



City of Denton

Meeting Agenda

City Council

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

Tuesday, May 2, 2023

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 regular or consent agenda items (excluding public hearing items), Individuals must be present at the meeting and 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 <https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>. 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.

4. By Phone:

Individuals may register to provide comments by phone. Instructions and a link to register to comment by phone will be available at www.cityofdenton.com/publicmeetings until noon of the meeting date. Residents will submit contact information using the link provided and receive further instructions via email on how to join the meeting by phone and provide comments.

After determining that a quorum is present, the City Council of the City of Denton, Texas will convene in a Work Session on Tuesday, May 2, 2023, at 2:00 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 utilizing the "By Phone" registration process as referenced under the REGISTRATION GUIDELINES FOR ADDRESSING THE CITY COUNCIL detailed at the beginning of this agenda. Registration is required prior to the time the City Council considers this item. Registrants may call in and remain on hold or receive a call back at the time the Work Session is called to Order and are encouraged to ensure they remain accessible to accept the call.

2. Requests for clarification of agenda items listed on this agenda.

This section includes questions members of the City Council direct to staff on any item listed on this agenda. Answers are compiled in a report and provided to the City Council and members of the public by clicking on Exhibit 1 of the item below. The link found within the document will provide access to the supporting documentation. The report will be available prior to start of the meeting. 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.

- A. [ID 23-634](#) Meeting Questions, Responses & Handouts

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

3. Work Session Reports

- A. [ID 23-149](#) Receive a report, hold a discussion, and give staff direction regarding Audit Project 022 - Building Permit Processes: Follow-Up Review.
-

[Estimated Presentation/Discussion Time: 15 minutes]

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Follow-Up Review of the Bulding Permit Processes Audit](#)
[Exhibit 3 - Presentation](#)

- B. [ID 23-150](#) Receive a report, hold a discussion, and give staff direction regarding Audit Project 016 - COVID-19 Response: Pandemic Preparedness Follow-Up Review.

[Estimated Presentation/Discussion Time: 15 minutes]

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Follow-Up Review of the COVID-19 Response: Pandemic Preparedn](#)
[Exhibit 3 - Presentation](#)

- C. [ID 23-286](#) Receive a report, hold a discussion, and give staff direction regarding funding recommendations from the Community Services Advisory Committee (CSAC) for the proposed activities to be included in the 2023-2027 Consolidated Plan for Housing and Community Development and 2023 Action Plan.

[Estimated Presentation/Discussion Time: 30 minutes]

Attachments: [Exhibit 1 – Agenda Information Sheet](#)
[Exhibit 2 – 2023-24 CSAC Funding Recommendations](#)
[Exhibit 3 – 2023-24 Project Descriptions](#)
[Exhibit 4 - 2023-2027 City of Denton Consolidated Plan Strategy Survey Result:](#)
[Exhibit 5 – Presentation](#)

- D. [ID 23-456](#) Receive a report, hold a discussion, and give staff direction regarding an allocation of excess sales tax.

[Estimation Presentation/Discussion Time: 30 minutes]

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - 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:

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.

- A. [ID 23-842](#) Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under

Texas Government Code Section 551.086; Consultation with Attorneys -- Under Texas Government Code Section 551.071.

Receive information from staff regarding an update on the Core Scientific Power Purchase Agreement and Lease that includes data stemming from public power utility competitive data; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding legal issues associated with the above matter where a 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 State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.

B. [ID 23-911](#) Consultation with Attorneys - Under Texas Government Code Section 551.071.

Consult with the City's attorneys on the legal status, expenses, strategy, and options for resolution of litigation issues associated with the "Application of Denton Municipal Electric to Change Rates for Wholesale Transmission Service" pending before the Public Utility Commission of Texas under Docket No. 52715; where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and Denton Municipal Electric (DME) under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or otherwise compromise the City's legal position.

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. PROCLAMATIONS/PRESENTATIONS

- A. [ID 23-429](#) Proclamation: National Preservation Month
- B. [ID 23-607](#) Proclamation: DFW Great 100 Award Recognition, Rebecca A. Jones, Director of Critical Care

- C. [ID 23-608](#) Proclamation: DFW Great 100 Award Recognition, Crystal Perry, MSN, RN, CEN, TCRN, Trauma Program Director
- D. [ID 23-610](#) Proclamation: DFW Great 100 Award Recognition, Maritza Cates
- E. [ID 23-653](#) Proclamation: National Nurses Week
- F. [ID 23-670](#) Proclamation: International Compost Awareness Week
- G. [ID 23-672](#) Proclamation: National Day of Prayer
- H. [ID 23-843](#) Proclamation: Small Business Week

3. 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 23-912](#) Ms. Camila Parra regarding youth and education.
- B. [ID 23-913](#) Mr. Stephen Dillenburg regarding Campaign and General Welfare of Denton Status Update and Query.

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.

4. 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 the 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 – M). 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 23-029](#) Consider approval of the minutes of the April 18, 2023 Meeting.
- Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - April 18, 2023 Minutes - Draft](#)
- B. [ID 23-059](#) Consider nominations/appointments to the City’s Boards, Commissions, and Committees: Special Citizens Bond Advisory Committee and Public Art Committee.
- Attachments: [Exhibit 2 - Nominations List \(REV\)](#)
- C. [ID 23-727](#) Consider adoption of an ordinance of the City Council of the City of Denton designating the City Secretary as the public information coordinator pursuant to Texas Government Code Section 552.012 (c); designating an electronic mailing address for all public information requests by electronic mail; designating a mailing address for all public information requests received by mail; designating a portal for other electronic submission and designating a physical address for hand delivery, as authorized by the Texas Government Code Section 552.234; and providing an effective date.
- Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Draft Ordinance](#)
- D. [ID 23-884](#) 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 environmental engineering and consulting services for the Environmental Services and Sustainability Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8171 - Professional Services Agreement for engineering and consulting services awarded to Freese and Nichols, Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$750,000.00). The Public Utilities Board recommends approval (7 - 0).
- Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Evaluation Sheet](#)
[Exhibit 3 - Ordinance and Contract](#)

- E. [ID 23-885](#) 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 OW Investors, LLC dba Mars Company, for a meter test bench and mobile testers for the Water Meter Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 8173 - awarded to OW Investors, LLC dba Mars Company, for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$796,435.00). The Public Utilities Board recommends approval (7 - 0).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - LLC Members](#)
[Exhibit 3 - Ordinance and Contract](#)

- F. [ID 23-886](#) 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 KBS Electrical Distributors, Inc., for the purchase of Electric Utility Substation Switches for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (IFB 8178 - awarded to KBS Electrical Distributors, Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$2,693,820.00). The Public Utilities Board recommends approval (7-0).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Bid Tabulation](#)
[Exhibit 3 - Ordinance and Contract](#)

- G. [ID 23-887](#) 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 Stearns, Conrad and Schmidt Consulting Engineers, Inc., for the engineered design of a concrete road and a vehicle undercarriage wash (wheel-wash) for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7109-032 - Professional Services Agreement for design services awarded to Stearns, Conrad and Schmidt Consulting Engineers, Inc., in the not-to-exceed amount of \$205,245.00). The Public Utilities Board recommends approval (7 - 0).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Ordinance and Contract](#)

- H. [ID 23-888](#) 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 Core and Main LP, amending the contract approved by City Council on March 17, 2020, in the not-to-exceed amount of \$5,800,000.00, said first amendment to continue to provide Water and Wastewater Inventory for the Warehouse Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7187 - providing for an additional first amendment expenditure amount not-to-exceed \$1,450,000.00, for a total contract amount not-to-exceed \$7,250,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Original Ordinance and Contract](#)
[Exhibit 3 - Ordinance and Amendment 1](#)

- I. [ID 23-889](#) 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 Ferguson Enterprises, LLC, amending the contract approved by City Council on March 17, 2020, in the not-to-exceed amount of \$3,630,000.00, said first amendment to continue to provide Water and Wastewater Inventory for the Warehouse Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7187 - providing for an additional first amendment expenditure amount not-to-exceed \$907,500.00, for a total contract amount not-to-exceed \$4,537,500.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Original Ordinance and Contract](#)
[Exhibit 3 - LLC Members](#)
[Exhibit 4 - Ordinance and Amendment 1](#)

- J. [ID 23-890](#) 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 Professional Services Agreement between the City of Denton and Weaver and Tidwell, L.L.P., amending the contract approved by the City Council on July 28, 2020, in the not-to-exceed amount of \$354,500.00; said first amendment to provide external audit services for the City of Denton's fiscal year 2022-23, including an audit of the financial statements and single audit for the year ending September 30, 2023, and an agreed-upon procedures report for the Texas Commission on Environmental Quality as managed by the City Auditor's Office; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7284 - providing for an additional first amendment expenditure amount not-to-exceed \$123,500.00, with the total contract amount not-to-exceed \$478,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Original Ordinance and Contract](#)
[Exhibit 3 - Ordinance and Amendment 1](#)

- K. [ID 23-891](#) 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 Nexus Solutions USA, Inc. through February 28, 2025, for airport vegetation management; and declaring an effective date (File 7333 - extending a contract with Nexus Solutions USA, Inc., to February 28, 2025).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Original Ordinance and Contract](#)
[Exhibit 3 - Ordinance and Amendment 1](#)

- L. [ID 23-892](#) 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 Innovative Transportation Solutions, Inc., for transportation consulting services on

various projects for the Capital Projects Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8179 - Professional Services Agreement for consulting services awarded to Innovative Transportation Solutions, Inc., for two (2) years, with the option for three (3) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$630,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Evaluation Sheet](#)
 [Exhibit 3 - Ordinance and Contract](#)

- M. [ID 23-894](#) 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 Ben E Keith Company, for the supply of food and concessions at the Water Works Park and Civic Center Pool concession stands for the Parks and Recreation Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 7854-02 - awarded to Ben E Keith Company, 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 \$363,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Ordinance and Contract](#)

5. PUBLIC HEARINGS

- A. [PD21-0007d](#) Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas regarding a request by Aimee Bisset, 97 Land Company, LLC., on behalf of the owner, Tony Riley, to rezone approximately 20.92 acres from a Suburban Corridor (SC) District to a Planned Development Mixed-Use Neighborhood (PD-MN) District. The site is generally located at the northeast corner of Loop 288 and FM 428, in the City of Denton, Denton County, Texas. THE APPLICANT HAS WITHDRAWN THIS ITEM FROM CONSIDERATION. (PD21-0007d, Sherman Drive Mixed Use, Angie Manglaris).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

6. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. [ID 23-753](#) Consider adoption of an ordinance of the City of Denton, Texas, amending the fiscal year 2022-2023 budget and annual program of services of the City of Denton to allow for adjustments to the Tourist & Convention Fund of two hundred and fifty thousand dollars (\$250,000) for the purpose of providing funding to the Denton Black Film Festival Institute, Inc. to support in part the production of a documentary series on Quakertown; declaring a public purpose; directing the City Secretary attach a copy to the 2022-2023 budget; requiring approval by at least five votes; and providing a severability clause, an open meetings clause, and an effective date.

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Ordinance](#)
 [Exhibit 3 - Presentation](#)

- B. [ID 23-916](#) Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute an agreement between the City of Denton and the Denton Black Film Festival Institute, Inc., for the payment and use of hotel tax revenue in support of the Quakertown Docuseries; and providing an effective date. (\$250,000 - Community Partnership Committee recommends approval 3-0)
- Attachments:* [Exhibit 1 Agenda Information Sheet](#)
[EXhibit 2 Ordinance](#)
- C. [ID 23-865](#) Consider approval of a resolution of the City of Denton, Texas, authorizing and approving the creation of Denton Public Facility Corporation, a public facility corporation, pursuant to Chapter 303 of the Texas Local Government Code; approving the articles of incorporation; appointing the initial directors of the corporation; approving the initial bylaws for the corporation; and providing an effective date.
- Attachments:* [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Presentation PFC](#)
[Exhibit 3 - DPFC Resolution - Articles-Bylaws](#)
- D. [ID 23-883](#) 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 Eurovia Atlantic Coast, LLC dba Sunmount Paving Company, for the 2019 Street Bond Neighborhood 4 project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8110 - awarded to Eurovia Atlantic Coast, LLC dba Sunmount Paving Company, in the not-to-exceed amount of \$7,541,673.42). The Public Utilities Board recommends approval (6 - 0).
- Attachments:* [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Pricing Evaluation](#)
[Exhibit 3 - LLC Members](#)
[Exhibit 4 - Presentation](#)
[Exhibit 5 - Ordinance and Contract](#)

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 April 28, 2023, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

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 48 HOURS 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 St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: ID 23-634, **Version:** 1

AGENDA CAPTION

Meeting Questions, Responses & Handouts



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: May 2, 2023

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:

Jesus Salazar
Interim City Secretary



City of Denton

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

Legislation Text

File #: ID 23-149, **Version:** 1

AGENDA CAPTION

Receive a report, hold a discussion, and give staff direction regarding Audit Project 022 - Building Permit Processes: Follow-Up Review.

[Estimated Presentation/Discussion Time: 15 minutes]



AGENDA INFORMATION SHEET

DEPARTMENT: Internal Audit

CITY AUDITOR: Madison Rorschach

DATE: May 2, 2023

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding Audit Project 022 – Building Permit Processes: Follow-Up Review.

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 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 follow-up review is intended to provide a progress update on recommendations from the Building Permit Processes Audit originally issued in July 2021. The Building Permit Processes audit was intended to provide assurance that the City had established adequate processes and procedures to ensure building permits were managed efficiency, effectively, and in accordance with rules and regulations.

RECOMMENDATION

Staff recommends Audit Project 022 – Building Permit Processes be closed until an informal follow-up review can be completed in about one year.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

Jul. 20, 2021: Original Audit Presented During Work Session
Aug. 16, 2022: Fiscal Year 2022-23 Annual Internal Audit Plan Adopted

EXHIBITS

1. Agenda Information Sheet

2. Follow-Up Review of the Building Permit Processes Audit
3. Presentation

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



Audit of Building Permit Processes

Follow-Up Review

In general, Development Services has developed and implemented new policies and standard operating procedures to provide improved guidance to staff. In addition, permit processing timeliness has significantly improved. Documentation of building inspection quality control and quality assurance activities could be further improved to help ensure variable workload does not impact inspection quality.

Audit Team

City Auditor

Madison Rorschach, CIA, CGAP

Audit Staff

Amber Jackson, MBA, CFE

Anthony Branch

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Follow-Up at a Glance

Why we did this Follow-Up:

This report is intended to provide information on what changes have been made in response to the Audit of Building Permit Processes issued in July of 2021. The original audit evaluated the Building Permit Department's quality controls and general processes as they related to permit issuance and fee collections. This follow-up review was included on the City's fiscal year 2022-2023 Annual Internal Audit Plan as approved by the City Council.

What we Found:

In general, Development Services has developed and implemented new policies and standard operating procedures to provide improved guidance to staff on assessing reinspection fees, and processing non-annexation agreement property permits. In addition, permit processing timeliness has significantly improved, and refunds are now adequately documented. That being said, documentation of building inspection quality control and quality assurance activities could be further improved to help ensure variable workload does not impact inspection quality. A progression plan and method for evaluating needed inspector licenses and certifications has been developed. The status of each recommendation is summarized below:

Recommendation	Mgmt. Response	Status
1. Reinststitute the Department's prior process to periodically identify pending permit applications to ensure applications are managed and updated timely and appropriately.	Concur	Implemented
2. Coordinate with City Planning to formalize a training program and review process for non-annexation agreement properties.	Concur	Implemented
3. Develop a formal refund request process for permitting fees to document supervisor approval.	Concur	Implemented
4. Develop a process to periodically update the code to the safe, including upon employee turnover.	Concur	Implemented
5. Develop a formal inspection review process to provide assurance that inspections are being completed effectively and in accordance with the Division's quality standards.	Concur	In Progress
6. Establish a process to provide assurance that variable daily inspection workload does not impact the quality of inspections.	Concur	Not Implemented
7. Develop re-inspection fee assessment guidelines or a review process.	Concur	Implemented
8. Formalize the building inspector progression plan to clearly delineate the expectations and requirements for promotion within the Building Inspector roles.	Concur	Implemented
9. Develop a process to periodically review staffing capacities to evaluate and identify potential license and certification gaps.	Concur	Implemented
10. Review and finalize departmental standard operating procedures to ensure each step of the building permit process is documented and reflects actual processes.	Concur	Implemented
11. Develop a formal conflict of interest procedure detailing employee responsibility, expectations, and process to report potential conflict of interests within the permitting process.	Concur	Implemented

Audit report translations may be requested by emailing InternalAudit@CityofDenton.com.

