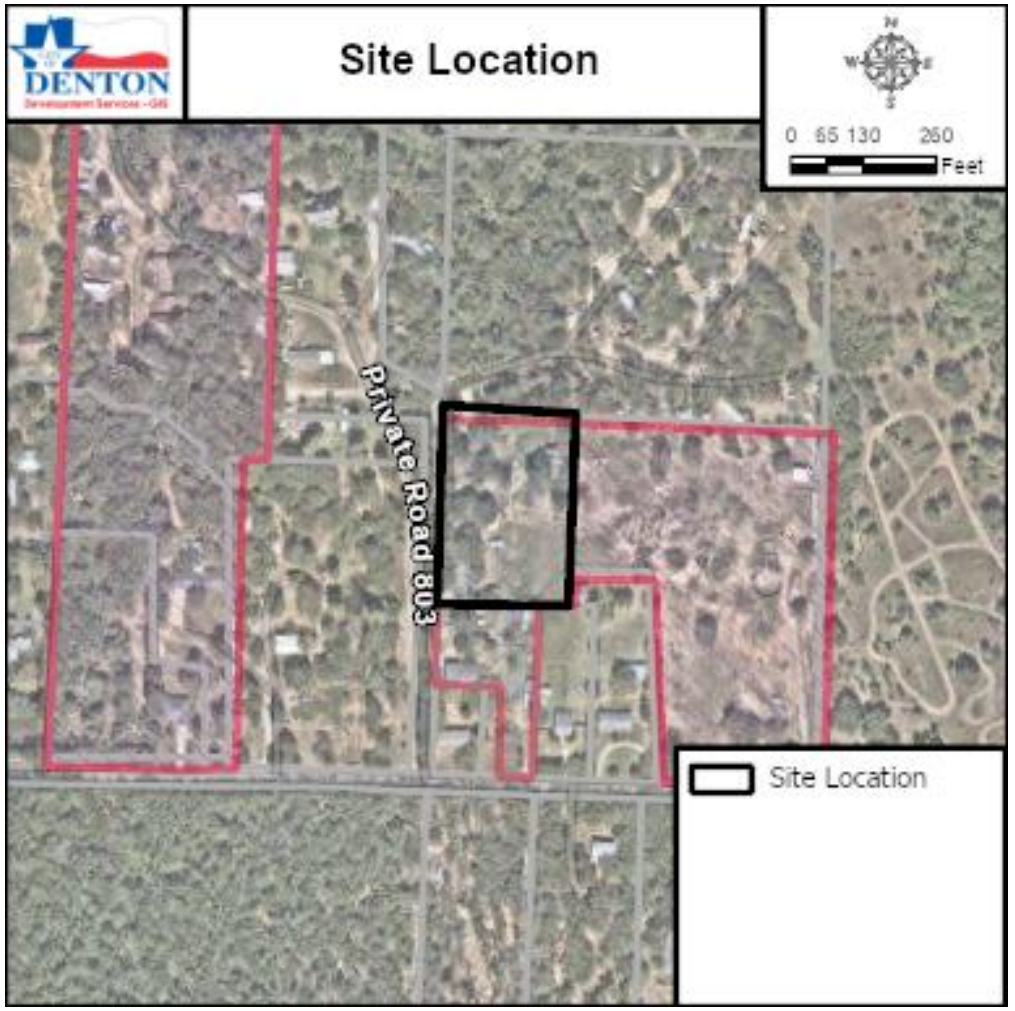
- Conduct the **first** of two readings of an ordinance of the City of Denton to annex approximately 2.00 acres of land

- Located approximately 300.77 feet north of Mills Road, approximately 1,453 feet west of South Trinity Road



Background

- Property owner had a non-annexation agreement that expired in August of 2020
- A new non-annexation agreement has not been signed
- Development includes a single-family home and accessory structures



Annexation Schedule

- **February 17, 2026**
  - Municipal Services Agreement – Action Required
  - Public Hearing – No Action
  - First Reading of the Annexation Ordinance – No Action

- **February 22, 2026**
  - Publication of Annexation Ordinance

- **March 24, 2026**
  - Second Reading and Adoption of the Annexation Ordinance – Action Required

Ordinance Caption

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ANNEXING APPROXIMATELY 2.00 ACRES OF LAND, APPROXIMATELY LOCATED 300.77 FEET NORTH OF MILLS ROAD, APPROXIMATELY 1,453 FEET WEST OF SOUTH TRINITY ROAD; APPROVING A SCHEDULE OF ANNEXATION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

QUESTIONS?

Angie Manglaris, AICP

Assistant Planning Direction

Development Services

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2025

SUBJECT

Conduct the first of two readings of an ordinance of the City of Denton, Texas annexing approximately 1.03 acres of land, generally located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road, into the City of Denton, Denton County, Texas; providing for a correction to the City map to include the annexed land; and providing for a savings clause and an effective date. (A25-0003b, Mills Rd Annexation, Ashley Ekstedt)

BACKGROUND

The owner, Victor Lopez, (hereafter referred to as "Owner"), had a non-annexation agreement (ordinance 2012-363), which expired on August 1, 2020. Pursuant to Council direction, the City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded. By operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of approximately 1.03 acres generally located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road (hereafter referred to as "Subject Property").

In accordance with State Law, non-annexation agreements (NAAs) were initially offered to property owners between 2010 and 2016 when the City was in the process of annexing land area within the Extra-Territorial Jurisdiction (ETJ). Texas Local Government Code Section 43.016 requires municipalities to offer NAA agreements to property owners of land area the City is interested in annexing if that land area is appraised for tax purposes as having agricultural, wildlife management, or timber use. In addition, the City also offered NAAs to properties used as single-family residences. NAAs entered into during this initial time period had an original expiration date of August 2020. In 2020, City Council directed staff to offer extensions of the NAAs to August 2040. In accordance with State Law, the total duration of the NAA shall not exceed 45 years.

The general requirements of the NAAS are as follows:

- The property may only be used for single-family residential, agricultural, wildlife, timber, or related uses.
- City of Denton regulations apply to proposed development.
- Development applications and building permits must be submitted and approved through the City of Denton.
- Land may be subdivided into smaller parcels via plating, provided the minimum lot size is at least 5 acres.
- Notification must be provided to the City if the property is sold.

- Properties with agriculture, wildlife management, or timberland exemptions are required to provide notice to the City if there is a change in exemption status.
- If the property owner does not abide by these requirements, or if the NAA expires, the City may proceed with annexation of the property.

Following Council direction in 2020, staff began engaging with property owners with expired NAAs in an effort to enter into new agreements with 2040 expiration dates. Between 2020 and 2021 a majority of property owners with expired NAAs entered into new agreements; however, 18 NAAs remained expired.

In 2024, staff revisited the topic of expired NAAs with City Council. Direction was given to contact the property owners of the 18 expired agreements to extend the NAAs and pursue annexation for any remaining expired NAAs. Initial letters offering NAA extensions were mailed in May 2024 with follow-up letters in June prior to the initial response deadline of June 21, 2024. Additional letters were mailed in September 2024, and a final letter was sent to the property owner on December 11, 2025. Currently, 7 of the 18 property owners with expired NAAs have entered into new agreements with the City. 11 NAAs remain expired and the City has begun the process of annexing these areas. Given the number of expired NAAs, staff will bring forward the annexation cases in groups based on parcel size, beginning with the smallest parcels.

The first reading of the annexation ordinance is the third of several steps required for a voluntary annexation based upon the requirements of TXLGC Sec. 43.0672 and the City's Charter as outlined below:

1. Approval of a Municipal Services Agreement
2. Annexation Public Hearing
3. **First Reading of Annexation Ordinance**
4. Publication of Annexation Ordinance
5. Second Reading and Adoption of Annexation Ordinance

The first three of these items are on this agenda, with this being the third required step in the process. Following the first reading of the annexation ordinance, the ordinance must be published in the newspaper, and the second reading is required to occur at least 30 days following ordinance publication.

The subject property is situated on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road. The property to the north of the subject property is situated within the City of Denton's Extraterritorial Jurisdiction (ETJ) and is under the same ownership as the subject property. This property also has an expired non-annexation agreement. The property to the east, west, and south of the Subject Property is situated within the City limits and zoned Rural Residential (RR). Mills Road, abutting the Subject Property to the south, is a two-lane roadway, classified as a Secondary Arterial per the 2022 Mobility Plan and Thoroughfare Map.