Introduction

The Internal Audit Department is responsible for providing: (a) an independent appraisal¹ of City operations to ensure policies and procedures are in place and complied with, inclusive of purchasing and contracting; (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.

The Internal Audit Department has completed a follow-up review of the Audit of Building Permit Processes issued in July 2021. 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.

Audit Objectives, Scope, and Methodology

This report is intended to provide a progress update on recommendations from the [Audit of Building Permit Processes](#) originally issued in July 2021, which evaluated all parts of the City's building permit processes to ensure building construction in the City is appropriately reviewed and inspected, and improvements comply with life & safety codes.

Audit fieldwork was conducted during March and April 2023. The scope of review varied depending on the procedure being performed. The following list summarizes major procedures performed during this time:

- Reviewed documentation from the issued audit to develop criteria including industry standards, best practices, policies, and procedures;
- Interviewed City of Denton Development Services staff;

¹ The City of Denton's Internal Audit Department is considered structurally independent as defined by generally accepted government auditing standard 3.56.

- Reviewed new standard operating procedures for Non-Annexation Agreement properties, conflicts of interest, and other permit-specific procedures;
- Reviewed new reinspection fee, refund request, and safe code change policies;
- Verified that a judgement sample of 15 issued refunds were requested timely, appropriately approved, and adequately explained;
- Evaluated a sample of 95 permits and calculated if there was a statistically significant difference between the average time it took to issue a permit in 2020 and 2022;
- Observed available building inspections quality assurance documentation; and
- Reviewed newly created progression plans for Building Inspectors, Health Inspectors, and Plans Examiners as well as a report from the Insurance Services Office on the City of Denton's Building Code Effectiveness.

Recommendation Status Update

This report summarizes the Audit of Building Permit Processes recommendations, management responses, and the Internal Audit Department's follow-up findings, which describe to what extent department management has implemented Internal Audit's recommendations since the publication of the original report in July 2021.

Permits Reviewed Appropriately Except for Some NAA Properties

- 1. **Reinstitute the Department’s prior process to periodically identify pending permit applications to ensure applications are managed and updated timely and appropriately.**

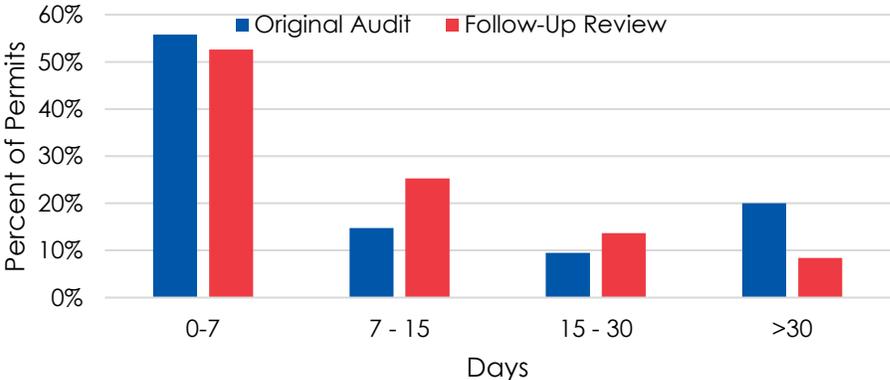
Management Response: Concur
Building Safety Comments: Process has been reinstated and applications are now being updated appropriately.

Audit Follow-Up Finding: Implemented

The original audit found that about 90 percent of permit applications are approved within one month and about 90 percent of permits are issued less than a month later.

Since the original audit, Building Safety has developed standard operating procedures to ensure permits are reviewed and issued timely. Based on a comparison of the time it took to issue a building permit once it was applied for, the Department has decreased the time from an average of 30 days to an average of 12 days, which is statistically significant, indicating that pending permits are being appropriately managed as illustrated in Figure 1.

Figure 1: Permit Issuance Timeliness Comparison



2. Coordinate with City Planning to formalize a training program and review process for non-annexation agreement properties.

Management Response: Concur

Building Safety: Staff is developing a review process and will implement a training program for these types of permits.

Audit Follow-Up Finding: Implemented

The City has previously handled building permit applications for properties under non-annexation agreements – or NAAs – inconsistently. It was found that 82 permits issued by the County were for properties with City of Denton NAAs.

Since the original audit, the Department coordinated with Denton County to develop and implement a new standard operating procedure to provide guidance to staff on identifying NAA properties. In addition, the Department has held joint trainings and discussions with Building Safety and Planning Division staff to ensure all are aware of NAA properties and how to process them.

Permit Fees Processed Appropriately; Refunds Not Formally Approved

3. Develop a formal refund request process for permitting fees to document supervisor approval. Consider requiring escalating approval authority based on certain dollar thresholds.

Management Response: Concur

Building Safety Comments: Policy for refund requests is currently in process.

Audit Follow-Up Finding: Implemented

The original audit found that refunds were typically issued due to applicant overpayment or changes in approved plans that resulted in a reduction of assessed permit fees. However, refunds were generally not properly approved and documented to ensure they were issued appropriately.

Based on review of a judgement sample of 15 issued refunds during 2022, all generally had adequate evidence that the refund was properly requested with adequate explanation. In addition, a formal refund policy has been established that outlines how and when applicants may apply for a refund.

4. Develop a process to periodically update the code to the safe, including upon employee turnover.

Management Response: Concur

Building Safety Comments: Staff is developing an improved security process.

Audit Follow-Up Finding: Implemented

The Development Services Department has implemented a policy that outlines when the safe code should be changed including if there is employee turnover.

Additional Monitoring of Inspections Would Further Ensure Quality

5. Develop a formal inspection review process to provide assurance that inspections are being completed effectively and in accordance with the Division's quality standards.

Management Response: Concur

Building Safety Comments: Staff ran a test of the new quality control inspection procedures in April 2023. This appears to meet most of the documentation needed, but not all. Staff is exploring new software to obtain this needed documentation capability in the reporting structure. A formal policy has been created to incorporate the rest of the supervising team. Checklists for the supervising team will follow in the coming month.²

Audit Follow-Up Finding: In-Progress

The original audit identified a risk that inspection scheduling practices might impact inspection quality as there was no limit on the number of inspections that could be scheduled for one day. Internal Audit recommended a formal inspection review process as a quality control measure to promote inspection compliance and to safeguard the public's health and safety.

Since then, Development Services has created an interim process to monitor inspection quality by having a Building Inspector supervisor ride-along or follow behind the inspector to see if any major issues were missed. Inspectors are currently using SOPs which have checklists integrated in them. During April 2023, Development Services began documenting quality control inspections in their permit management system and developed a policy outlining who was responsible for quality control inspections, what should be reviewed, and how the inspections should be documented. This policy became effective on May 1, 2023.

² This management response was revised by the Department during the follow-up review.

6. Establish a process to provide assurance that variable daily inspection workload does not impact the quality of inspections.

Management Response: Concur

Building Safety Comments: New software failed meeting the expectations that was to be up and running by the end of July, the update was to include time tracking for inspections. Additionally, the Building Safety Team has a third-party inspection company available if workloads become too heavy or the team experiences an increase in absences.³

Audit Follow-Up Finding: Not Implemented

Development Services level of service policy to ensure all requested inspections are performed on the day of request has not changed. In addition, while Development Services has implemented a new permitting software, staff stated it does not effectively track how long an inspection took to perform. In addition, inspection quality control and quality assurance activities have not been well documented as stated in the Recommendation 5 findings, limiting the Department's ability to monitor if workload is impacting inspection quality. New software systems are currently being explored by the Department for time tracking.

7. Develop re-inspection fee assessment guidelines or a review process. Ensure building inspectors receive consistent training on re-inspection fee assessment.

Management Response: Concur

Building Safety Comments: Policy will be documented, and quarterly training provided to ensure consistent application of the policy.

Audit Follow-Up Finding: Implemented

The original audit found permit fees were calculated based on the submitted plans or application. However, re-inspection fees were subject to building inspectors' professional judgement, increasing the risk that a reinspection fee may be charged inequitably or inappropriately.

Since then, Development Services implemented a policy in 2022 that provides guidelines for when reinspection fees should be issued, and Building Inspectors have received training on these guidelines.

³ This management response was revised by the Department during the follow-up review.

Lack of Formal Inspector Development Plan May Hinder Effectiveness

- 8. Formalize the building inspector progression plan to clearly delineate the expectations and requirements for promotion within the Building Inspector roles. Include expected timelines and required licenses/certifications to expand the offered inspection services by the City.**

Management Response: Concur

Building Safety Comments: Draft progression plan has been completed, but not yet formally approved.

Audit Follow-Up Finding: Implemented

The original audit found not all building inspectors met certification and licensing requirements listed on job descriptions, increasing the risk that inspection workload could not be adequately distributed. In addition, the Department had not established a clear development program or incentives to encourage staff to meet the certification and licensing requirements.

Since the audit, Development Services has created progression plans for building inspectors that outlines their current certifications, licenses, and experience, including what additional criteria they must meet to progress.

- 9. Develop a process to periodically review staffing capacities to evaluate and identify potential license and certification gaps. This evaluation should be used to update the building inspector career progression plan and building inspector job descriptions.**

Management Response: Concur

Building Safety Comments: Staff will develop an updated policy.

Audit Follow-Up Finding: Implemented

The implemented building inspector progression plan details staffs' current certifications and licenses, and identifies certifications and licenses not yet obtained. As such, it can be used to identify any necessary gaps. In addition, the Development Services Department is reviewed every five years by the Insurance Services Office, which rates a municipality's building codes as a tool for property insurance underwriters. This organization rates a municipality on code administration, plan review, and field inspection in both commercial and residential areas and allows an organization and the public to determine if there are gaps in building inspector quality.

Standard Operating Procedures Should Be Finalized

- 10. Review and finalize departmental standard operating procedures to ensure each step of the building permit process is documented and reflects actual processes. These should incorporate references and images as necessary to provide clarity, including a periodic review process.**

Management Response: Concur

Building Safety Comments: Currently in-process. Process developed will be reviewed on an annual basis and with code changes.

Audit Follow-Up Finding: Implemented

Since the original audit, multiple standard operating procedures have been developed and implemented to ensure that building permit processes are adequately documented and accurately reflect current processes.

- 11. Develop a formal conflict of interest procedure detailing employee responsibility, expectations, and process to report potential conflict of interests within the permitting process. Consider development of an annual conflict of interest ethics statement.**

Management Response: Concur

Building Safety Comments: Staff will develop a policy.

Audit Follow-Up Finding: Implemented

Since the original audit, Development Services has developed a standard operating procedure for conflicts of interest that details employee responsibility, expectations, and a process to report potential conflicts of interest prior to the permitting process. Employees that identify a conflict of interest are required to fill out a Conflict Disclosure Form and may be recused from the permit of conflict.



Follow-Up Review of Building Permit Processes Audit

Madison Rorschach

City Auditor

Internal Audit Department

May 2, 2023

Purpose of the Follow-Up Review

- Provides a progress update on audit recommendations.
- Audit evaluated City building permit processes.
- Development Services has implemented new policies, SOPs, & training to improve permit review; inspection quality assurance could be improved.



AUDIT OF BUILDING PERMIT PROCESSES

ABSTRACT

In general, the City has established effective controls related to the management of building permit application reviews and fee payment; however, additional oversight of non-annexation agreement property applications and refund requests is needed.

Finally, additional quality controls over the building inspection process would provide further assurance that permitted work was completed appropriately.

Audit Team

City Auditor
Madison Rorschach, CIA, CGAP

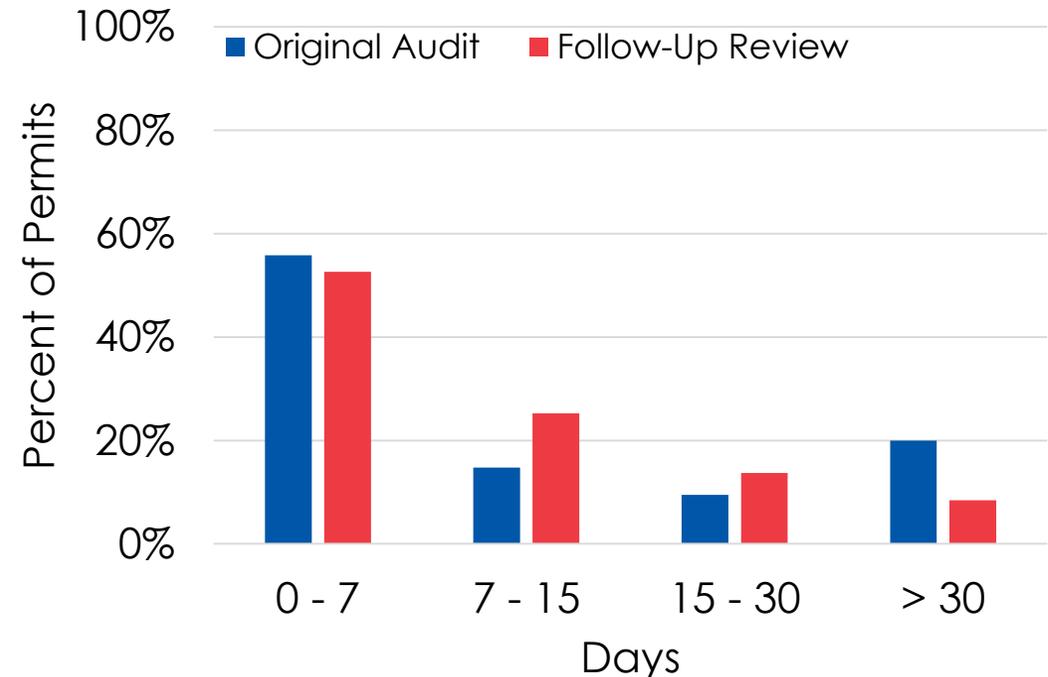
Audit Staff
Amber Jackson, MBA, CFE



Permit Review Timeliness Improved; Payment Controls Enhanced

- Permit processing procedures improved:
 - More permits closed within 30 days.
 - Non-annexation agreement procedures and other review SOPs established.
- Fee processing controls improved:
 - Refund approval required;
 - Safe code change & COI policies established; &
 - Reinspection fee guidance established.

Permit Issuance Timeliness



Inspection Quality Assurance Process Could be Further Formalized

- Inspection quality assurance procedures established; documentation could be further improved.
 - Completed software update does not allow for inspection time tracking.
- Development Services has established a progression plan for Building Inspectors to encourage staff development.
 - Progression plans allow for identification of certification or licensing gaps; and
 - Periodic review of the Department by the Insurance Services Office allows for independent review of inspection capacity gaps.



Procurement Process Follow-Up Report Summary: Significant Improvement Made

Audit Area	Recommendations	Implemented	In Progress	Not Implemented
Permit Processing	7	100%	0%	0%
Inspection Quality Monitoring	4	50%	25%	25%
All:	11	82%	9%	9%

Recommendations in Progress or Not Implemented:

5. Develop a formal inspection review process to provide assurance that inspections are being completed effectively and in accordance with the Division's quality standards.
6. Establish a process to provide assurance that variable daily inspection workload does not impact the quality of inspections.



*Detailed recommendations and follow-up findings can be seen in the full audit report.

Questions?

Madison Rorschach

City Auditor

Internal Audit Department



ID 23-149

6



City of Denton

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Legislation Text

File #: ID 23-150, **Version:** 1

AGENDA CAPTION

Receive a report, hold a discussion, and give staff direction regarding Audit Project 016 - COVID-19 Response: Pandemic Preparedness Follow-Up Review.

[Estimated Presentation/Discussion Time: 15 minutes]



AGENDA INFORMATION SHEET

DEPARTMENT: Internal Audit

CITY AUDITOR: Madison Rorschach

DATE: May 2, 2023

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding Audit Project 016 – COVID-19 Response: Pandemic Preparedness Follow-Up Review.

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 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 follow-up review is intended to provide a progress update on recommendations from the COVID-19 Response: Pandemic Preparedness Audit originally issued in September 2020. The COVID-19 Response: Pandemic Preparedness audit evaluated the City’s pandemic readiness to provide assurance that the City had established adequate plans, procedures, and controls to respond to pandemics.

RECOMMENDATION

Staff recommends Audit Project 016 – COVID-19 Response: Pandemic Preparedness be closed until an informal follow-up review can be completed in about one year.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

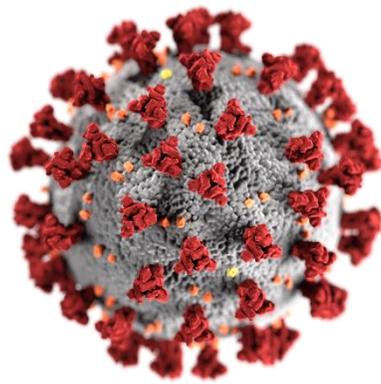
Sep. 15, 2020: Original Audit Presented During Work Session
Aug. 16, 2022: Fiscal Year 2022-23 Annual Internal Audit Plan Adopted

EXHIBITS

1. Agenda Information Sheet

2. Follow-Up Review of the COVID-19 Response: Pandemic Preparedness Audit
3. Presentation

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



Audit of COVID-19 Response

Pandemic Preparedness Follow- Up Review

The City of Denton has generally updated its emergency response plans to incorporate pandemic-specific considerations like social distancing and teleworking. In addition, telework has formally become part of the City's standard business practices. Some specific teleworking considerations still need to be incorporated into the Business Continuity Plan.

Audit Team

City Auditor

Madison Rorschach, CIA, CGAP

Audit Staff

Jenesa Halter

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Follow-Up at a Glance

Why we did this Follow-Up:

This report is intended to provide information on what changes have been made in response to the Audit of COVID-19 Response: Pandemic Preparedness issued in September 2020. The original audit evaluated the City's plans, procedures, and controls related to pandemic response. This follow-up review was included on the City's fiscal year 2022-23 Annual Internal Audit Plan as approved by the City Council.

What we Found:

The City of Denton's Emergency Operations Manual and Pandemic Influenza Preparedness plan have been updated to include pandemic-specific considerations and a repository and tracking system for required National Incident Management System training has been developed. While, telework has formally become part of the City's standard business practices, some unique telework considerations still need to be incorporated into the Business Continuity Plan. The status of each recommendation is summarized below:

Recommendation	Mgmt. Response	Status
1. Review and update the City's Emergency Management Plan and the Pandemic Influenza Preparedness Plan to include specific guidelines for non-congregate sheltering and socially distant mass care during pandemics.	Concur	Implemented
2. Revise the Emergency Operations Center Manual to include procedures for activating and operating a socially distant emergency operations center during pandemics.	Concur	Implemented
3. Create and maintain appropriate records for operating and deactivating the Emergency Operations Center for the current COVID-19 Pandemic.	Concur	Alt. Solution
4. Update the EOC Manual to clarify which City staff are required to complete disaster management training, including how often and by when these training requirements should be complete.	Partially Concur	Implemented
5. Create a central repository for the required disaster management training certificates and centralize the responsibility for ensuring these trainings are completed appropriately.	Concur	Implemented
6. Document emergency operations exercises including who attended and what activities were tested.	Partially Concur	Implemented
7. Incorporate planning for telework during pandemics into the existing Business Continuity Plan.	Partially Concur	In Progress
8. Incorporate planning for virtual meeting activities during pandemics into the existing Business Continuity Plan.	Concur	Alt. Solution
9. Review and potentially update the City's Fund Balance Policy and Utilities Financial Strategies to account for the prolonged financial impacts cause by pandemics.	Concur	Implemented

Introduction

The Internal Audit Department is responsible for providing: (a) an independent appraisal¹ of City operations to ensure policies and procedures are in place and complied with, inclusive of purchasing and contracting; (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.

The Internal Audit Department has completed a follow-up review of the Audit of COVID-19 Response: Pandemic Preparedness issued in September 2020. 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.

Audit Objectives, Scope, and Methodology

This report is intended to provide a progress update on recommendations from the Audit of COVID-19 Response: Pandemic Preparedness (September 2021), which evaluated the City's pandemic readiness to provide assurance that adequate plans, procedures, and controls were established to respond to pandemics.

Audit fieldwork was conducted during March and April 2023. The scope of review varied depending on the procedure being performed. The following list summarizes major procedures performed during this time:

- Reviewed documentation from the issued audit to develop criteria including industry standards, best practices, policies, and procedures;
- Interviewed Emergency Management Division and Finance, Technology Services, and Communications & Market Departments staff;

¹ The City of Denton's Internal Audit Department is considered structurally independent as defined by generally accepted government auditing standard 3.56.

- Reviewed updates to the Pandemic Influenza Preparedness Plan and the Emergency Operations Manual;
- Observed emergency operations center documentation from recent events; and
- Reviewed documentation of emergency operations exercises and required National Incident Management System training certification and tracking.

Background

According to the World Health Organization, a pandemic is the worldwide spread of a new disease. On Jan. 30, 2020, the World Health Organization declared an outbreak of a novel coronavirus – commonly known as COVID-19. On March 11, 2020, the COVID-19 outbreak was declared a pandemic. Just two days later, the United States President declared the COVID-19 Pandemic a national emergency. The City of Denton's Mayor issued a Local Disaster ordinance that same day.

The City's Disaster Declaration was issued with the intention to reduce or stop the spread of COVID-19 and to mitigate the economic impact of the COVID-19 Pandemic in the City of Denton. The City of Denton's Disaster Declaration expired on Jun. 30, 2021.

Recommendation Status Update

This report summarizes the Audit of COVID-19 Response: Pandemic Preparedness' recommendations, management responses, and the Internal Audit Department's follow-up findings, which describe to what extent City management has implemented Internal Audit's recommendations since the publication of the original report in September 2020.

Emergency Management Planning Activities Adequately Consider Pandemics

1. **Review and update the City's Emergency Management Plan and the Pandemic Influenza Preparedness Plan to include specific guidelines or non-congregate sheltering and socially distant mass care during pandemics.**

Management Response: Concur

Fire Department Comments: The Fire Department is planning on having an outside consultant evaluate the entire Emergency Management Program by the end of the calendar year. Once the evaluation is complete, we will have the proper language to insert for this item. The expected completion is 03/01/2021.

Audit Follow-Up Finding: Implemented

While the update Emergency Operations Manual has not yet been fully implemented, the Pandemic Influenza Preparedness Plan now includes an Isolation/Quarantine Algorithm graphic and a non-congregated approach to sheltering plan.

Standard EOC Procedures may be Insufficient for Pandemics

2. **Revise the Emergency Operations Center Manual to include procedures for activating and operating a socially distant emergency operations center during pandemics.**

Management Response: Concur

Fire Department Comments: The Fire Department is planning on having an outside consultant evaluate the entire Emergency Management Program by the end of the calendar year. Once the evaluation is complete, we will have the proper language to insert for this item. The expected completion is 03/01/2021.

Audit Follow-Up Finding: Implemented

While the update Emergency Operations Manual has not yet been fully implemented, the Manual now includes procedures for activating and

operating a virtual Emergency Operations Center using the City's virtual communications platform.

3. Create and maintain appropriate records for operating and deactivating the Emergency Operations Center for the current COVID-19 Pandemic.

Management Response: Concur

Fire Department Comments: The Fire Department is planning on having an outside consultant evaluate the entire Emergency Management Program by the end of the calendar year. Once the evaluation is complete, we will have the proper language to insert for this item. The expected completion is 03/01/2021. During this evaluation period we will also be researching the best electronic software for emergency management functions so we can keep all of the files neatly sorted electronically. The Fire Department will also determine when the last virtual EOC meeting was with the former EMC around late April or early May. We will then document that the EOC operations for COVID were ended on that date.

Audit Follow-Up Finding: Alt. Solution

Due to transitions in the City's emergency management leadership during the COVID-19 Pandemic, records for deactivating the emergency operations center were not formally completed. That being said, a new Emergency Manager was hired in mid-2021. Since then, most Emergency Operations Center activities have been held using the City's virtual communications platform, which allows for these activities to be documented. In addition, for each event, the Emergency Manager has created, and distributed situation reports typically twice a day, indicating that effective documentation of Emergency Operations Center activities is now common practice.

Emergency Management Training Requirements are not Well Defined or Tracked

4. Update the EOC Manual to clarify which City staff are required to complete disaster management training, including how often and by when these training requirements should be complete. The EOC manual should also delegate responsibility for communicating these training requirements to the necessary individuals.

Management Response: Partially Concur

Fire Department Comments: We will be developing a matrix to better clarify which courses are required and by who. This item should be completed by the end of this calendar year. BC Lahart talked with the former EMC and he stated that they had a meeting this calendar year

with NIMS compliance members of most City departments that were responsible for their employees (some compliance members oversee a few departments). We still believe that the ultimate fix will be to house a copy of these certificates electronically so that the EM office can easily access the records. This can either be an EM type of software program or maybe some type of software that HR houses.

Audit Follow-Up Finding: Implemented

While the update Emergency Operations Manual has not yet been fully implemented, the Manual now specifies which National Incident Management System trainings staff that are involved in Emergency Operations Center activities are required to take. While it does not include how often these trainings must be completed, based on a review of industry standards, once a training is complete a refresher is not usually required.

- 5. Create a central repository for the required disaster management training certificates and centralize the responsibility for ensuring these trainings are completed appropriately.**

Management Response: Concur

Fire Department Comments: We will establish a temporary repository for training certificates by the end of the calendar year. A permanent solution will occur when we can find and implement an Emergency Management Software Program.

Audit Follow-Up Finding: Implemented

A repository for National Incident Management System training certificates has been created on the City's network and the Emergency Manager appears to have created a tracking spreadsheet, indicating that this recommendation is implemented. That being said, based on review of the tracking spreadsheet, it has not been updated since Feb. 2022, and includes 14 employees who have separated from the City.

- 6. Document disaster exercises including who attended and what emergency response activities were tested.**

Management Response: Partially Concur

Fire Department Comments: The exercises are well documented and meet all of the criteria set forth by the state. They also include sign-in sheets, etc. Unfortunately, they are currently all in paper form for the past 7 years. All of the folders are located in the filing cabinet in the Emergency Manager's Office. A better process will be investigated including an Emergency Management Software Program to manage these huge files and better organize the contents. We are hoping to have a new software program to track several emergency management functions going forward.

Audit Follow-Up Finding: Implemented

Historically, disaster exercise documentation was only retained physically, making it difficult to review during the original audit. Since then, emergency operations exercises have been stored electronically on the Fire Department's network drives and appears to include documented exercises dating from 2001 to 2022.

Based on review of exercises held by the City of Denton's emergency management program between 2019 and 2022, all events generally had adequate documentation of attendance and content. An exercise has been planned for 2023 but had not yet been held when the follow-up review was conducted.

The Business Continuity Plan Needs to Include Planning for Pandemics

- 7. Incorporate planning for telework during pandemics into the existing Business Continuity Plan. Teleworking resources should be prioritized based on critical and non-critical functions.**

Management Response: Partially Concur

Technology Services Comments: Technology Services partially concurs. Technology Services agrees that very specific and unusual department needs for remote work should be included in the business continuity plan (BCP). For example, providing Engineering access to their desktops to run applications too powerful for their laptops was outside of normal operations and should be included. Remote work technology (work from home) is considered a normal day to day technology function/service and not something utilized just in an emergency situation. For instance, we've always provided corporate Wi-Fi and corporate VPN prior to the pandemic. During the beginning stages of the pandemic, Technology Services was busier than normal, but did not provide services beyond normal operations. As a result, Technology Services did not activate the Technology Services BCP plan.

Audit Follow-Up Finding: In Progress

Since the original audit, the Business Continuity Plan has not been updated. Based on discussion with Technology Services and Fire Department staff, responsibility for periodically reviewing and updating the Business Continuity Plan transitioned from Technology Services to Emergency Management in April 2023.

In addition, telework has been formally incorporated into the City's regular course of business since the COVID-19 Pandemic, indicating that

only specialized teleworking needs should be included in the Business Continuity Plan when it is updated.

- 8. Incorporate planning for virtual meeting activities during pandemics into the existing Business Continuity Plan. Public Affairs should consult with Technology Services and the City Attorney's Office to ensure applicable state laws are considered when planning for virtual meetings.**

Management Response: Concur

Customer Service and Public Affairs (now Communications & Marketing)

Comments: Customer Service and Public Affairs concurs with this recommendation. Virtual meeting protocols and guidelines will enable Technology Services, the City Attorney's Office, customer Service and Public Affairs, and the City Manager's Office to more rapidly and reliably consider and, pending Council approval, deploy virtual meetings in a future pandemic or disaster, if needed.

Audit Follow-Up Finding: Alternative Solution

Since the original audit, the Business Continuity Plan has not been updated; however, a system for virtual public meeting participation that meets Texas Open Meeting Act requirements as well as the City's needs and standards has been established. This system includes allowing for virtual participation for members of the City Council

Financial Reserves are Maintained for Unexpected Situations

- 9. Review and potentially update the City's Fund Balance Policy and Utilities Financial Strategies to account for the prolonged financial impacts caused by pandemics.**

Management Response: Concur

Finance Department Comments: The Finance Department concurs with this recommendation. The City currently has reserve targets for all the utility Funds, General Fund, and several of the Special Revenue Funds. In the coming months, the Finance Department will complete an in-depth fund balance analysis to determine if the City's reserve targets are sufficient to sustain a revenue shortfall, major infrastructure failures or prolonged financial impact (i.e. pandemic). This analysis will provide guidance regarding optimal reserve targets to minimize the financial impact to citizens and rate payers. Once completed, recommendations will be presented to the Public Utilities Board (PUB) and Council for consideration.

Audit Follow-Up Finding: Implemented

Since the original audit, the City has updated its Fund Balance Policy in response to Winter Storm Uri and the impacts of the COVID-19 Pandemic. These changes are summarized in Table 1:

Table 1: Fund Balance Policy Changes

Fund	2016 Policy	2021 Policy
Electric	8-12%	38-61%
Wastewater	20-31%	20-31%
Water	25-42%	25-42%
Solid Waste	6-10%	6-10%

Based on this the policy appears to have been updated only to significantly increase fund balance requirements for the Electric fund. The Electric fund is likely to have the most impact from a pandemic event as electric usage at commercial buildings would likely significantly decrease.



Follow-Up Review of COVID-19 Response: Pandemic Preparedness Audit

Madison Rorschach

City Auditor

Internal Audit Department

May 2, 2023

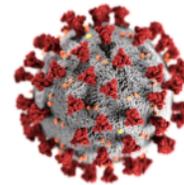


Purpose of the Follow-Up Review

- Provides a progress update on audit recommendations.
- Audit evaluated the pandemic readiness of the City by evaluating available emergency plans, procedures, and controls.
- Emergency management plans generally updated to include pandemic-specific considerations.



ID 23-150



AUDIT OF COVID-19
RESPONSE
Pandemic Preparedness

ABSTRACT

The City generally has appropriate plans in place to respond to disaster situations – including a Pandemic Influenza Preparedness Plan; however, most of these plans should be updated to incorporate pandemic-specific considerations like social distancing and teleworking.