The Future Land Use designation for the subject property is Low Residential. The description for this Future Land Use category is provided below:

> This category includes the city's predominantly single-family neighborhoods, with lot sizes ranging from one acre or more in rural fringe areas up to five units per acre gross density throughout many of the city's suburban subdivisions. Dwellings in this land use district are generally one to two stories with private driveways and open space, consisting of privately maintained tree canopy and front, back and side yards. Building and driveway orientation, the locations of private garages, building material, and the presence of sidewalks vary by neighborhood and the era of neighborhood development. Generally, these types of single-family neighborhoods are developed as distinct subdivisions that are linked by internal circulation systems with limited access to local and

connector roads. This category may also include land uses that support residential neighborhoods, such as appropriately scaled commercial at arterial and collector street corners, and appropriately scaled public and quasi-public uses, such as religious and educational institutions.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

December 18, 2012	City Council	Non-Annexation Agreement	Approved

OPTIONS

No action is required for the first reading of the annexation ordinance.

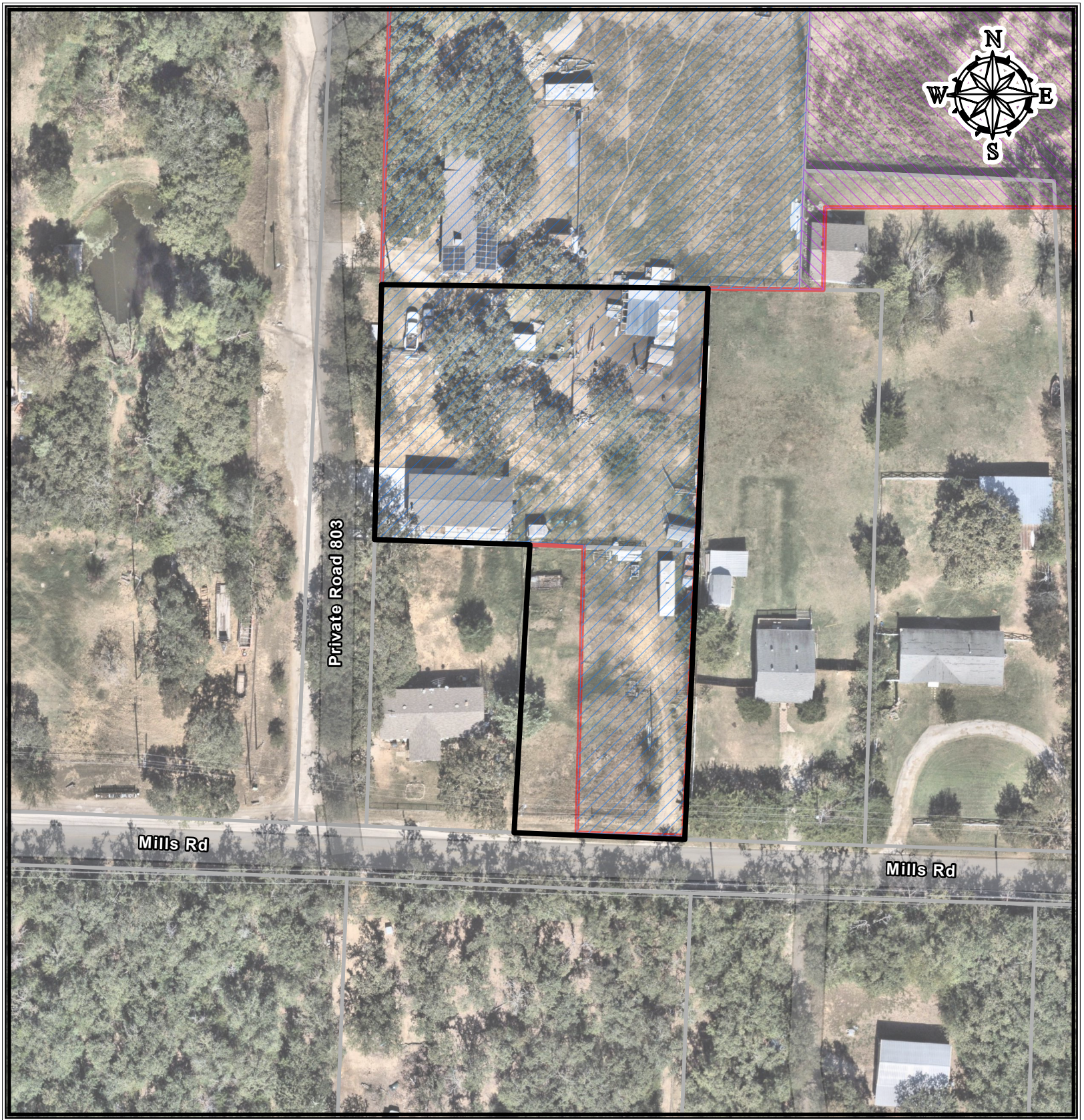
EXHIBITS

Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Draft Annexation Ordinance
Exhibit 6 - Presentation

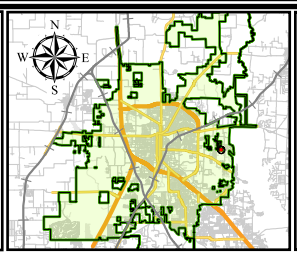
Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Ashley Ekstedt, AICP
Associate Planner

A25-0003
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40

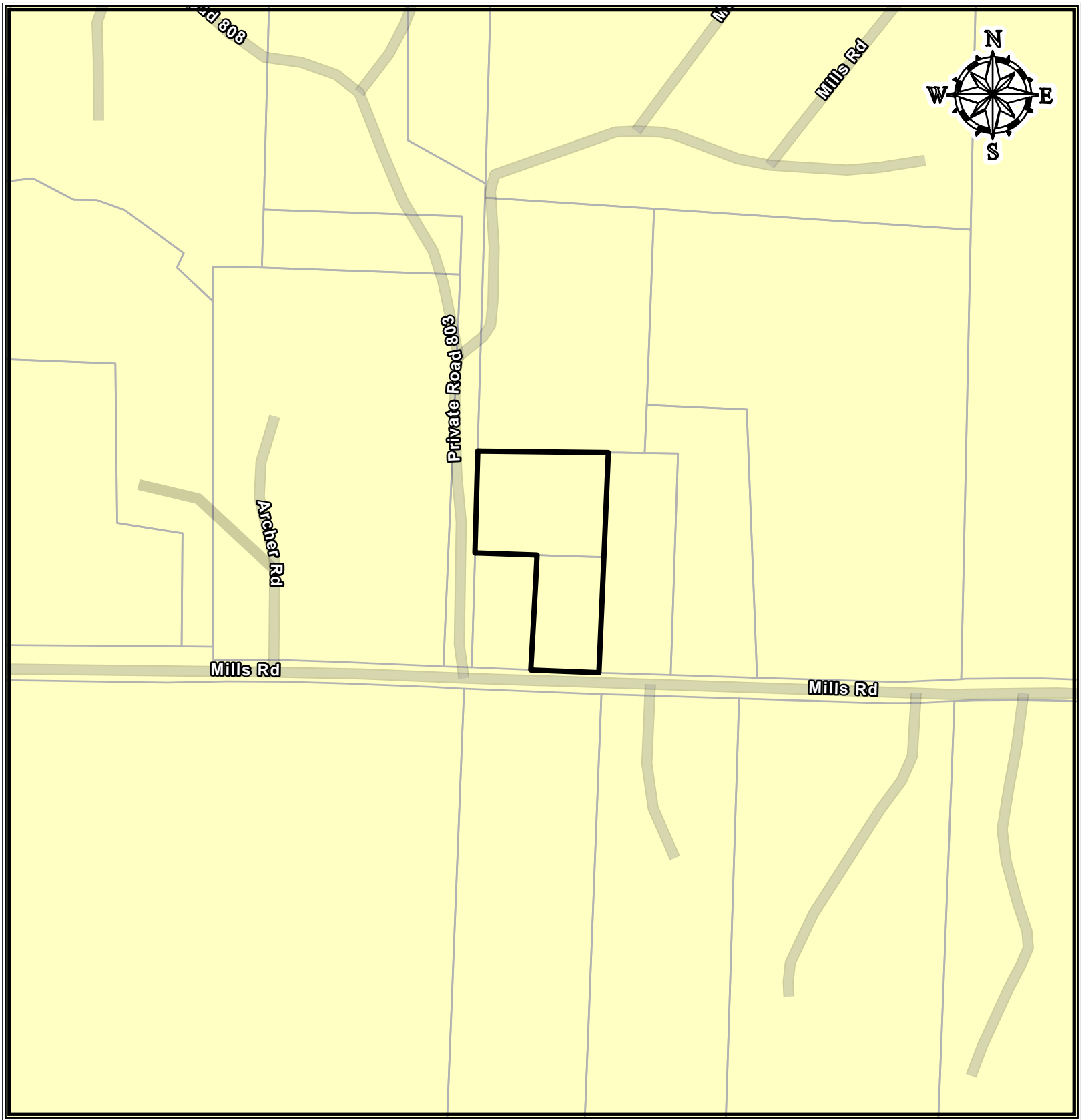


0 20 40 80 Feet

CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

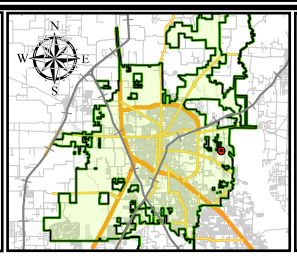
"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

A25-0003
Future Land Use Map



Future Land Use 2040

- Agriculture
- Rural Areas
- Low Residential
- Moderate Residential
- Master Planned Community
- Downtown Denton
- Regional Mixed Use
- Community Mixed Use
- Neighborhood Mixed Use
- Neighborhood / University Compatibility Area
- Business Center
- Light Industrial
- Industrial Commerce
- Government / Institutional
- Parks / Open Space
- Site Location

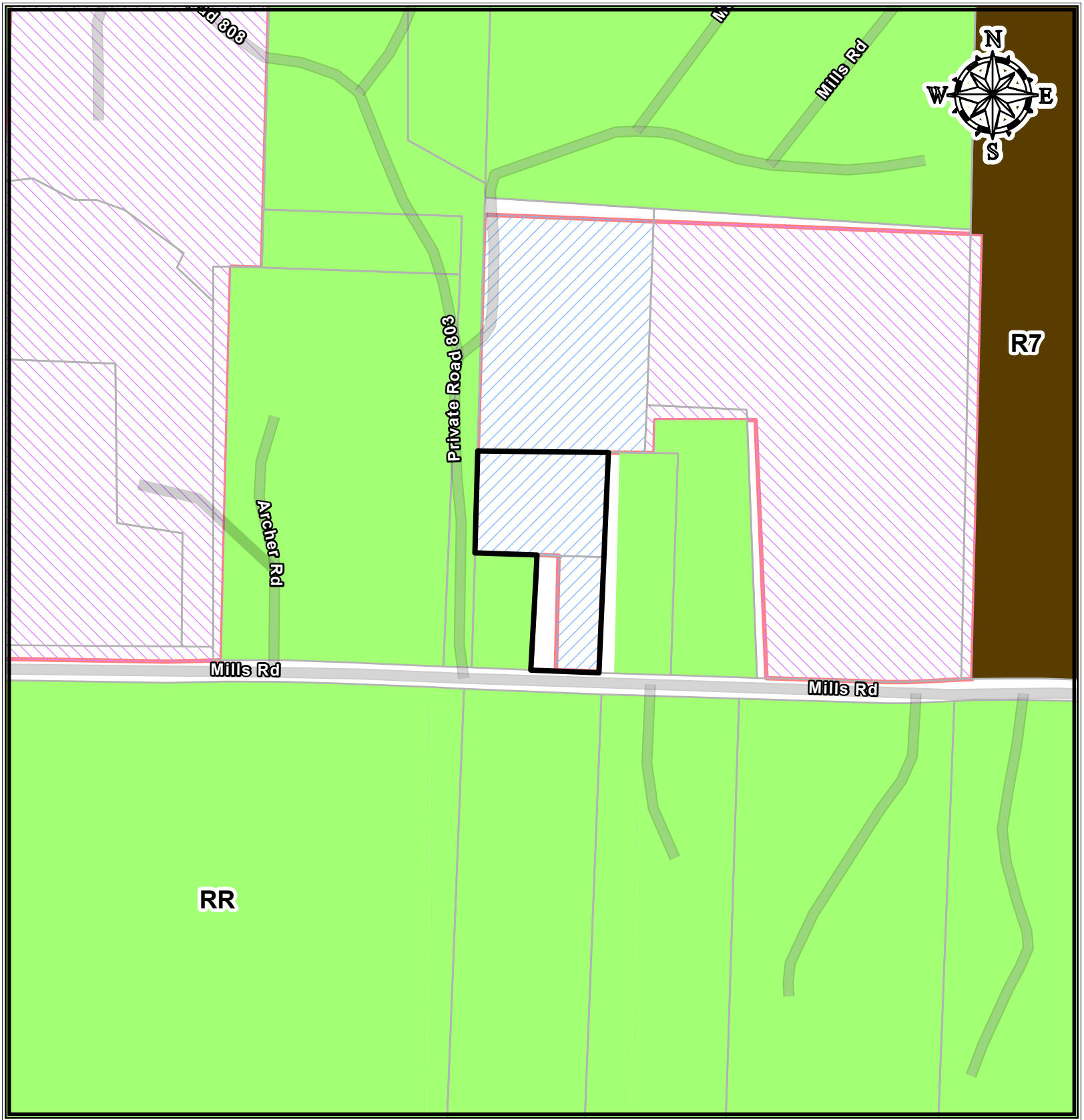


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CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

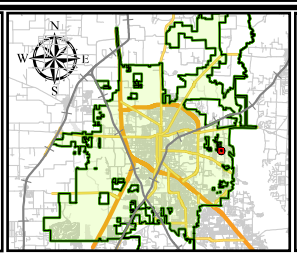
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A25-0003
Current Zoning Map



Current Zoning

- RR - Residential Rural
- R1 - Residential
- R2 - Residential
- R3 - Residential
- R4 - Residential
- R6 - Residential
- R7 - Residential
- MN - Mixed-Use Neighborhood
- MD - Mixed-Use Downtown Core
- MR - Mixed-Use Regional
- HC - Highway Corridor
- SC - Suburban Corridor
- GO - General Office
- LI - Light Industrial
- HI - Heavy Industrial
- PF - Public Facilities
- PD - Planned Development
- MPC
- OVERLAY



0 55 110 220 Feet

CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ANNEXING APPROXIMATELY 1.03 ACRES OF LAND, GENERALLY LOCATED ON THE NORTH SIDE OF MILLS ROAD, APPROXIMATELY 1,453 FEET WEST OF SOUTH TRINITY ROAD, INTO THE CITY OF DENTON, DENTON COUNTY, TEXAS; PROVIDING FOR A CORRECTION TO THE CITY MAP TO INCLUDE THE ANNEXED LAND; AND PROVIDING FOR A SAVINGS CLAUSE AND AN EFFECTIVE DATE. (A25-0003c)

WHEREAS, pursuant to Subchapter C-3, Chapter 43, Texas Local Government Code, a municipality may annex an area if the property owner requests the annexation; and

WHEREAS, the Owner had a non-annexation agreement, ordinance 2012-363, which expired on August 1, 2020 and said non-annexation agreement provides that upon expiration of the agreement, the Property will be annexed; and

WHEREAS, pursuant to Council direction, City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded; and

WHEREAS, by operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of the Property; and

WHEREAS, the City of Denton and Owner have entered into a written Municipal Services Agreement for the provision of full municipal services to the Property to be annexed, in accordance with Tex. Loc. Gov't. Code Sec. 43.0672, and said agreement was approved by the City Council on November 18, 2025; and

WHEREAS, on February 17, 2026, the City Council held a public hearing to provide persons interested in the annexation the opportunity to be heard and to adopt an ordinance annexing the area, pursuant to Sec. 43.0673 of the Tex. Loc. Gov't. Code; and

WHEREAS, annexation proceedings were instituted for the Property upon the **first reading** of the ordinance at the City Council meeting on February 17, 2026; and

WHEREAS, this ordinance has been published in full one time in the official newspaper of the City of Denton after annexation proceedings were instituted, and 30 days prior to City Council taking final action, as required by Sec. 1.03 of the City Charter; and

WHEREAS, a **second reading** of the ordinance was conducted and final action on the annexation was taken at the City Council meeting on March 24, 2026; and

WHEREAS, the Denton City Council hereby deems it to be in the best interests of the citizens of the City of Denton to approve the annexation of the Property; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The real property described in **Exhibit A** and depicted on **Exhibit B**, attached hereto and incorporated herein by reference, is annexed into the City of Denton, Texas.