Internal Audit Department

City Auditor
Madison Rorschach, CIA, CGAP

Audit Staff
Neeraj Sama, MBA



Emergency Management Plans Generally Updated; Telework Incorporated into Regular Business

- Emergency Management Plan Updates:
 - Pandemic Influenza Plan now includes isolation/quarantine information and non-congregate sheltering plans.
- Emergency Operations Center Manual:
 - Now includes procedures for virtual EOC operations;
 - Adequate procedures for documenting EOC operations developed – COVID-19 EOC operations documentation not finalized.
- Business Continuity Plan:
 - Responsibility for plan recently shifted from Tech Services to Emergency Management – not yet updated;
 - Telework & virtual meetings incorporated into regular business practices.



Disaster Management Training Better Documented

- Disaster Management Training:
 - Required trainings now specified in EOC Manual;
 - Emergency Manager now centrally tracking training completion – tracker has not been updated since early 2022.
- Disaster Management Exercises:
 - All disaster management exercises now retained electronically;
 - All City exercises conducted between 2019 and 2022 are adequately documented.



Procurement Process Follow-Up Report Summary: Significant Improvement Made

Audit Area	Recommendations	Implemented	In Progress	Not Implemented
Emergency Management Planning	5	80%	20%	0%
Disaster Management Training	3	100%	0%	0%
EOC Operations	1	100%	0%	0%
All:	9	89%	11%	0%

Recommendations in Progress:

- Incorporate planning for telework during pandemics into the existing Business Continuity Plan.



*Detailed recommendations and follow-up findings can be seen in the full audit report.

Questions?

Madison Rorschach

City Auditor

Internal Audit Department



ID 23-150

6



City of Denton

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

Legislation Text

File #: ID 23-286, **Version:** 1

Receive a report, hold a discussion, and give staff direction regarding funding recommendations from the Community Services Advisory Committee (CSAC) for the proposed activities to be included in the 2023-2027 Consolidated Plan for Housing and Community Development and 2023 Action Plan.

[Estimated Presentation/Discussion Time: 30 minutes]



AGENDA INFORMATION SHEET

DEPARTMENT: Community Services
CM/ DCM/ ACM: Frank Dixon, Assistant City Manager
DATE: May 2, 2023

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding funding recommendations from the Community Services Advisory Committee (CSAC) for the proposed activities to be included in the 2023-2027 Consolidated Plan for Housing and Community Development and 2023 Action Plan.

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Strengthen Community and Quality of Life.

BACKGROUND

As a recipient of Community Development Block Grant (CDBG) and Home Investment Partnership (HOME) program funds, the City of Denton is required to submit a three or five-year Consolidated Plan for Housing and Community Development (ConPlan) and an annual Action Plan to the U.S. Department of Housing and Urban Development (HUD). The Consolidated Plan measures community need, identifies goals for meeting those needs and develops strategies for meeting those goals.

Annual Action Plans are developed based on the strategies outlined in the Consolidated Plan and provide a description of how the funds will be allocated each program year. The annual Action Plan is reviewed and approved by City Council and then submitted to HUD.

The Community Services Advisory Committee (CSAC) advises the City Council on programs, services, and use of public resources to address complex social problems such as economic instability, housing, homelessness, and meeting community service needs. The CSAC reviews applications for the Community Development Grant Program and makes funding recommendations to Denton City Council which includes distribution of local (General Fund) and federal (CDBG and HOME) sources of funding.

DISCUSSION

2023-2027 CONSOLIDATED PLAN

Community Services is currently finishing the 2023-27 ConPlan and today's presentation provides federal funding recommendations for 1st year of the plan. The draft 2023 Action Plan for the Program Year from October 1, 2023 through September 30, 2024, represents the first in the City's five-year strategy.

ELIGIBLE ACTIVITIES

Eligible activities include housing development, rehabilitation and preservation; improving community facilities and neighborhood infrastructure; public services; economic development; planning; and program administration. Activities highlighted in the table below indicate activities prioritized in the City's ConPlan and Action Plan: Public Facilities and Improvements, Social (Human) Services, Affordable Rental Housing and Homeownership Assistance.

CDBG	HOME
<ul style="list-style-type: none"> ■ Acquisition ■ Public Facilities and Improvements ■ Demolition and Clearance ■ Social Services (15% cap) ■ Housing Programs ■ Economic Development ■ Historic Preservation ■ Code Enforcement ■ Removal of Architectural Barriers 	<ul style="list-style-type: none"> ■ Affordable Rental Housing ■ Homeownership Assistance ■ Tenant Based Rental Assistance ■ Land Acquisition ■ New Housing Construction

2023-24 ACTION PLAN & 2023-2027 CONSOLIDATED PLAN TIMELINE

DATE	ACTIVITY
October - December 2022	Funding Priority Survey
October 27, 2022	Public Hearing #1 (virtual)
January 12, 2023	Public Hearing #2 (in-person)
January 3, 2023	2023-2024 Community Development Grant Program Funding Applications Released
January 31, 2023	2023-2024 Community Development Grant Program Funding Applications Due
January - March 2023	Consolidated Plan Strategy Survey
April 21, 2023	CSAC Make Funding Recommendations for 2023 Action Plan
May 2, 2023	Work Session: Action Plan Funding Recommendations & Consolidated Plan Update
May 12, 2023	CSAC Review Consolidated Plan
May 15, 2023	Draft Action Plan & Consolidated Plan Available on City's Website
May 15, 2023 - June 16, 2023	Consolidated Plan & Action Plan Comment Period
June 6, 2023	Public Hearing for Consolidated Plan & Action Plan at City Council
July 18, 2023	Council Consider Approval of 2023-2027 Consolidated Plan & 2023 Action Plan
August 1, 2023	Submit Consolidated Plan & Action Plan to HUD
September 15, 2023	HUD Approval of Consolidated Plan & Action Plan (Est. 45 days from submission)
September 27, 2023	City Council consider General Fund Ordinances & Project Agreements for Approval
October 17, 2023	City Council consider CDBG & HOME Ordinances & Project Agreements for Approval

CITIZEN PARTICIPATION

The City's Consolidated Plan is developed in collaboration with local citizens, coalitions and collaboratives, nonprofit organizations, educational community, elected leaders, council appointed citizen advisory committees, and other community stakeholders. This engagement helps prioritize community development actions and the process allows for more effective planning for Denton's CDBG and HOME program activities.

To gain public input to draft the 2023-24 Action Plan and the 2023-2027 Consolidated Plan, staff held a virtual funding priority workshop on October 27, 2022, and collected citizen input regarding the use of CDBG and HOME funds through an online survey from October 13, 2022, through December 2, 2022. The survey collected feedback regarding the City's goals and strategies in the Consolidated Plan: Affordable Housing; Making Homelessness Rare, Brief and Nonrecurring; Public Services; and Public Facilities, Public Improvements and Infrastructure. The survey aimed to obtain community feedback regarding evaluation and prioritization of these goals for the City of Denton's 2023-2027 Consolidated Plan. Results from this survey are included in **Exhibit 4**.

The City will hold a public hearing to gain input from citizens on June 6, 2023. Strategies deployed to gain input from the public are outlined below.

1. Public Hearing for Consolidated Plan & Action Plan at City Council
2. Information is sent via email to residents, previous clients, committee members, local faith-based groups, participating lenders and realtors, neighborhood associations and social services agencies.
3. Print advertisements are placed in the Denton Record Chronicle.
4. Friday Report updates are provided to City Council members and City employees.
5. Information is included on DTV news segments.
6. Information is shared through the City’s social media accounts.

AVAILABLE FUNDING

The City of Denton’s Action Plan reflects local (General Fund), federal (CDBG and HOME), and American Rescue Plan Act’s State and Local Fiscal Recovery Funds (ARP-SLFRF) funding. Today’s presentation reviews the CSAC’s 2023-24 Community Development Grant Program funding recommendations. The City’s general fund allocations and ARP-SLFRF are included in the Action Plan to reflect the City’s investment leveraged with federal funds. However, the General Fund recommendations will be considered by City Council during the normal budgeting cycle for FY2023/24.

The total amount of funding is \$1,774,760.67:

FUNDING DESCRIPTION	2023-24 AMOUNT	2023-24 SET-ASIDES	2023-24 ALLOCATION
Funding Allocation	964,531.00		
Estimated Program Income ¹	5,000.00		
Administration ²		180,668.00	
Reallocated Funds ³	35,546.74		
CDBG ⁴	1,005,077.74	180,668.00	824,409.74
Funding Allocation	513,327.00		
Program Income ¹	68,355.93		
Administration ²		51,332.00	
Reallocated Funds ³	0.00		
HOME	581,682.93	51,332.00	530,350.93
General Funds	2,350,638.15		
General Funds – Administration		932,188.15	
General Funds – Homeless Initiatives		703,450.00	
General Funds – Rental Repair Program		100,000.00	
General Funds – Mentor Denton		20,000.00	
General Funds – Development Fee Grant		225,000.00	
GF	2,350,638.15	1,980,638.15	370,000.00
ARP - SLFRF	50,000.00		50,000.00
ARP - SLFRF	50,000.00	0.00	50,000.00
TOTAL	3,987,398.82	2,212,638.15	1,774,760.67

¹Based on HUD's recommendation the actual 2022/22 HOME Program Income will be allocated in the 2023 Action Plan.

²HUD allows a maximum percentage of the grant for administration (CDBG 20%/HOME 10%). Set-aside is based on costs for 2 FTE.

³The reallocated funds are residual balances from completed projects.

⁴HUD allows a maximum of 15% of the CDBG grant allocation to be utilized for public services activities. Final amount \$144,679.

2023-24 APPLICATIONS RECEIVED

A total of twenty-four (24) funding requests were submitted for the 2023-24 Community Development Grant Program totaling \$2,656,012.24 of requests. Four (4) applications were submitted for Housing Projects, one (1) application was submitted for Public Facility projects, and nineteen (19) applications were submitted for Human Services projects. A table outlining applications received is included below.

Applicant Organization	Application Type	2023-2024 Request
Boys & Girls Clubs of Greater Tarrant County	Human Services	\$51,118.00
CASA of Denton County Inc.	Human Services	\$42,000.00
Children's Advocacy Center for North Texas Inc ¹	Human Services	\$100,000.00
Chisholm Trail RSVP, Inc	Human Services	\$10,000.00
City of Denton Parks and Recreation (Summer Camp)	Human Services	\$67,042.50
Communities in Schools of North Texas, Inc.	Human Services	\$36,000.00
Denton Christian Preschool, Inc	Human Services	\$35,000.00
Denton City County Day School	Human Services	\$55,000.00
Denton County Friends of the Family, Inc.	Human Services	\$70,000.00
Denton County MHMR Center ²	Human Services	\$49,920.00
Fred Moore Day Nursery School	Human Services	\$10,000.00
Grace Like Rain Inc. DBA Giving Grace ³	Human Services	\$153,321.74
Health Services of North Texas, Inc.	Human Services	\$75,000.00
North Texas Solutions for Recovery, Inc. ⁴	Human Services	\$256,020.00
Opening Doors International Services, Inc.	Human Services	\$30,000.00
Our Daily Bread, Inc. ⁵	Human Services	\$90,000.00
PediPlace	Human Services	\$50,000.00
SPAN, Inc.	Human Services	\$27,000.00
The Salvation Army, a G.A. Corp. - Denton	Human Services	\$65,000.00
City of Denton (Minor Repair Program)	Housing Project	\$400,500.00
Denton Affordable Housing Corporation (DAHC)	Housing Project	\$200,000.00
Grace Like Rain Inc dba Giving Grace	Housing Project	\$227,090.00
Habitat for Humanity of Denton County, Inc.	Housing Project	\$260,000.00
City of Denton (Fred More Park Upgrades)	Public Facilities	\$296,000.00
TOTAL REQUESTED		\$2,656,012.24
GENERAL FUNDS AVAILABLE	\$370,000.00	
CDBG FUNDS AVAILABLE	\$824,409.74	
HOME FUNDS AVAILABLE	\$530,350.93	
ARP - SLFRF FUNDS AVAILABLE	\$50,000.00	
TOTAL FUNDS AVAILABLE	1,774,760.67	1,774,760.67
UNFUNDED BALANCE		-\$881,251.57

COMMITTEE RECOMMENDATIONS

On [April 21, 2023](#), the CSAC approved their recommendations to City Council.

A summary of funding recommendations, including project descriptions, is included in **Exhibit 2**. Below is a summary of total funding requests and recommendations by funding source.

2023/24 COMMUNITY DEVELOPMENT GRANT PROGRAM FUNDING RECOMMENDATIONS ALL SOURCES

	2023-2024		Recommendations by Source			
	Request	Recommendation	General Fund	CDBG	HOME	ARP
TOTAL	\$2,656,012.24	\$1,774,760.67	\$370,000.00	\$824,409.74	\$530,350.93	\$50,000.00
CDBG FUNDS		824,409.74		\$824,409.74		
HOME FUNDS		\$530,350.93			\$530,350.93	
GENERAL FUNDS		\$370,000.00	\$370,000.00			
ARPA FUNDS³		\$50,000.00				\$50,000.00
TOTAL FUNDS	1,774,760.67	\$1,774,760.67	\$370,000.00	\$824,409.74	\$530,350.93	\$50,000.00
UNPROGRAMMED FUNDS	-\$881,251.57	\$0	\$0	\$0	\$0	\$0

OPTIONS

1. Direct staff to proceed with the proposed CSAC CDBG and HOME recommendations as presented to be included in the 2023-24 Action Plan; OR
2. Provide other direction to staff regarding the funding recommendations for the 2023-24 Action Plan.

RECOMMENDATION

Direct staff to proceed with the proposed CSAC CDBG and HOME recommendations as presented to be included in the 2023-24 Action Plan

FISCAL INFORMATION

All projects and programs approved under the 2023-24 Action Plan are funded with CDBG, HOME, and program income from the use of these funds. General fund will be considered during the normal budgeting cycle by City Council for FY2023-24.

EXHIBITS

- Exhibit 1 – Agenda Information Sheet
- Exhibit 2 – 2023-24 CSAC Funding Recommendations
- Exhibit 3 – 2023-24 Project Descriptions
- Exhibit 4 – 2023-2027 City of Denton Consolidated Plan Strategy Survey Results
- Exhibit 5 – Presentation

Respectfully submitted:
 Dani Shaw
 Director of Community Services

Prepared by:
 Courtney Douangdara
 Deputy Director of Community Services

Luisa Garcia
 Community Development Manager

2023-2024 Community Services Advisory Committee (CSAC)
FUNDING RECOMMENDATIONS

Organization	Application Type*	2023-24		Funding Recommendation by Source			
		Request	Funding Recommendations	HOME	CDBG	GF ¹	ARP-SLFRF ²
Denton Affordable Housing Corporation	Housing	200,000.00	221,000.00	221,000.00			
Habitat for Humanity of Denton County	Housing	260,000.00	309,350.93	309,350.93			
City of Denton - Home Repair Program (Minor)	Housing	400,500.00	449,730.74		449,730.74		
City of Denton Parks - Fred Moore Park Improvements	PF	296,000.00	230,000.00		230,000.00		
Grace Like Rain DBA Giving Grace Housing Project	PF	227,090.00	0.00				
Boys & Girls Clubs of Greater Tarrant County	HS	51,118.00	0.00				
CASA of Denton County	HS	42,000.00	36,000.00			36,000.00	
Children's Advocacy Center for North Texas, Inc.	HS	100,000.00	27,500.00			27,500.00	
Chisholm Trail RSVP	HS	10,000.00	0.00				
City of Denton - Parks & Recreation (Summer Camp)	HS	67,042.50	45,000.00		45,000.00		
Communities in Schools of North Texas, Inc.	HS	36,000.00	27,500.00			27,500.00	
Denton Christian Preschool	HS	35,000.00	25,179.00			25,179.00	
Denton City County Day School	HS	55,000.00	25,000.00		25,000.00		
Denton County Friends of the Family	HS	70,000.00	50,000.00		50,000.00		
Denton County MHMR	HS	49,920.00	28,000.00			28,000.00	
Fred Moore Day Nursery School	HS	10,000.00	0.00				
Giving Grace, Inc.	HS	153,321.74	50,000.00				50,000.00
Health Services of North Texas, Inc.	HS	75,000.00	50,000.00			50,000.00	
North Texas Solutions for Recovery, Inc. (SONTX)	HS	256,020.00	50,000.00			50,000.00	
Opening Doors International Services, Inc.	HS	30,000.00	15,000.00			15,000.00	
Our Daily Bread, Inc.	HS	90,000.00	45,000.00			45,000.00	
PediPlace	HS	50,000.00	30,000.00			30,000.00	
SPAN, Inc.	HS	27,000.00	25,500.00		24,679.00	821.00	
The Salvation Army - Denton	HS	65,000.00	35,000.00			35,000.00	
TOTALS		2,656,012.24	1,774,760.67	530,350.93	824,409.74	370,000.00	50,000.00
CDBG FUNDS AVAILABLE			824,409.74		824,409.74		
HOME FUNDS AVAILABLE			530,350.93	530,350.93			
GENERAL FUNDS AVAILABLE			370,000.00			370,000.00	
ARP-SLFRF FUNDS AVAILABLE			50,000.00				50,000.00
TOTAL FUNDS AVAILABLE			1,774,760.67	530,350.93	824,409.74	370,000.00	50,000.00
UNPROGRAMMED FUNDS			0.00	0.00	0.00	0.00	0.00

¹General Fund availability based on previous year allocations, and the CSAC may recommend a different funding amount to Council. 2023-2024 General Funds are considered for approval by Denton City Council on September 27, 2023.

²ARP - funding was a one-time allocation of American Rescue Plan Act funding from US Treasury. ARP Funding Agreement will be considered for approval by Denton City Council on September 27, 2023.

**2023-2024 Community Development Grant Program
Funding Recommendations**

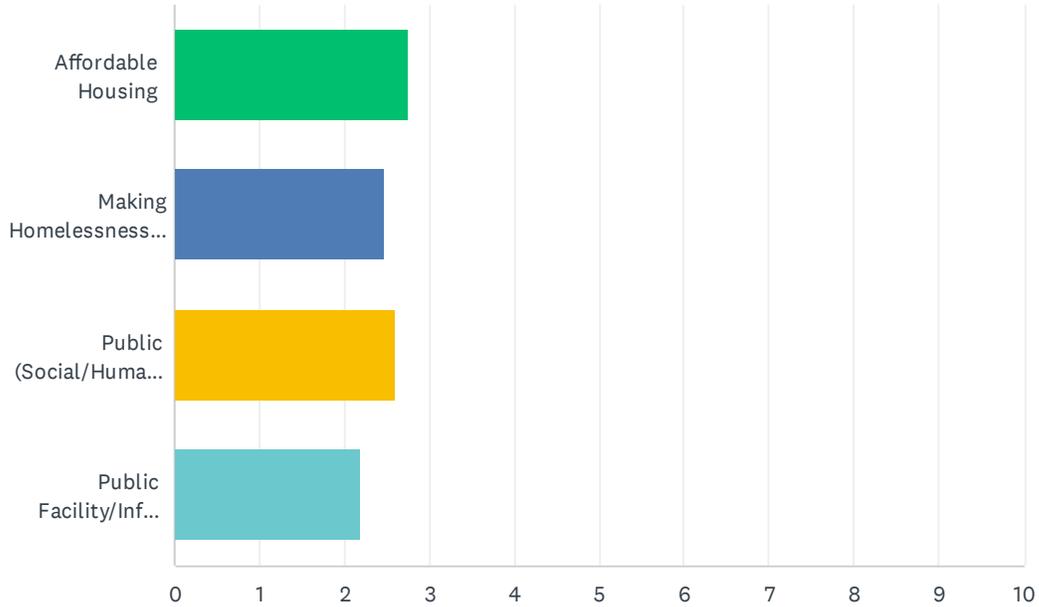
Organization	Project Description	Funding Amount	Projected Outputs
HOUSING PROJECTS		TOTAL	\$980,082
			<i>UNITS</i>
Denton Affordable Housing Corporation (DAHC)	DAHC will use the funds to convert its single-family home at 3813 Camelot St, Denton, Texas 76209 into a duplex, grant will cover some construction cost.	\$221,000	2
Giving Grace Housing Project	Funds will go towards predevelopment costs for Love First, a transitional community, for up to 77 families experiencing homelessness or at risk of experiencing homelessness.	\$0	0
Habitat for Humanity of Denton County, Inc.	Project consists of Habitat for Humanity building 35 small homes in a neighborhood community. Funds will help pay for a part of the build rate per home.	\$309,351	4
Home Repair Program	The program addresses urgently needed repairs of homes up to \$24,900 for low and moderate-income households. The program can stabilize a home within the city limits of Denton	\$449,731	30
PUBLIC FACILITY PROJECTS		TOTAL	\$230,000
			<i>PEOPLE</i>
City of Denton Parks and Rec-Fred Moore Park Upgrades	Funds will go towards a shade structure and ADA accessible walkway to the dugouts of Fred Moore Park.	\$230,000	2630
HUMAN SERVICES PROJECTS		TOTAL	\$564,679
			<i>PEOPLE</i>
Boys and Girls Club of Tarrant County	Mobile Clubhouse offers youth development programming and on-site enrichment activities at targeted locations through our fleet of customized vehicles, including an RV and cargo vans. Money will go towards two salaried specialist positions.	\$0	200
CASA of Denton County	Recruit, train and support community volunteers to advocate for the best interest of abused and neglected children, and to promote community awareness of child abuse issues.	\$36,000	245
Children's Advocacy Center for Denton County	Direct client services to help child abuse victims and families needing services.	\$27,500	500
Chisolm Trail RSVP	Coordination of volunteer services for senior citizens in Denton who provide volunteer services to local nonprofits meeting a community need.	\$0	200
Communities in Schools of North Texas	Dropout prevention programs in Denton ISD campuses located within city limits of Denton serving grades K-12 students who struggle with academic, social, emotional, and/or physical barriers to success and are at-risk of dropping out of school based on Texas Education Agency's 14 at-risk criteria.	\$27,500	1260
Denton Christian Preschool	Provide quality education for preschool age children in the Denton community to ensure children are at or above grade level when entering kindergarten and help end generational poverty. Funds will cover a portion of salaries for two (2) employees – Bilingual Teacher and Bus Driver.	\$25,179	45
Denton City County Day School	Support a diverse, multicultural population of prekindergarten children and their families in Denton County by providing quality, affordable childcare and early childhood education. Special emphasis and attention are placed on serving children from low to middle-income families. Funds will cover a portion of the salaries for two (2) Lead Teachers.	\$25,000	86
Denton County Friends of the Family	Salary support for a Shelter Director to ensure shelter is properly equipped to improve clients' sense of safety, provide support in overcoming the impact of violence and abuse and begin the process of helping the client achieve and maintain self-sufficiency free from family violence.	\$50,000	170
Denton Parks Camps & Childcare	Provide full scholarships for a summer day camp program to income-eligible kids in need of quality care, mentoring, development of life skills, leadership, respect for others and respect for self.	\$45,000	61

**2023-2024 Community Development Grant Program
Funding Recommendations**

Organization	Project Description	Funding Amount	Projected Outputs
Denton County MHMR LOSS Team	Outreach to Suicide Survivors by LOSS Team who are on-site at the scene of a suicide to provide resources and hope to newly bereaved. Funds will cover the cost of the LOSS Team Coordinator salary.	\$28,000	12
Fred Moore Day Nursery School	Provide tuition assistance for early childhood education for low-income families between 6 weeks and 4 years old.	\$0	141
Grace Like Rain	A two-year, three-phase case management and referrals for households experiencing or at-risk of homelessness.	\$50,000	130
Health Services of North Texas	Provides quality primary medical care for impoverished and uninsured/underinsured patients of all ages (including women's health & prenatal care).	\$50,000	250
North Texas Solutions for Recovery, Inc. (SONTX)	Provide scholarship funds to those who need services but cannot pay, as well as the integral case management services that ensures success in the program. Funds will pay for a portion of the salary for case manager personnel and scholarships for bed days.	\$50,000	180
Opening Doors International Services	Provide outreach, consultation on immigration benefits and openings for immigration cases at low- or no-cost.	\$15,000	419
Our Daily Bread	Security and staff supporting programs related to daily meals, supportive program services, and referrals for individuals experiencing economic hardships, food insecurity, Enhanced Shelter, program services, and referrals for individuals experiencing homelessness.	\$45,000	2471
PediPlace	Primary healthcare for children residing in Denton ages birth to 18 who are uninsured or qualify for Medicaid or CHIP benefits.	\$30,000	626
SPAN	Senior nutrition program providing hot, nutritionally regulated home delivered and congregate meals for senior adults in Denton.	\$25,500	420
The Salvation Army Denton	Assistance with food provided during the K.A.R.E. Kitchen daily meals and Food Pantry for clients experiencing homelessness and low-income households.	\$35,000	6774

Q1 Rank the City of Denton's current Consolidated Plan funding strategies in order of priority.

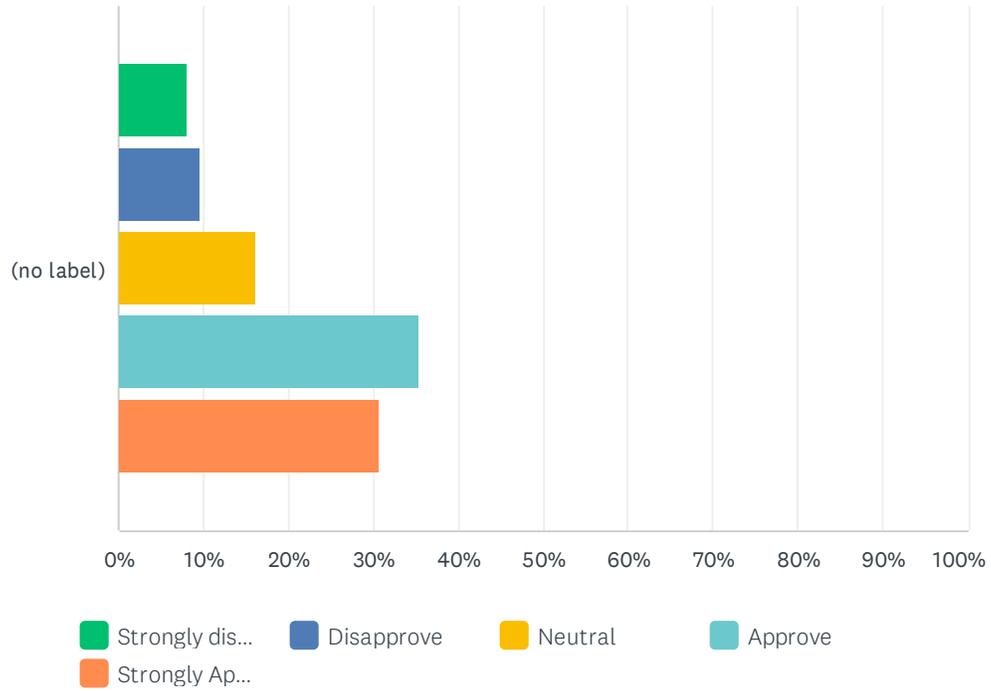
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	1	2	3	4	TOTAL	SCORE
Affordable Housing	35.48% 22	19.35% 12	30.65% 19	14.52% 9	62	2.76
Making Homelessness Rare, Brief and Nonrecurring	22.58% 14	27.42% 17	24.19% 15	25.81% 16	62	2.47
Public (Social/Human) Services	17.74% 11	40.32% 25	27.42% 17	14.52% 9	62	2.61
Public Facility/Infrastructure Improvements	25.40% 16	12.70% 8	17.46% 11	44.44% 28	63	2.19

Q2 Affordable Housing

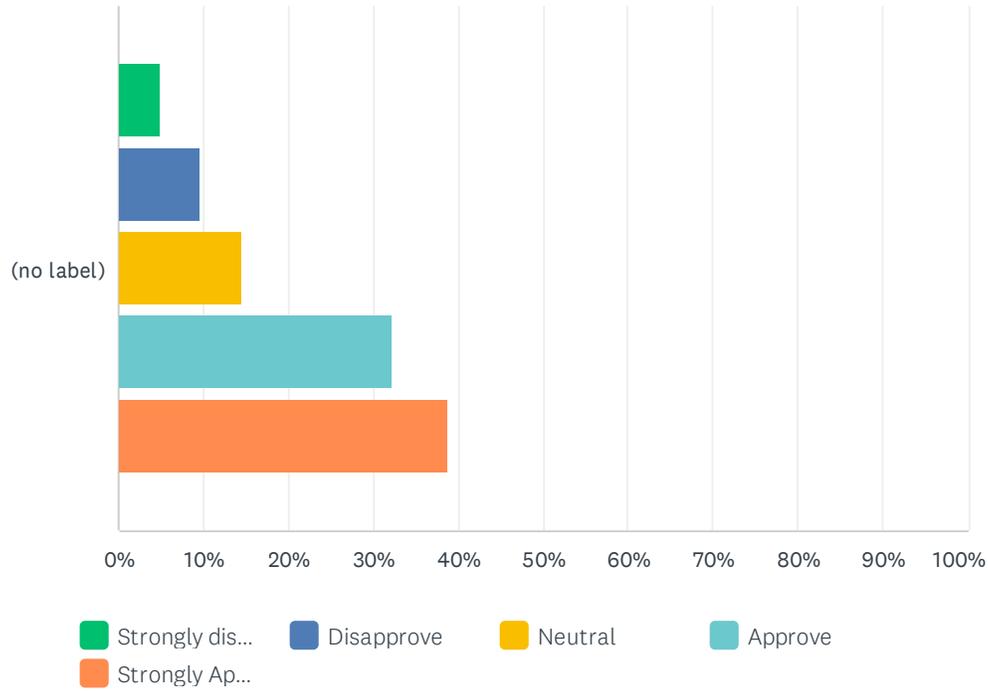
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	STRONGLY DISAPPROVE	DISAPPROVE	NEUTRAL	APPROVE	STRONGLY APPROVE	TOTAL	WEIGHTED AVERAGE
(no label)	8.06%	9.68%	16.13%	35.48%	30.65%	62	3.71
	5	6	10	22	19		

Q3 Making Homelessness Rare, Brief and Nonrecurring

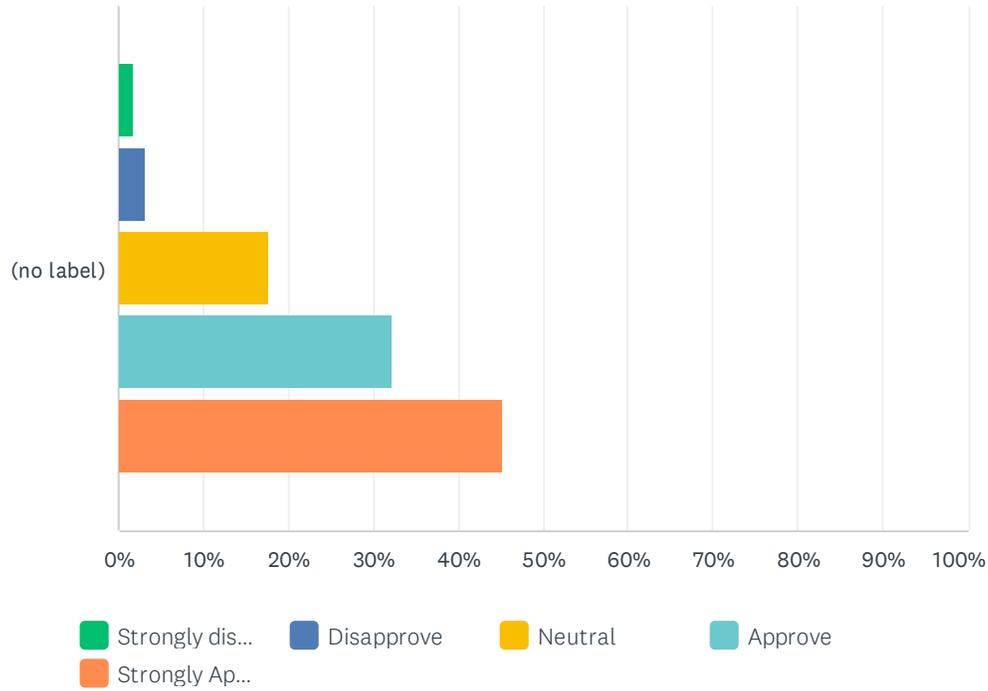
Answered: 62 Skipped: 1



	STRONGLY DISAPPROVE	DISAPPROVE	NEUTRAL	APPROVE	STRONGLY APPROVE	TOTAL	WEIGHTED AVERAGE
(no label)	4.84% 3	9.68% 6	14.52% 9	32.26% 20	38.71% 24	62	3.90