SECTION 3. A service agreement approved by Ordinance No. _____, is attached as **Exhibit C** and made a part hereof for all intents and purposes.

SECTION 4. The newly annexed property shall be included within the corporate limits of the City of Denton, Texas, thereby extending the City's corporate limits and granting to all inhabitants of the newly annexed property all of the rights and privileges of other citizens and bringing the inhabitants to all of the ordinances, resolutions, acts, and regulations of the City. A copy of this Ordinance shall be filed in the real property records of the Denton County Clerk and within the Denton County Appraisal District.

SECTION 5. The City Manager is hereby authorized and directed to immediately correct the map of the City of Denton by adding thereto the additional territory annexed by this Ordinance, indicating on the map the date of annexation and the number of this Ordinance, and the ETJ resulting from such boundary extensions.

SECTION 6. Should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall be affected thereby.

SECTION 7. This ordinance shall be effective immediately upon its passage.

AND IT IS SO ORDERED

The motion to approve this ordinance was made by _____ and seconded by _____, the 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 _____, 2026.

_____

GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:_____

EXHIBIT A
LEGAL DESCRIPTION

Being a 2.0 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated September 20, 1973, from H.L. Harris to Jimmie D. Brown and wife, Reba E. Brown, filed for record on September 20, 1973, and recorded in Volume 686, Page 82, of the Real Property Records of Denton County, Texas, SAVE and EXCEPT the following three (3) tracts of land: A 0.344 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated February 21, 1985, from Jimmie D. Brown and wife, Reba E. Brown, to Jimmie D. Brown, Jr. and wife, Brenda Danielle Brown, filed for record on March 5, 1985, and recorded in Volume 1534, Page 805, of the Real Property Records of Denton County, Texas. Said 0.344 acre tract of land is commonly known as DCAD Property ID 161515. A 0.344 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated May 9, 1986, from Jimmie D. Brown and wife, Reba E. Brown, to Jeffery G. Brown, filed for record on May 12, 1986, and recorded in Volume 1882, Page 499, of the Real Property Records of Denton County, Texas. Said 0.344 acre tract of land is commonly known as DCAD Property ID 121712. A called 0.688 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated May 9, 1986, from Jimmie D. Brown and wife, Reba E. Brown, to John C. Brown and wife, Shelia M. Brown, filed for record on May 12, 1986, and recorded in Volume 1882, Page 503, of the Real Property Records of Denton County, Texas. Said 0.688 acre tract of land is commonly known as DCAD Property ID 131805.

Leaving a called 0.69 acre tract of land that is commonly known as DCAD Property ID 37221.

TOGETHER WITH

Being a 0.344 acre tract of land, more or less, situated in the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas, and being more fully described in that Warranty Deed dated January 27, 1998, from John C. Brown and wife, Shelia M. Brown, to Jeffery G. Brown and wife, Gina C. Brown, filed for record on March 23, 1998, and recorded in Volume 4055, Page 284, of the Real Property Records of Denton County, Texas. Said 0.344 acre tract of land is commonly known as DCAD Property ID 121712.

EXHIBIT B
LOCATION MAP

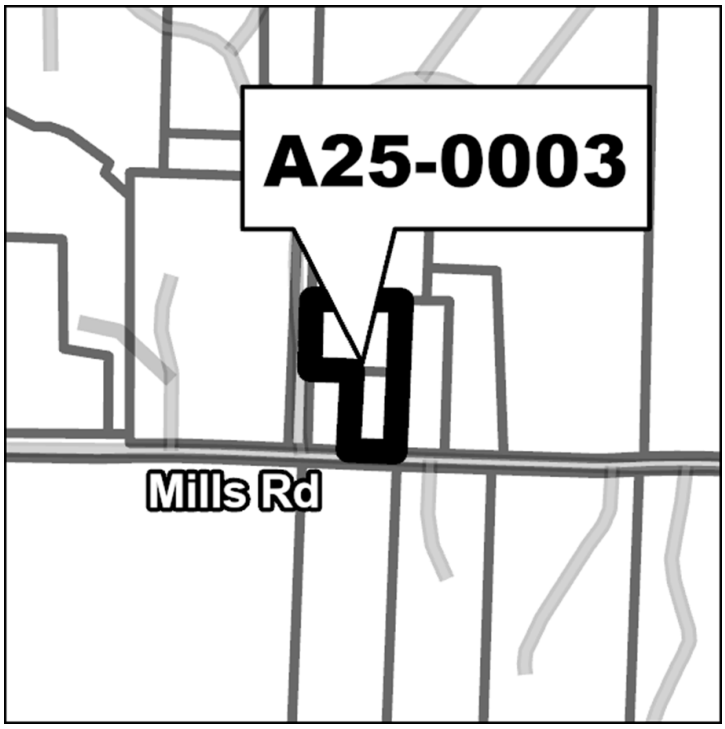
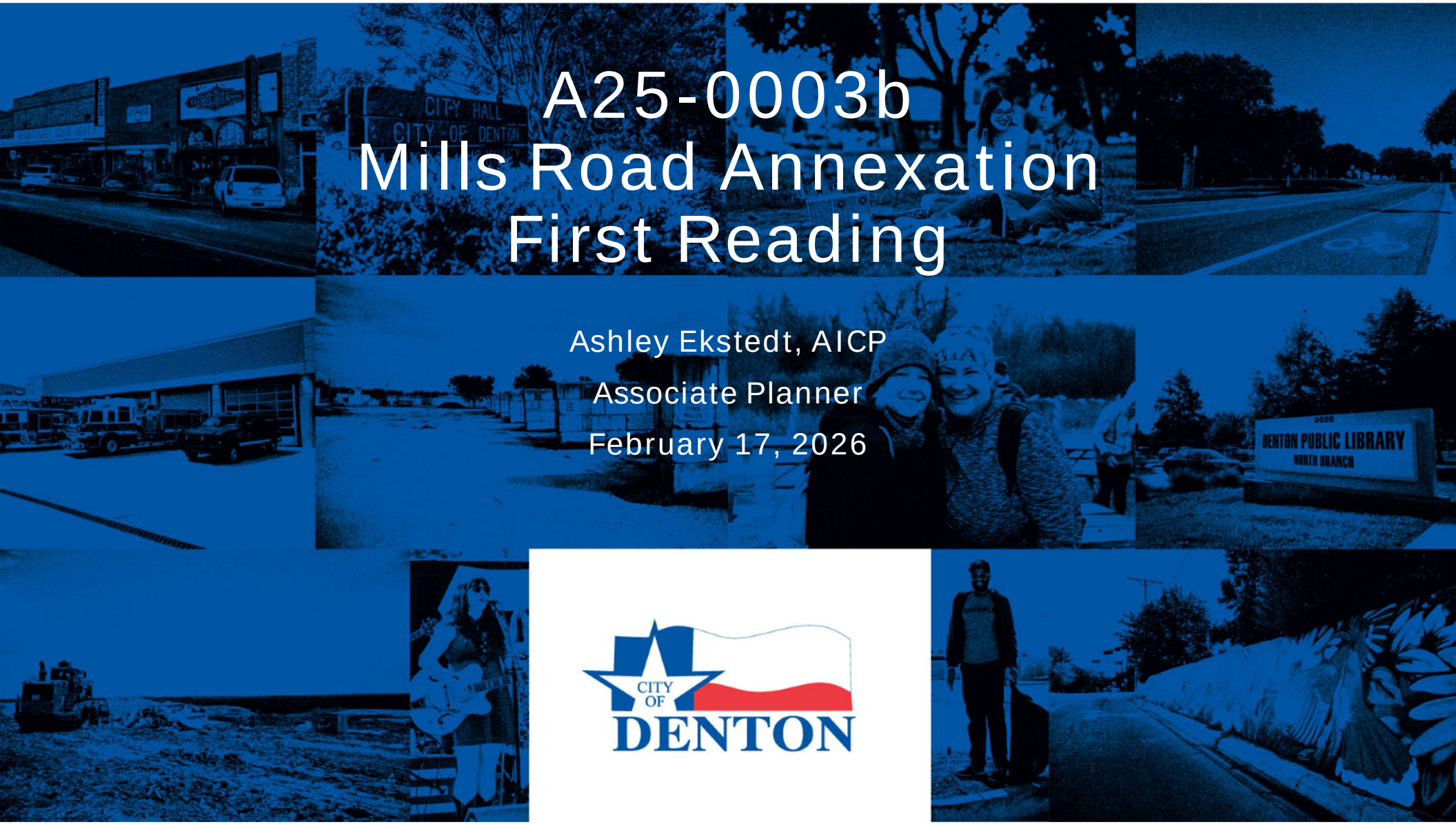


EXHIBIT C
MUNICIPAL SERVICES AGREEMENT



A25-0003b
Mills Road Annexation
First Reading

Ashley Ekstedt, AICP

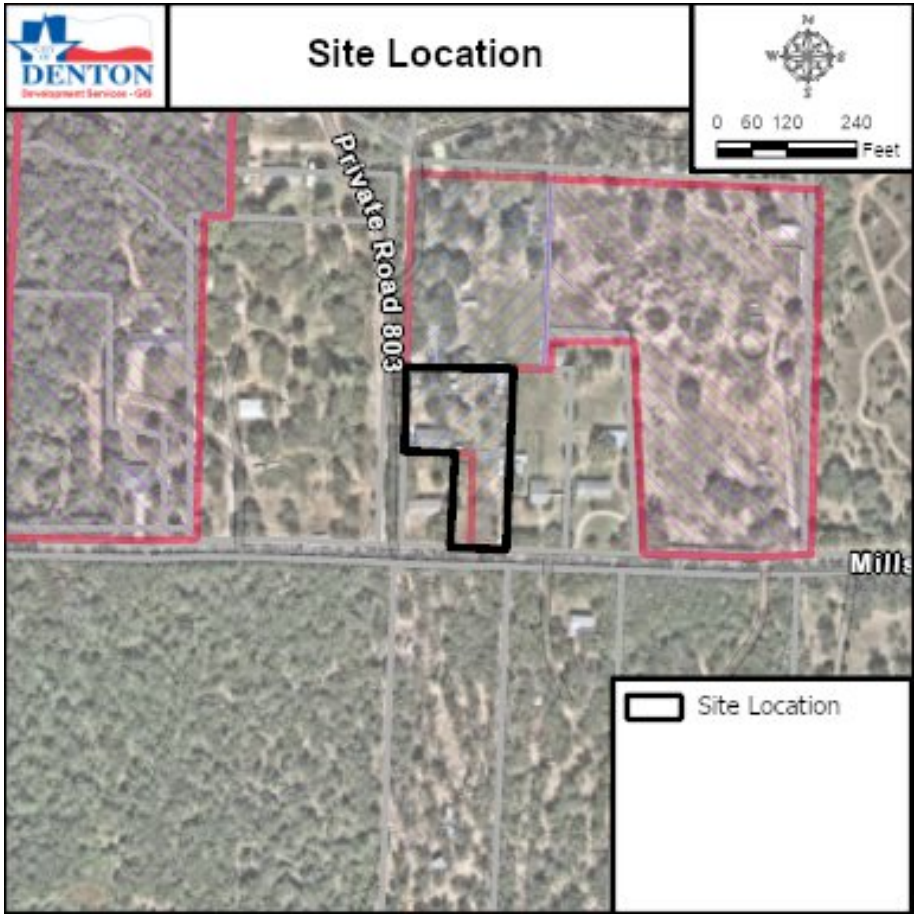
Associate Planner

February 17, 2026

Request

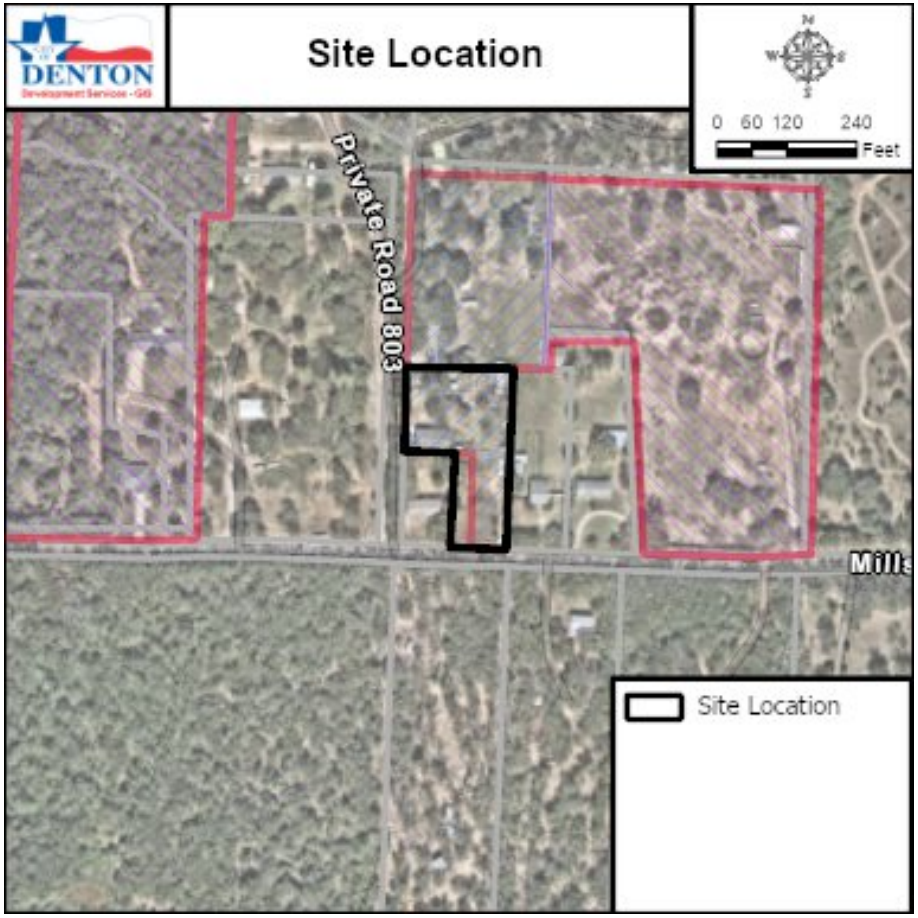
- Conduct the first of two readings of an ordinance of the City of Denton to annex approximately 1.03 acres of land

- Located on the north side of Mills Road, approximately 1,453 feet west of South Trinity Road



Background

- Property owner had a non-annexation agreement that expired in August of 2020
- A new non-annexation agreement has not been signed
- Development includes a single-family home and outbuildings



Annexation Schedule

- February 17, 2026
  - Municipal Services Agreement – Action Required
  - Public Hearing – No Action
  - First Reading of the Annexation Ordinance – No Action

- February 22, 2026
  - Publication of Annexation Ordinance

- March 24, 2026
  - Second Reading and Adoption of the Annexation Ordinance – Action Required

Ordinance Caption

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ANNEXING APPROXIMATELY 1.03 ACRES OF LAND, GENERALLY LOCATED ON THE NORTH SIDE OF MILLS ROAD, APPROXIMATELY 1,453 FEET WEST OF SOUTH TRINITY ROAD, INTO THE CITY OF DENTON, DENTON COUNTY, TEXAS; PROVIDING FOR A CORRECTION TO THE CITY MAP TO INCLUDE THE ANNEXED LAND; AND PROVIDING FOR A SAVINGS CLAUSE AND AN EFFECTIVE DATE.

QUESTIONS?

Ashley Ekstedt, AICP
Associate Planner
Development Services

City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

DCM: Cassey Ogden

DATE: February 17, 2026

SUBJECT

Conduct the first of two readings of an ordinance of the City of Denton, Texas annexing approximately 1.09 acres of land, generally located 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road, into the City of Denton, Denton County, Texas; providing for a correction to the City map to include the annexed land; and providing for a savings clause and an effective date. (A25-0004b, Swisher Road, Bryce Van Arsdale)

BACKGROUND

The owner, J. Doss Phillips, (hereafter referred to as "Owner"), had a non-annexation agreement (ordinance 2012-362), which expired on August 1, 2020. Pursuant to Council direction, the City corresponded with the Owner on multiple occasions, including April 23, 2024, June 13, 2024, and December 11, 2025, to offer a new annexation agreement, but the Owner has not responded. By operation of the expired non-annexation agreement, the Owner has filed a written petition with the City for voluntary annexation of approximately 1.09 acres of land, generally located 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road (hereafter referred to as "Subject Property").