Q4 Public (Social/Human) Services

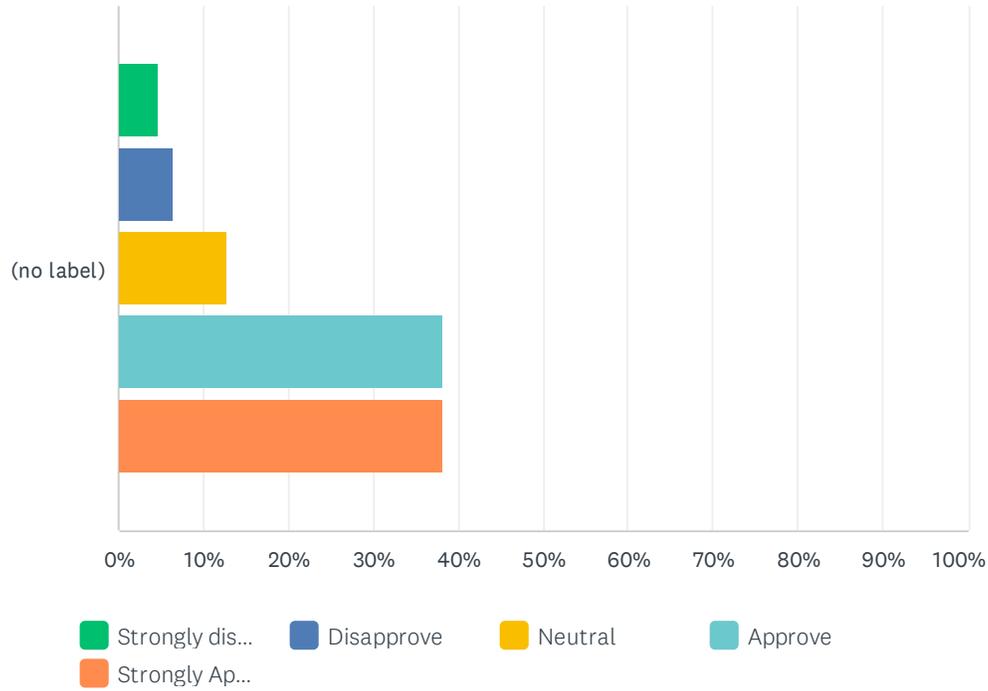
Answered: 62 Skipped: 1



	STRONGLY DISAPPROVE	DISAPPROVE	NEUTRAL	APPROVE	STRONGLY APPROVE	TOTAL	WEIGHTED AVERAGE
(no label)	1.61% 1	3.23% 2	17.74% 11	32.26% 20	45.16% 28	62	4.16

Q5 Public Facility/Infrastructure Improvements

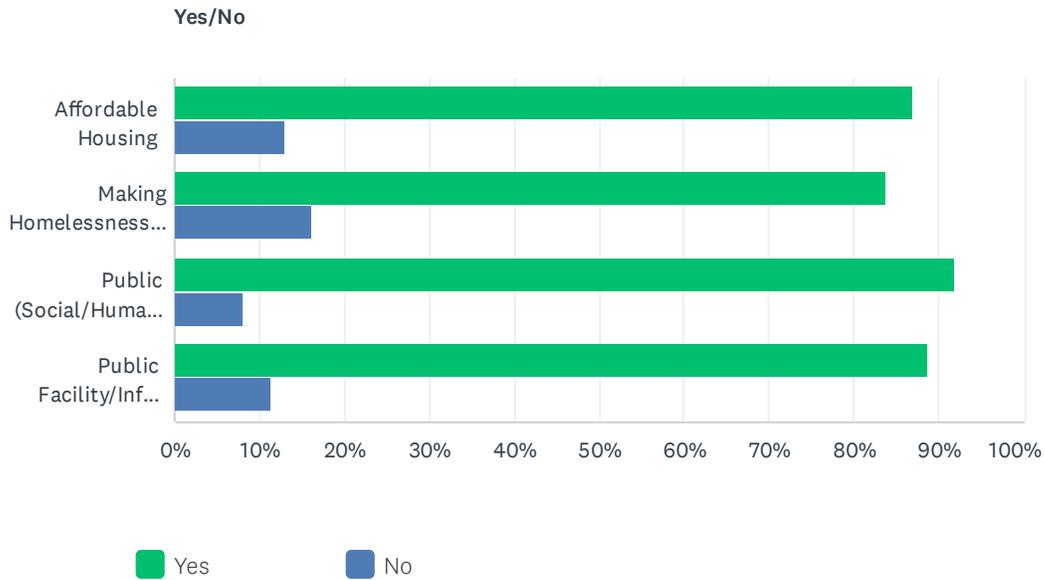
Answered: 63 Skipped: 0



	STRONGLY DISAPPROVE	DISAPPROVE	NEUTRAL	APPROVE	STRONGLY APPROVE	TOTAL	WEIGHTED AVERAGE
(no label)	4.76%	6.35%	12.70%	38.10%	38.10%	63	3.98
	3	4	8	24	24		

Q6 Indicate whether or not you think the City of Denton should continue prioritizing current funding strategies.

Answered: 62 Skipped: 1



Yes/No	YES	NO	TOTAL
Affordable Housing	87.10% 54	12.90% 8	62
Making Homelessness Rare, Brief and Nonrecurring	83.87% 52	16.13% 10	62
Public (Social/Human) Services	91.94% 57	8.06% 5	62
Public Facility/Infrastructure Improvements	88.71% 55	11.29% 7	62

Q7 What, if any, other funding strategies should the City of Denton prioritize for the 2023-2027 Consolidated Plan?

Answered: 40 Skipped: 23

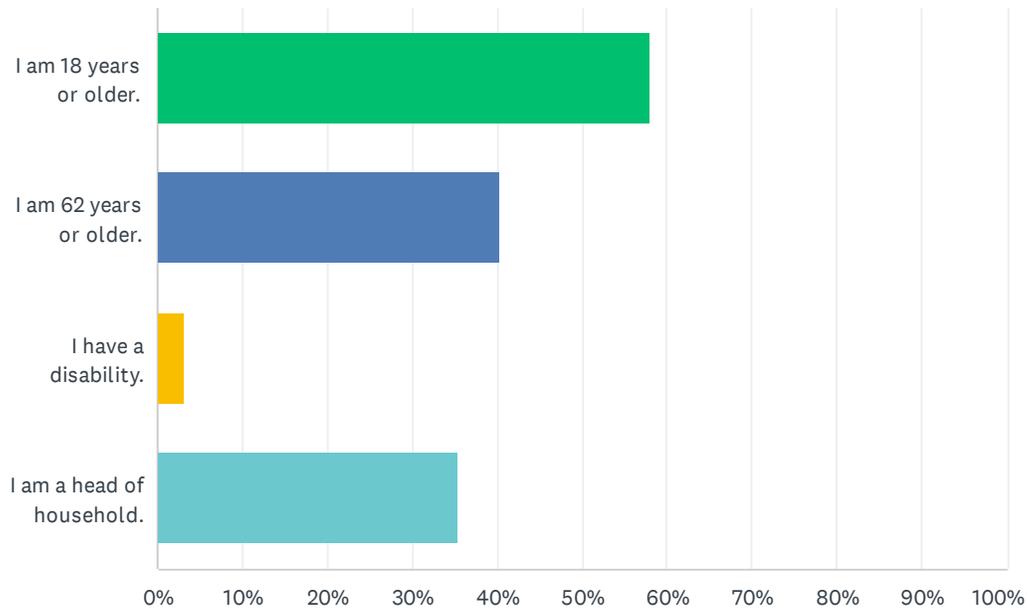
#	RESPONSES	DATE
1	Animal shelter expansion, combatting predatory and anti-animal rental agreements (possibly offering tax credits to developers that are pet inclusive)	2/9/2023 3:27 PM
2	Improving safe walking/biking within our city. Not just from houses to schools/parks, but also to basic necessities like housing to grocers or convenience stores. Needing a car to get basic necessities raises our citizen's basic living expense. Public transit would also assist this.	2/9/2023 1:58 PM
3	Child- care, job/skills training, and available health services enable people in need to be independent. Being able to earn a living and to develop future goals helps to promote self - respect. A caring community should provide job placement for people who haven't figured out how to manage independent living.	2/9/2023 10:53 AM
4	Walkable, accessibility, pedestrian, zones, and more bike paths.	2/8/2023 7:21 PM
5	Roads	2/8/2023 4:05 PM
6	Unknown these are amazing goals. Affordable housing is huge especially family assistance programs and making them easily accessible and known to the public. Assistance for families with special needs or troubled kids would be great as well for a community outreach.	2/8/2023 10:35 AM
7	Creating and maintaining green spaces such as parks and road medians.	2/8/2023 10:16 AM
8	Fix the streets that are failing.	2/7/2023 7:40 PM
9	More funding for more adequate public safety resources, buildings, and staffing.	2/7/2023 3:49 PM
10	Unknowns	2/7/2023 3:28 PM
11	Reduce tax breaks to corporations like the crypto mining companies. That only passes more taxes on to the citizens. More transparency from the Mayor.	2/7/2023 3:25 PM
12	Community parks, road improvements and school updates	2/6/2023 9:03 PM
13	Infrastructure and crime and education	2/3/2023 3:55 PM
14	funding for family services to keep families together through crisis	2/3/2023 6:28 AM
15	76207	2/2/2023 9:08 PM
16	Senior citizen housing	2/2/2023 8:44 PM
17	Libraries should be a priority because they serve such a large swath of the population.	2/2/2023 6:07 PM
18	Analyze city processes, like development and permitting, to find and implement efficiencies.	2/2/2023 12:31 PM
19	Fund youth and mental health programs. Promote funding to help increase Black and brown Businesses and ownerships.	2/2/2023 12:08 AM
20	Replanting trees and leaving places of Denton natural with no development for animal habitats and for the overall health of the earth and community.	1/23/2023 5:55 AM
21	Reduce homeless population	1/22/2023 10:33 PM
22	Fixing the streets	1/16/2023 4:32 PM
23	Help create affordable housing by allowing more ACUs and in-fill projects. We need greater density in our housing to reduce the need for cars. Poor people cannot afford cars. We need housing density and public transit that works.	1/16/2023 11:08 AM
24	Creating/improving significant nature and green belt areas in and immediately surrounding	1/14/2023 11:44 AM

2023-2027 City of Denton Consolidated Plan Strategy Survey

	Denton to ensure the city is not surrounded by rampant development.	
25	Parks and recreation, parkland and public event spaces...	1/14/2023 8:21 AM
26	Support new construction efforts for affordable housing by working with developers to incentivizing projects that produce units with lower AMI targeting.	1/13/2023 10:47 AM
27	Mental Health services	1/12/2023 10:45 AM
28	Infrastructure spending should focus on walkability and bicycles. Widening roads is counter-productive. Also, GoZone was released with the sales pitch that it would serve people all over Denton while bus routes do not. But there are still large parts of Denton which have zero access to any form of public transit (e.g. around Guyer High School).	1/12/2023 10:42 AM
29	Housing	1/12/2023 7:36 AM
30	SAFE accessibility via walking and biking lanes separate from dangerous cars on roads with attention to improving the density of housing/services.	1/11/2023 12:57 PM
31	More affordable housing	1/11/2023 10:20 AM
32	Roads! The city of Denton roads, especially near the center are awful. Surrounding towns have way better roads. Longer hours at the public pool facilities (more funding to pay people to work more hours).	1/9/2023 11:05 PM
33	We need to see more involvement from the city to bring the communities together. DPD does an excellent job of being present but when it comes to City Manager or Counsel members you only see them for photo ops then they disappear.	1/9/2023 2:48 PM
34	Make Denton a walkable, bikeable, and provide better transportation options besides the road-clogging, polluting GoZone. Bus ridership is low because the routes aren't accessible to most people. Maybe those that have say should read the book Strong Towns.	1/9/2023 2:21 PM
35	Improving city facilities across the board. Stop building ugly apartments. Bring business to Denton. Bring better doctors to Denton.	1/9/2023 1:32 PM
36	More public parks with space for special needs kids	1/9/2023 1:24 PM
37	Using SPAN to fill the huge gaps left by DCTA for underserved populations.	1/9/2023 7:51 AM
38	None because the four mentioned previously haven't been dealt with adequately or appropriately.	1/8/2023 10:13 AM
39	More recognition that area volunteer agencies offer real benefits to the city/county and yet have to fend for themselves to find meeting spaces, community event spaces, etc. while they are offering "free" community services.	1/7/2023 7:38 AM
40	Neighborhood Improvements	1/6/2023 4:35 PM

Q8 Please tell us about yourself (Select all that apply)

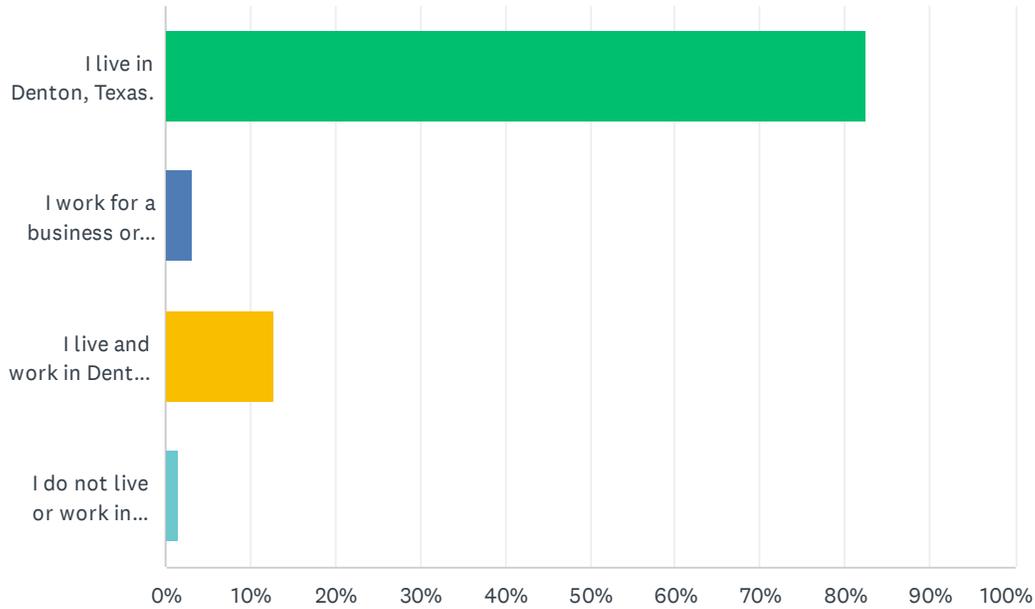
Answered: 62 Skipped: 1



ANSWER CHOICES	RESPONSES	
I am 18 years or older.	58.06%	36
I am 62 years or older.	40.32%	25
I have a disability.	3.23%	2
I am a head of household.	35.48%	22
Total Respondents: 62		

Q9 Which best describes you?