In accordance with State Law, Non-Annexation Agreements (NAAs) were initially offered to property owners between 2010 and 2016 when the City was in the process of annexing land area within the Extra-Territorial Jurisdiction (ETJ). Texas Local Government Code Section 43.016 requires municipalities to offer NAA agreements to property owners of land area the City is interested in annexing if that land area is appraised for tax purposes as having agricultural, wildlife management, or timber use. In addition, the City also offered NAAs to properties used as single-family residences. NAAs entered into during this initial time period had an original expiration date of August 2020. In 2020, City Council directed staff to offer extensions of the NAAs to August 2040. In accordance with State Law, the total duration of the NAA shall not exceed 45 years.

The general requirements of the NAAs are as follows:

- The property may only be used for single-family residential, agricultural, wildlife, timber, or related uses.
- City of Denton regulations apply to proposed development.
- Development applications and building permits must be submitted and approved through the City of Denton.
- Land may be subdivided into smaller parcels via plating, provided the minimum lot size is at least 5 acres.
- Notification must be provided to the City if the property is sold.

- Properties with agriculture, wildlife management, or timberland exemptions are required to provide notice to the City if there is a change in exemption status.
- If the property owner does not abide by these requirements, or if the NAA expires, the City may proceed with annexation of the property.

Following Council direction in 2020, staff began engaging with property owners with expired NAAs in an effort to enter into new agreements with 2040 expiration dates. Between 2020 and 2021 a majority of property owners with expired NAAs entered into new agreements; however, 18 NAAs remained expired.

In 2024, staff revisited the topic of expired NAAs with City Council. Direction was given to contact the property owners of the 18 expired agreements to extend the NAAs and pursue annexation for any remaining expired NAAs. Initial letters offering NAA extensions were mailed in May 2024 with follow-up letters in June prior to the initial response deadline of June 21, 2024. Additional letters were mailed in September 2024, and a final letter was sent to the property owner on December 11, 2025. Currently, 7 of the 18 property owners with expired NAAs have entered into new agreements with the City. 11 NAAs remain expired and the City has begun the process of annexing these areas. Given the number of expired NAAs, staff will bring forward the annexation cases in groups based on parcel size, beginning with the smallest parcels.

The first reading of the annexation ordinance is the third of several steps required for an annexation based upon the requirements of TXLGC Sec. 43.0672 and the City's Charter as outlined below:

1. Approval of a Municipal Services Agreement
2. Annexation Public Hearing
3. **First Reading of Annexation Ordinance**
4. Publication of Annexation Ordinance
5. Second Reading and Adoption of Annexation Ordinance

The first three of these items are on this agenda, with this being the third required step in the process. Following the first reading of the annexation ordinance, the ordinance must be published in the newspaper, and the second reading is required to occur at least 30 days following ordinance publication.

The subject property is situated 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road. Swisher Road, the nearest right-of-way, is classified as a Proposed Secondary Arterial according to the 2022 Mobility Plan. The properties to the south and east of the subject property are situated within the City of Denton City Limits and classified under the Rural Residential (RR) zoning district. The property to the north of the subject property is within City Limits and zoned as Public Facilities (PF) zoning district; this property is maintained by the City as Villages of Carmel Park. The properties to the west of the subject property are within city limits and zoned as Residential-6 (R6) zoning district.

The Future Land Use designation for the subject property is Moderate Residential within the Denton 2040 Comprehensive Plan. The description for this Future Land Use category is provided below:

> This category accommodates single-family detached housing on small lots, typical of Denton's more compact, established single-family neighborhoods and low-rise multi-family dwellings and townhomes. This land use applies to areas within the central areas of Denton and transition areas between established single-family neighborhoods and mixed-use or commercial areas that can accommodate greater density, or adjacent to key corridors. Dwellings in this future land use category vary in scale and style and may contain a great deal of diversity by each street and block. Most areas are characterized by rectilinear lots with modest front yards. Most streets are lined by sidewalks, but this is not prevailing throughout. Development is linked by local streets and is most commonly accessed by

multiple intersections and points of access. While the land use primarily includes single-family dwellings, multi-family dwellings, and townhomes may be located in this land use as well. While the quality of multi-family dwellings and townhomes currently varies, in the case of future infill development, they should maintain a scale, style, and building orientation in order to complement the prevailing character of its surroundings. This category may also include land uses that support residential neighborhoods, such as neighborhood scaled commercial at arterial and collector street corners, and appropriately scaled public and quasi-public uses, such as religious and educational institutions

The Subject Property is not currently being served with City water or sewer.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)
On December 18, 2012, City Council approved the Non-Annexation Agreement (Ordinance 2012-362). An agreement which expired on August 1, 2020.

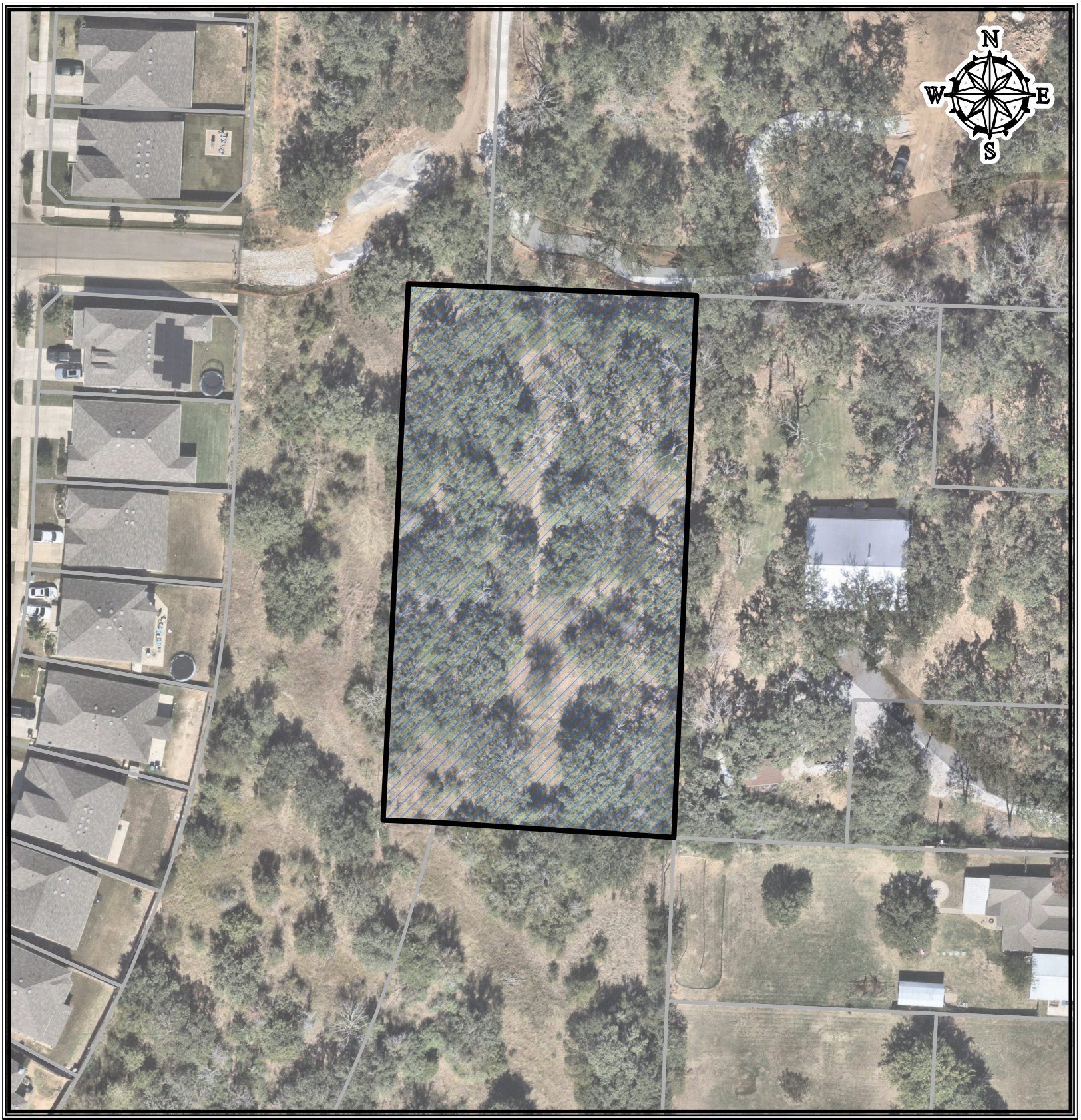
OPTIONS
No action is required for the first reading of the annexation ordinance.

EXHIBITS
Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Site Location Map
Exhibit 3 - Future Land Use Map
Exhibit 4 - Current Zoning Map
Exhibit 5 - Draft Annexation Ordinance
Exhibit 6 - Presentation

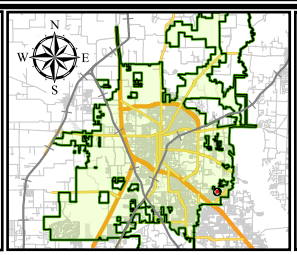
Respectfully submitted:
Hayley Zagurski, AICP
Planning Director

Prepared by:
Bryce Van Arsdale
Assistant Planner

A25-0004
Aerial Site Location



COD
ETJ
ETJ 2
NAA 8/1/20
NAA 8/1/40

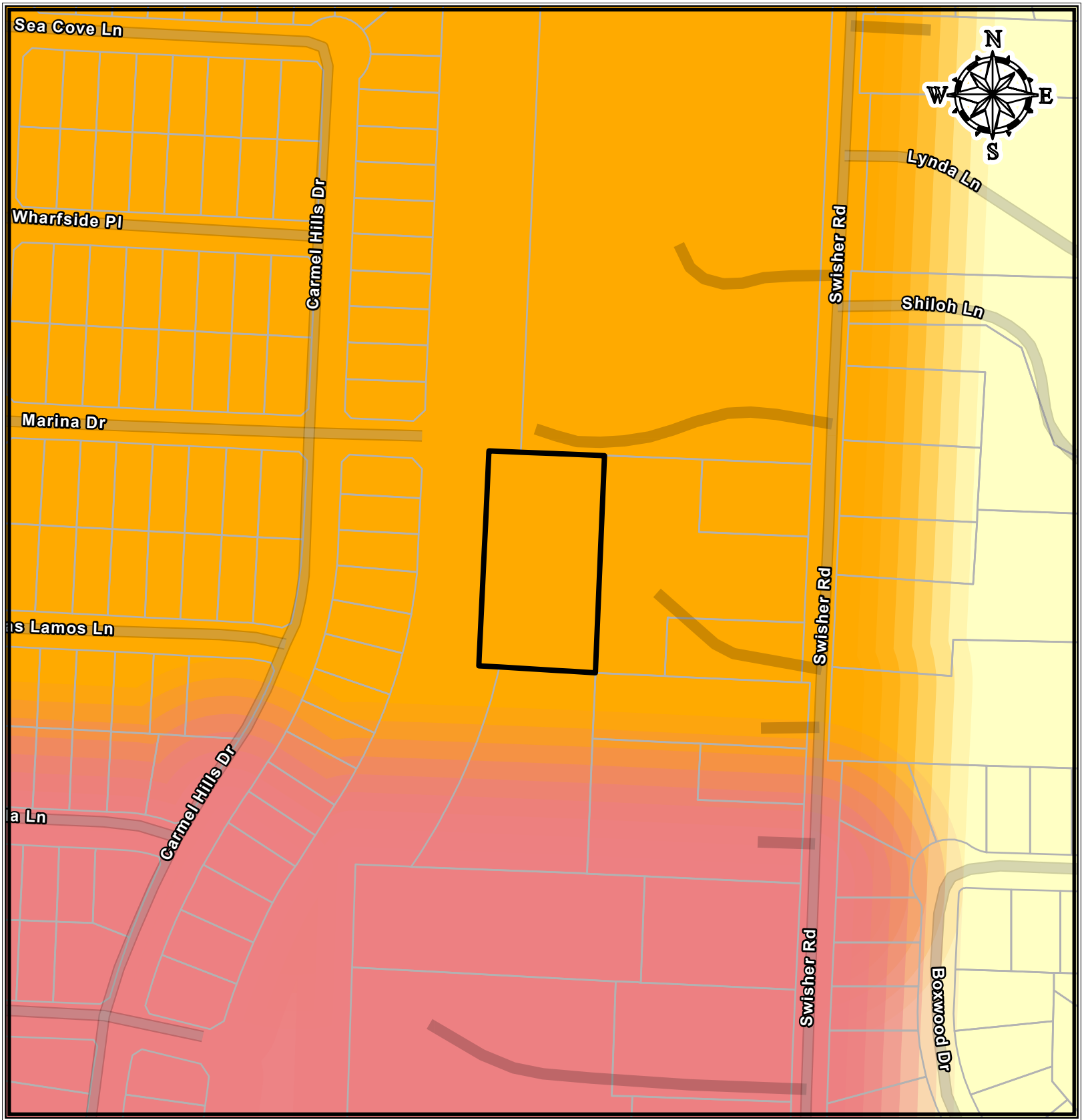


0 20 40 80 Feet

CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

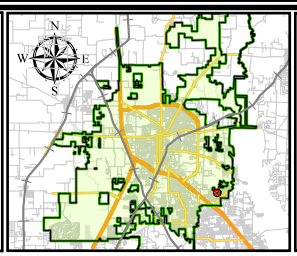
"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Although every effort was made to ensure the accuracy of this data, no such guarantee is given or implied. Utilization of this map indicates the understanding that there is no guarantee to the accuracy of this data."

A25-0004
Future Land Use Map



Future Land Use 2040

- Agriculture
- Rural Areas
- Low Residential
- Moderate Residential
- Master Planned Community
- Downtown Denton
- Regional Mixed Use
- Community Mixed Use
- Neighborhood Mixed Use
- Neighborhood / University Compatibility Area
- Business Center
- Light Industrial
- Industrial Commerce
- Government / Institutional
- Parks / Open Space
- Site Location