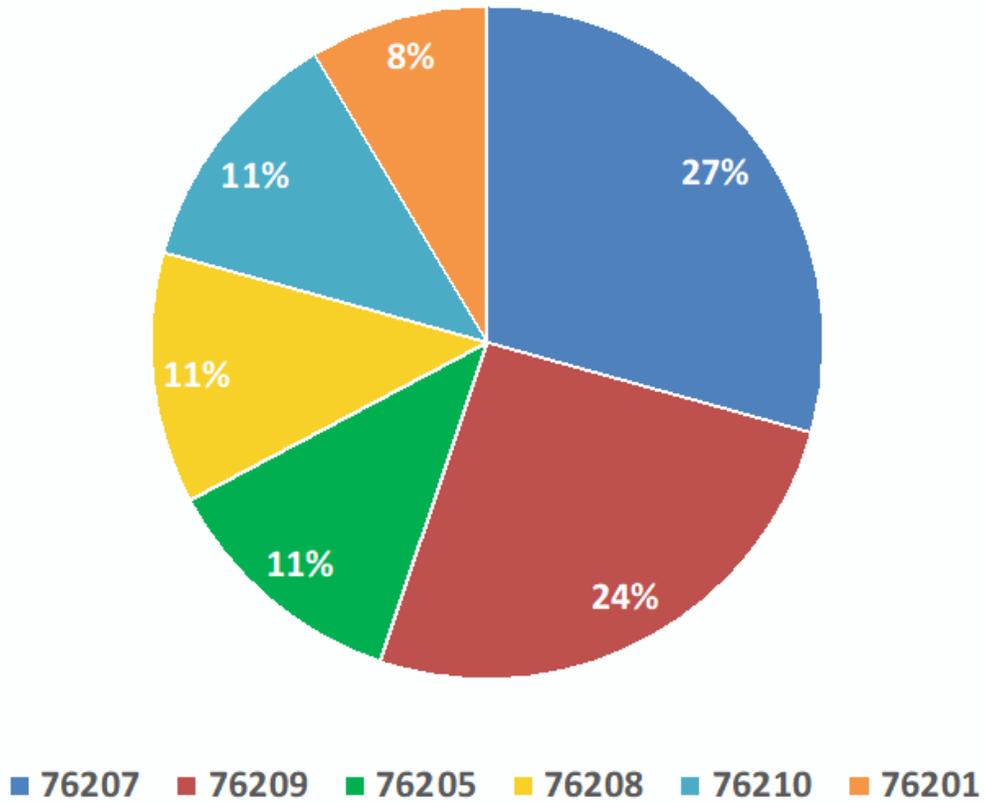
Answered: 63 Skipped: 0



ANSWER CHOICES	RESPONSES	
I live in Denton, Texas.	82.54%	52
I work for a business or organization operating in Denton, Texas.	3.17%	2
I live and work in Denton, Texas.	12.70%	8
I do not live or work in Denton, Texas.	1.59%	1
TOTAL		63

Q10 What is your Zip Code of residence?

Answered: 63 Skipped: 0





CSAC Funding Recommendations

May 2, 2023

ID23-286

COMMUNITY SERVICES

AGENDA

- Provide information on the 2023-2027 Consolidated Plan
- Provide notification of the upcoming Public Hearing on City use of federal Community Development Grant funds
- Review CSAC Community Development Grant funding recommendations for the 2023-24 Action Plan
- Receive any direction or feedback from Council

CONSOLIDATED PLAN & ACTION PLAN

CONSOLIDATED PLAN

- Required by HUD for communities that received CDBG/HOME funds
- Describes needs, resources, priorities, strategies, and goals
- Update every 3-5 years
- Currently developing **2023-2027 Consolidated Plan**

ACTION PLAN

- Required to be submitted annually
 - **2023-24 Action Plan - Year 1**
 - 2024-25 Action Plan - Year 2
 - 2025-26 Action Plan - Year 3
 - 2026-27 Action Plan – Year 4
 - 2027-28 Action Plan – Year 5

ELIGIBLE ACTIVITIES

CDBG

- Acquisition
- Public Facilities and Improvements
- Demolition and Clearance
- Social Services (15% cap)
- Housing Programs
- Economic Development
- Historic Preservation
- Code Enforcement
- Removal of Architectural Barriers

HOME

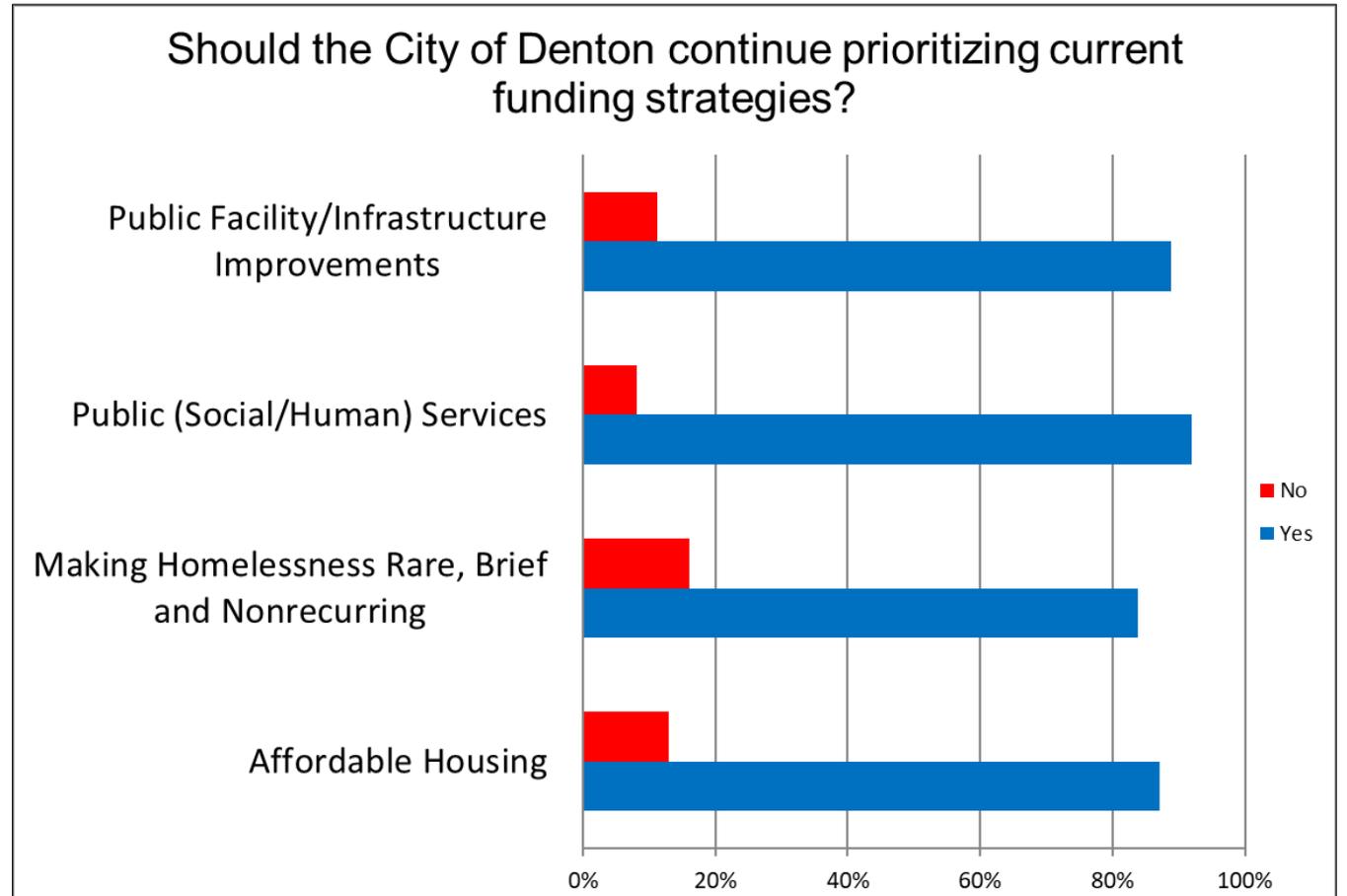
- Affordable Rental Housing
- Homeownership Assistance
- Tenant Based Rental Assistance
- Land Acquisition
- New Housing Construction

2023-24 ACTION PLAN & 2023-27 CONSOLIDATION PLAN TIMELINE

DATE	ACTIVITY
April 21, 2023	CSAC Make Funding Recommendations for 2023 Action Plan
May 2, 2023	Council Work Session: Action Plan Funding Recommendations & Consolidated Plan Update
May 12, 2023	CSAC Review Consolidated Plan
May 15, 2023	Draft Action Plan & Consolidated Plan Available on City's Website
May 15, 2023 - June 16, 2023	Consolidated Plan & Action Plan Comment Period
<i>June 6, 2023</i>	<i>Public Hearing for Consolidated Plan & Action Plan at City Council</i>
July 18, 2023	Council Consider Approval of 2023-2027 Consolidated Plan & 2023 Action Plan
August 1, 2023	Submit Consolidated Plan & Action Plan to HUD
September 15, 2023	HUD Approval of Consolidated Plan & Action Plan (Est. 45 days from submission)
September 27, 2023	City Council consider General Fund Ordinances & Project Agreements for Approval
October 17, 2023	City Council consider CDBG & HOME Ordinances & Project Agreements for Approval

CITIZEN PARTICIPATION

- Citizen and Community Involvement:
 - 2 Surveys
 - 2 Public Hearings
 - Community Coalitions



2023 COMMUNITY DEVELOPMENT GRANT PROGRAM

FUNDING

- Total Requested: **\$2,656,012.24**
- Total Available: **\$1,774,760.67**
 - Federal CDBG: \$824,409.74
 - Federal HOME: \$530,350.93
 - General Fund: \$370,000
 - ARP-SLFRF: \$50,000

APPLICATIONS

- Total Applications Received: **24**
 - 4 - Housing
 - 1 - Public Facility
 - 19 - Human (Social) Services

CSAC RECOMMENDATIONS

Organization	Application Type*	2023-24		Funding Recommendation by Source			
		Request	Funding Recommendations	HOME	CDBG	GF ¹	ARP-SLFRF ²
Denton Affordable Housing Corporation	Housing	\$200,000.00	\$221,000.00	\$221,000.00			
Habitat for Humanity of Denton County	Housing	\$260,000.00	\$309,350.93	\$309,350.93			
City of Denton - Home Repair Program (Minor)	Housing	\$400,500.00	\$449,730.74		\$449,730.74		
City of Denton Parks - Fred Moore Park Improvements	PF	\$296,000.00	\$230,000.00		\$230,000.00		
DBA Giving Grace Housing Project	PF	\$227,090.00	\$0.00				

CSAC RECOMMENDATIONS

Organization	Application Type*	2023-24		Funding Recommendation by Source			
		Request	Funding Recommendations	HOME	CDBG	GF ¹	ARP-SLFRF ²
Boys & Girls Clubs of Greater Tarrant County	HS	\$51,118.00	\$0.00				
CASA of Denton County	HS	\$42,000.00	\$36,000.00			\$36,000.00	
Children's Advocacy Center for North Texas, Inc.	HS	\$100,000.00	\$27,500.00			\$27,500.00	
Chisholm Trail RSVP	HS	\$10,000.00	\$0.00				
City of Denton - Parks & Recreation (Summer Camp)	HS	\$67,042.50	\$45,000.00		\$45,000.00		
Communities in Schools of North Texas, Inc.	HS	\$36,000.00	\$27,500.00			\$27,500.00	
Denton Christian Preschool	HS	\$35,000.00	\$25,179.00			\$25,179.00	
Denton City County Day School	HS	\$55,000.00	\$25,000.00		\$25,000.00		
Denton County Friends of the Family	HS	\$70,000.00	\$50,000.00		\$50,000.00		
Denton County MHMR	HS	\$49,920.00	\$28,000.00			\$28,000.00	
Fred Moore Day Nursery School	HS	\$10,000.00	\$0.00				
Giving Grace, Inc.	HS	\$153,321.74	\$50,000.00				\$50,000.00
Health Services of North Texas, Inc.	HS	\$75,000.00	\$50,000.00			\$50,000.00	
North Texas Solutions for Recovery, Inc. (SONTX)	HS	\$256,020.00	\$50,000.00			\$50,000.00	
Opening Doors International Services, Inc.	HS	\$30,000.00	\$15,000.00			\$15,000.00	
Our Daily Bread, Inc.	HS	\$90,000.00	\$45,000.00			\$45,000.00	
PediPlace	HS	\$50,000.00	\$30,000.00			\$30,000.00	
SPAN, Inc.	HS	\$27,000.00	\$25,500.00		\$24,679.00	\$821.00	
The Salvation Army - Denton	HS	\$65,000.00	\$35,000.00			\$35,000.00	

CSAC RECOMMENDATIONS

TOTALS	2,656,012.24	1,774,760.67	530,350.93	824,409.74	370,000.00	50,000.00
CDBG FUNDS AVAILABLE		\$824,409.74		\$824,409.74		
HOME FUNDS AVAILABLE		\$530,350.93	\$530,350.93			
GENERAL FUNDS AVAILABLE		\$370,000.00			\$370,000.00	
ARP-SLFRF FUNDS AVAILABLE		\$50,000.00				\$50,000.00
TOTAL FUNDS AVAILABLE	1,774,760.67	\$1,774,760.67	\$530,350.93	\$824,409.74	\$370,000.00	\$50,000.00
UNPROGRAMMED FUNDS	-\$881,251.57	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

¹General Fund availability based on previous year allocations, and the CSAC may recommend a different funding amount to Council. 2023-2024 General Funds are considered for approval by Denton City Council on September 27, 2023.

²ARP - funding was a one-time allocation of American Rescue Plan Act funding from US Treasury. ARP Funding Agreement will be considered for approval by Denton City Council on September 27, 2023.

SEEKING COUNCIL DIRECTION

1. Direct staff to proceed with the proposed CSAC recommendations as presented to be included in the 2023/24 Action Plan; OR
2. Provide other direction to staff regarding the funding recommendations for the 2023/24 Action Plan.



City of Denton

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Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: ID 23-456, **Version:** 1

AGENDA CAPTION

Receive a report, hold a discussion, and give staff direction regarding an allocation of excess sales tax.
[Estimation Presentation/Discussion Time: 30 minutes]



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Finance
ACM: Cassey Ogden
DATE: May 2, 2023

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding an allocation of excess sales tax.

BACKGROUND

On December 6, 2022, City Council gave direction for staff to present information regarding establishing a formal policy to provide 15% of sales tax revenue that exceeds the fiscal year budget will be spent on one-time expenses for the Denton Police Department.

The City anticipated receiving \$46,246,938 in sales tax revenue for Fiscal Year 2022, as adopted in the City's annual budget. The actual sales tax received in Fiscal Year 2022 was \$53,264,727, a \$7,017,789 increase from the budgeted amount, 15% of this increase is \$1,052,668.

Sales tax is volatile and varies from year-to-year. When the City receives more sales tax revenue than anticipated, the City funds one-time expense requests that do not require an on-going impact to future budgets. Departments submit budget requests based on a variety of factors. At this time, the Police Department has not identified any one-time expense requests for the Fiscal Year 2024 budget. City Council is presented one-time and on-going, or supplemental, requests for consideration during the annual budget process.

ESTIMATED SCHEDULE OF PROJECT

If Council gives direction to proceed with a formal policy, staff will present a draft ordinance for Council consideration at a future meeting.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

This work session report was requested as a result of a two-minute pitch on December 6, 2022.