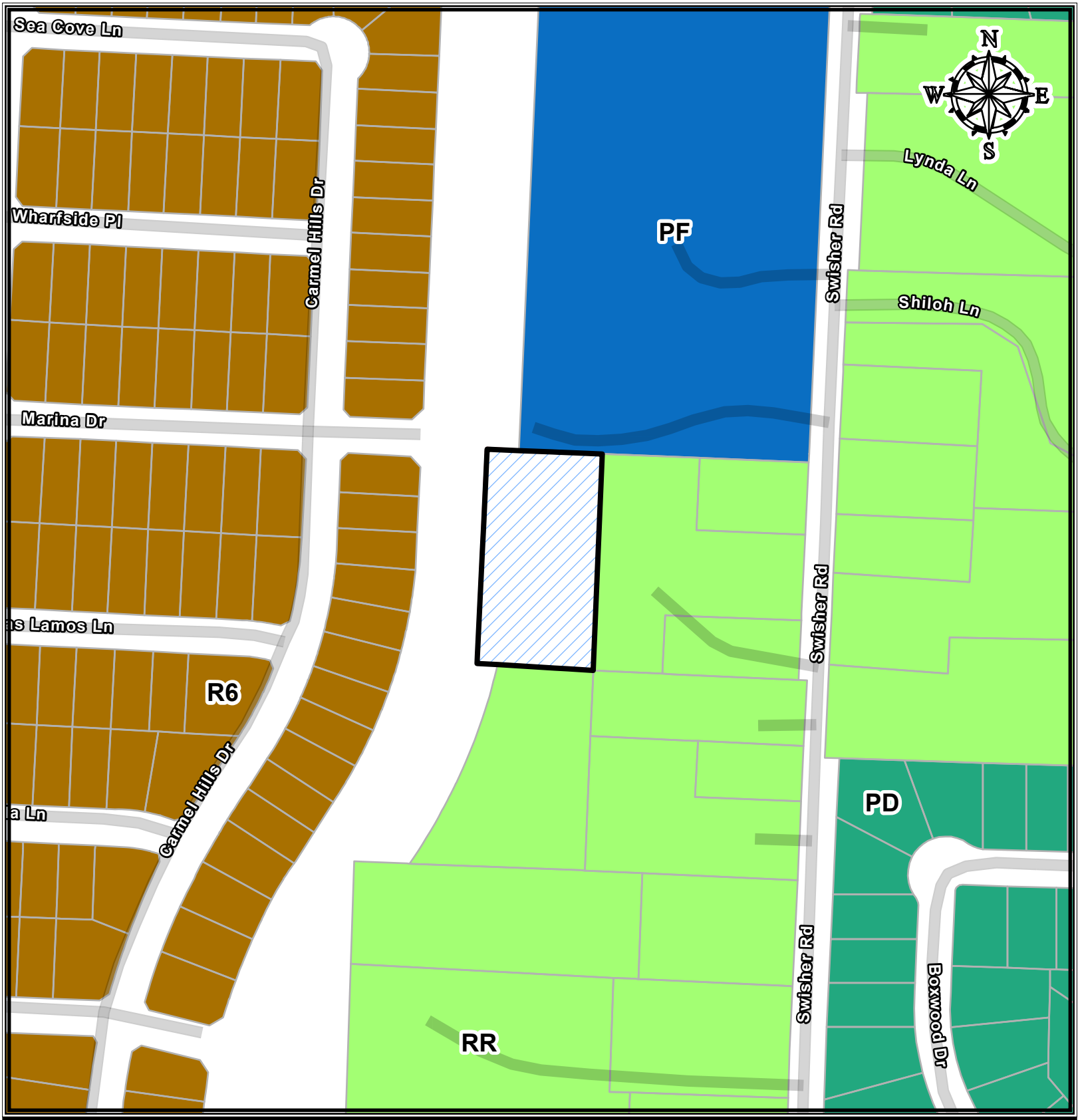


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CITY OF DENTON
Development Services • GIS
Date: 12/30/2025

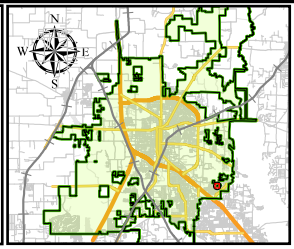
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A25-0004
Current Zoning Map



Current Zoning

- RR - Residential Rural
- R1 - Residential
- R2 - Residential
- R3 - Residential
- R4 - Residential
- R6 - Residential
- R7 - Residential
- MN - Mixed-Use Neighborhood
- MD - Mixed-Use Downtown Core
- MR - Mixed-Use Regional
- HC - Highway Corridor
- SC - Suburban Corridor
- GO - General Office
- LI - Light Industrial
- HI - Heavy Industrial
- PF - Public Facilities
- PD - Planned Development
- MPC
- OVERLAY



0 50 100 200 Feet

CITY OF DENTON
Development Services · GIS
Date: 12/30/2025

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ANNEXING APPROXIMATELY 1.09 ACRES OF LAND, GENERALLY LOCATED 290 FEET WEST OF SWISHER ROAD AND 740 FEET SOUTH OF EDWARDS ROAD, INTO THE CITY OF DENTON, DENTON COUNTY, TEXAS; PROVIDING FOR A CORRECTION TO THE CITY MAP TO INCLUDE THE ANNEXED LAND; AND PROVIDING FOR A SAVINGS CLAUSE AND AN EFFECTIVE DATE. (A25-0004c)

WHEREAS, pursuant to Subchapter C-3, Chapter 43, Texas Local Government Code, a municipality may annex an area if the property owner requests the annexation; and

WHEREAS, the property owner J. Doss Phillips ("Owner") submitted a petition for voluntary annexation of approximately 1.09 acres of land in Denton County, Texas and described in **Exhibit A** and depicted on **Exhibit B** attached hereto and incorporated herein ("Property"); and

WHEREAS, the City of Denton and Owner have entered into a written Municipal Services Agreement for the provision of full municipal services to the Property to be annexed, in accordance with Tex. Loc. Gov't. Code Sec. 43.0672, and said agreement was approved by the City Council on February 17, 2026; and

WHEREAS, on February 17, 2026, the City Council held a public hearing to provide persons interested in the annexation the opportunity to be heard and to adopt an ordinance annexing the area, pursuant to Sec. 43.0673 of the Tex. Loc. Gov't. Code; and

WHEREAS, annexation proceedings were instituted for the Property upon the **first reading** of the ordinance at the City Council meeting on February 17, 2026; and

WHEREAS, this ordinance has been published in full one time in the official newspaper of the City of Denton after annexation proceedings were instituted, and 30 days prior to City Council taking final action, as required by Sec. 1.03 of the City Charter; and

WHEREAS, a **second reading** of the ordinance was conducted and final action on the annexation was taken at the City Council meeting on March 24, 2026; and

WHEREAS, the Denton City Council hereby deems it to be in the best interests of the citizens of the City of Denton to approve the annexation of the Property; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The real property described in **Exhibit A** and depicted on **Exhibit B**, attached hereto and incorporated herein by reference, is annexed into the City of Denton, Texas.

DRAFT

SECTION 3. A service agreement approved by Ordinance No. _____, is attached as **Exhibit C** and made a part hereof for all intents and purposes.

SECTION 4. The newly annexed property shall be included within the corporate limits of the City of Denton, Texas, thereby extending the City's corporate limits and granting to all inhabitants of the newly annexed property all of the rights and privileges of other citizens and bringing the inhabitants to all of the ordinances, resolutions, acts, and regulations of the City. A copy of this Ordinance shall be filed in the real property records of the Denton County Clerk and within the Denton County Appraisal District.

SECTION 5. The City Manager is hereby authorized and directed to immediately correct the map of the City of Denton by adding thereto the additional territory annexed by this Ordinance, indicating on the map the date of annexation and the number of this Ordinance, and the ETJ resulting from such boundary extensions.

SECTION 6. Should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall be affected thereby.

SECTION 7. This ordinance shall be effective immediately upon its passage.

AND IT IS SO ORDERED

The motion to approve this ordinance was made by _____ and seconded by _____, the 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:	_____	_____	_____	_____

DRAFT

PASSED AND APPROVED this, the _____ day of _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:_____

DRAFT

EXHIBIT A
LEGAL DESCRIPTION

BEING a 1.0959 acre tract of land, more or less, situated in the Gideon Walker Survey, Abstract No. 1330, Denton County, Texas, and being more fully described in that certain Warranty Deed dated December 31, 1996 from David W. Mason to J. Doss Phillips and wife, Glynnis Phillips, filed for record on January 2, 1997 and recorded in Instrument No. 97-R0000117 of the Real Property Records of Denton County, Texas. Said 1.0959 acre tract is commonly known as DCAD Property ID 189728.

DRAFT

EXHIBIT B
LOCATION MAP



EXHIBIT C
MUNICIPAL SERVICES AGREEMENT

DRAFT

A25-0004b
Swisher Road Annexation
First Reading

Bryce Van Arsdale

Assistant Planner

February 17, 2026

CITY OF DENTON

Request

- Conduct the **first** of two readings of an ordinance of the City of Denton to annex approximately 1.09 acres of land

- Located 290 feet west of Swisher Road, approximately 740 feet south of Edwards Road



Background

- Non-Annexation Agreement (NAA) for the property expired on August 1, 2020
- A new NAA has not been signed
- The property is undeveloped



Annexation Schedule

- **February 17, 2026**
  - Municipal Services Agreement – Action Required
  - Public Hearing – No Action
  - First Reading of the Annexation Ordinance – No Action

- **February 22, 2026**
  - Publication of Annexation Ordinance

- **March 24, 2026**
  - Second Reading and Adoption of the Annexation Ordinance – Action Required

Ordinance Caption

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ANNEXING APPROXIMATELY 1.09 ACRES OF LAND, GENERALLY LOCATED 290 FEET WEST OF SWISHER ROAD AND 740 FEET SOUTH OF EDWARDS ROAD, INTO THE CITY OF DENTON, DENTON COUNTY, TEXAS; PROVIDING FOR A CORRECTION TO THE CITY MAP TO INCLUDE THE ANNEXED LAND; AND PROVIDING FOR A SAVINGS CLAUSE AND AN EFFECTIVE DATE.

QUESTIONS?

Bryce Van Arsdale
Assistant Planner
Development Services