FISCAL INFORMATION

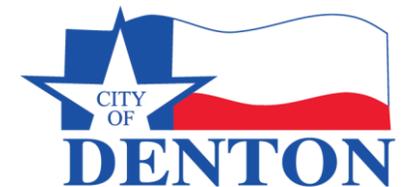
EXHIBITS

1. Agenda Information Sheet
2. Presentation

Respectfully submitted:
Cassey Ogden
Assistant City Manager / CFO



Excess Sales Tax Collection



Background

- Result of two-minute pitch made on December 6, 2022.
- Pitch request for a portion (15%) of the sales tax collected above budget to be dedicated to the Police Department for one-time expenses through a formal policy.

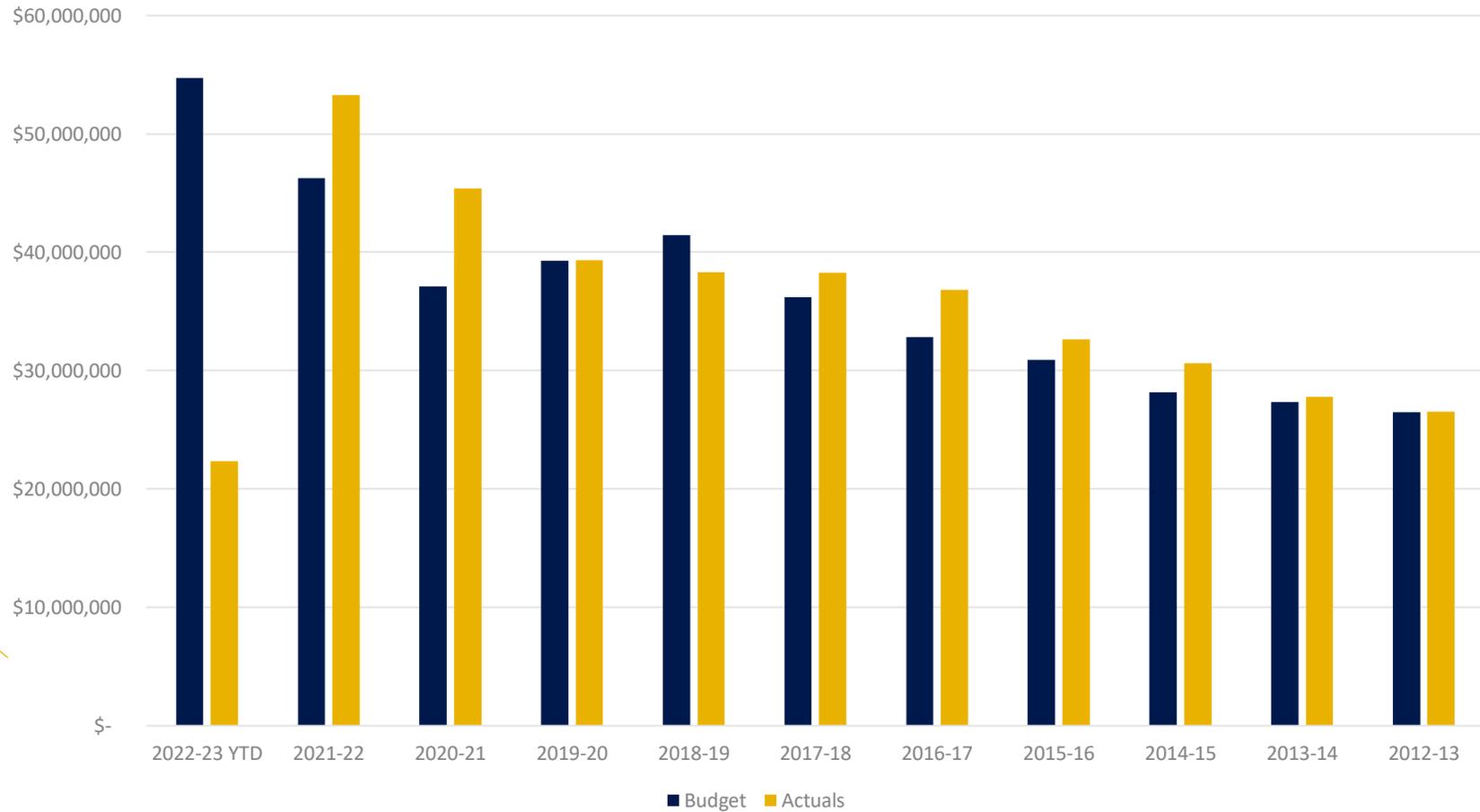
Current Process

- All revenue is utilized to meet budgetary requirements and maintain fund balance in accordance with City policy.
- Due to volatility of sales tax revenue, higher than forecasted collections are considered for one-time expenses annually, through the budget process.
 - The annual sales tax revenue is finalized in November of each year, for the prior fiscal year.
 -
- Funding requests are submitted through the annual budget process and comprised of three categories:
 - **Baseline adjustments** are requests made for inflation and contractual increases.
 - **One-time** requests have no recurring expenses.
 - **Supplemental** requests are new programs, services, and/or personnel with ongoing expenses.
- The City Manager includes recommended funding levels for baseline, one-time, and supplemental requests in the Proposed Budget based on a number of factors including: regulatory, safety, Council priorities, growth, etc.
- Council provides direction, which can include funding additional requests through excess sales tax, property tax, and/or a draw down of fund balance during the annual Budget Workshop held in August.

Considerations

- Revenue projections are updated throughout the budget process as additional information is received.
- All revenue sources are evaluated when funding recommendations are made to City Council.
- Department needs vary from year-to-year, including one-time requests.
- In 2019 the City adopted the Police Department Staffing Study and has followed the recommendations by increasing public safety personnel since adoption with the goal of 220 sworn positions by 2025 and 236 sworn positions by 2030. Both Police and Fire have submitted for additional staff in FY 2024.

Sales Tax History



One-time Requests

- FY 2022 – Sales tax revenue exceeded budget by \$7,017,789.
 - 15% = \$1,052,668
- At this time, no one-time expenditures have been identified by the Police Department.
 - Police Department requested baseline adjustments and supplemental requests for FY24.
 - The FY24 budget requests will be discussed with City Council at the Budget Workshop on August 5, 2023.

Fiscal Year	Amount	Department
FY 2023	\$302,560	Police, Planning, Building Inspections, Parks
FY 2022	\$1,514,390	Fire, Planning, Parks, Traffic, Community Services, Libraries, Economic Development
FY 2021	\$7,595,037	Libraries, Tech Services, Development Service, Customer Service, Procurement, Finance, Capital

Options

- Option 1: Create a formal policy.
- Option 2: Continue with current process.

Questions





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Legislation Text

File #: ID 23-842, **Version:** 1

AGENDA CAPTION

Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys -- Under Texas Government Code Section 551.071.

Receive information from staff regarding an update on the Core Scientific Power Purchase Agreement and Lease that includes data stemming from public power utility competitive data; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding legal issues associated with the above matter where a 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 State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.



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File #: ID 23-911, **Version:** 1

AGENDA CAPTION

Consultation with Attorneys - Under Texas Government Code Section 551.071.

Consult with the City's attorneys on the legal status, expenses, strategy, and options for resolution of litigation issues associated with the "*Application of Denton Municipal Electric to Change Rates for Wholesale Transmission Service*" pending before the Public Utility Commission of Texas under Docket No. 52715; where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and Denton Municipal Electric (DME) under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or otherwise compromise the City's legal position.



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Legislation Text

File #: ID 23-429, **Version:** 1

AGENDA CAPTION

Proclamation: National Preservation Month



City of Denton

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Legislation Text

File #: ID 23-607, **Version:** 1

AGENDA CAPTION

Proclamation: DFW Great 100 Award Recognition, Rebecca A. Jones, Director of Critical Care



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Legislation Text

File #: ID 23-608, **Version:** 1

AGENDA CAPTION

Proclamation: DFW Great 100 Award Recognition, Crystal Perry, MSN, RN, CEN, TCRN, Trauma Program Director



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Legislation Text

File #: ID 23-610, **Version:** 1

AGENDA CAPTION

Proclamation: DFW Great 100 Award Recognition, Maritza Cates



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Legislation Text

File #: ID 23-653, **Version:** 1

AGENDA CAPTION

Proclamation: National Nurses Week



City of Denton

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Legislation Text

File #: ID 23-670, **Version:** 1

AGENDA CAPTION

Proclamation: International Compost Awareness Week



City of Denton

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Legislation Text

File #: ID 23-672, **Version:** 1

AGENDA CAPTION

Proclamation: National Day of Prayer



City of Denton

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Legislation Text

File #: ID 23-843, **Version:** 1

AGENDA CAPTION

Proclamation: Small Business Week



City of Denton

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Legislation Text

File #: ID 23-912, **Version:** 1

AGENDA CAPTION

Ms. Camila Parra regarding youth and education.



City of Denton

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Legislation Text

File #: ID 23-913, **Version:** 1

AGENDA CAPTION

Mr. Stephen Dillenburg regarding Campaign and General Welfare of Denton Status Update and Query.



City of Denton

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215 E. McKinney St.
Denton, Texas 76201
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Legislation Text

File #: ID 23-029, **Version:** 1

AGENDA CAPTION

Consider approval of the minutes of the April 18, 2023 Meeting.



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: City Secretary's

CM: Office Sara Hensley

DATE: May 2, 2023

SUBJECT

Consider approval of the minutes of the April 18, 2023 Meeting.

BACKGROUND

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

EXHIBITS

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – April 18, 2023 Minutes – Draft

Respectfully submitted:

Jesus Salazar
Interim City Secretary

CITY OF DENTON CITY COUNCIL MINUTES
April 18, 2023

After determining that a quorum was present, the City Council of the City of Denton, Texas convened in a Work Session on Tuesday, April 18, 2023, 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 Brian Beck and Council Members Vicki Byrd, Jesse Davis, Brandon Chase McGee, and Chris Watts (Virtual)

ABSENT: None

VACANT: District 4

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.

- Clarification was requested on the following items:
 - Mayor Pro Tem Beck: Consent Items 4.M (23-745), 4.P (23-761), 4.T (23-789), and 4.V (23-821)
 - Council Member Byrd: Consent Item 4.G (23-737)
- The following item was pulled for Individual Consideration:
 - Council Member Davis: Consent Item 4.C (23-762)
- The following item was pulled from consideration:
 - At the request of Staff: Consent Item 4.E (23-675)
- The following item was pulled for deliberation at the Closed Meeting:
 - Council Member Watts: Work Session Item 4.C (23-661)

3. Recess of the Work Session

The work session was recessed to a Closed Meeting at 2:22 p.m.

CLOSED MEETING

1. The City Council convened into a Closed Meeting at 2:22 p.m. consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law, as follows.
 - A. ID 23-841 Consultation with Attorneys - Under Texas Government Code Section 551.071. Consult with the City's attorneys on the legal status, expenses, strategy, and options for resolution of litigation issues associated with the "Application of Denton Municipal Electric to Change Rates for Wholesale Transmission Service" pending before the Public Utility Commission of Texas under Docket No. 52715; where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and Denton Municipal Electric (DME) under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or otherwise compromise the City's legal position.

DELIBERATED

- B. ID 23-764 Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code, Section 551.071. Receive competitive and financial public power information from staff related to a Power Purchase Agreements between the City of Denton, as the seller of power and electric energy services, and TT of Denton, Inc., (Toyota of Denton) a Texas corporation, as buyers of power and electric energy services; discuss and deliberate actions regarding the same. Consultation with the City's attorneys regarding legal issues associated with the above matters where a 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 the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.

DELIBERATED

- C. ID 23-835 Consultation with Attorneys - Under Texas Government Code Section 551.071. Consultation with City's attorneys regarding legal issues associated the Aggressive Solicitation Ordinance where a 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 Rules of Professional Conduct of State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.

DELIBERATED

WORK SESSION ITEM 4.C ID (23-661) Consultation with Attorneys - Under Texas Government Code Section 551.071. Consultation with City's attorneys regarding legal issues associated the implementable components of Proposition B where a 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 Rules of Professional Conduct of State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.

DELIBERATED

As authorized by Section 551.071(2) of the Texas Government Code, Council Member Watts requested that the meeting convene into Closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on Work Session agenda Item #23-661, Receive a report, hold a discussion, and give staff direction regarding implementable components of Proposition B.

The closed meeting started at 2:25 p.m. and ended at 3:52 p.m. No votes or actions were taken during the closed meeting.

Mayor Hudspeth called for a short break at 3:52 p.m. and reconvened at 4:01 pm

WORK SESSION – CONTINUED

Following the completion of the Closed Meeting, the City Council reconvened the Work Session at 4:01 p.m. in the Council Work Session Room to consider the following items:

4. Work Session Reports

- A. ID 23-151 Receive a report, hold a discussion, and give staff direction regarding Audit Project 032 - Fleet Operations: Fuel Management. [Estimated Presentation/Discussion Time: 30 minutes]

The item was presented and discussion followed.

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

- B. ID 22-1281 Receive a report, hold a discussion, and give staff direction regarding Aggressive Solicitation policy in the City of Denton. [Estimated Presentation/Discussion Time: 45 minutes]

The item was presented and discussion followed.

Following discussion, City Council consensus was to support staff recommendation.

- C. ID 23-661 Receive a report, hold a discussion, and give staff direction regarding implementable components of Proposition B. [Estimated Presentation/Discussion Time: 45 minutes]

The item was not presented and no discussion followed.

- D. ID 23-213 Receive a report, hold a discussion, and give staff direction on pending City Council requests for: 1) Request for a Work Session to discuss traffic safety on West US 380. [Estimated Presentation/Discussion Time: 30 minutes]

The item was presented and discussion followed.

Following discussion, results were as follows:

- ID 23-213 (1) Request for a Work Session to discuss traffic safety on West US 380.
 - Consensus for a future work session.

The work session ended at 4:47 p.m.

REGULAR MEETING

After determining that a quorum was present, the City Council of the City of Denton, Texas convened in a Special Called Meeting on Tuesday, April 18, 2023, at 6:30 p.m. in the Council Chambers at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Mayor Gerard Hudspeth, Mayor Pro Tem Brian Beck and Council Members Vicki Byrd, Jesse Davis, Brandon Chase McGee, and Chris Watts (Virtual)

ABSENT: None

VACANT: District 4

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 and B. Texas Flag

2. PROCLAMATIONS/PRESENTATIONS

A. ID 23-611 Proclamation: National Volunteer Week

PRESENTED

B. ID 23-711 Proclamation: National Library Week

PRESENTED

C. ID 23-834 Proclamation: Building Safety Month

PRESENTED

D. ID 23-686 Proclamation: Child Abuse Prevention Month

PRESENTED

- E. ID 23-776 Proclamation: Sexual Assault Awareness Month
PRESENTED

3. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

A. Review of procedures for addressing the City Council.

B. Reports from members of the public

1) Scheduled Citizen Reports from Members of the Public

a. ID 23-839 Ms. Nell Yeldell regarding utility issues at 514 and 516 E. Prairie Street.

PRESENTED

b. ID 23-857 Mr. Nick Stevens regarding City of Denton's Refusal to Implement Proposition B.

PRESENTED

c. ID 23-861 Mr. Stephen Dillenburg regarding Campaign and General Welfare of Denton Status Update and Query.

CANCELLED

d. ID 23-862 Ms. Dana Dillenberg regarding bond packages and vaccine experience.

CANCELLED

2) Additional Citizen Reports (Open Microphone)

Citizen comments received are noted in Exhibit A.

4. CONSENT AGENDA

The Consent Agenda consisted of Items 4. A-W. During the Work Session held earlier in the day, Item 4.C (23-762) was pulled for Individual Consideration by Council Member Davis, and Item 4.E (23-675) was pulled from consideration at the request of staff.

Mayor Pro Tem Beck moved to adopt the Consent Agenda, now consisting of Items 4.A-B and D -W. Motion seconded by Council Member Davis. Motion carried.

AYES (6): Mayor Hudspeth, Mayor Pro Tem Beck and Council Members Byrd, Davis, McGee, and Watts

NAYS (0): None

VACANT (1): District 4

- A. ID 23-028 Consider approval of the minutes of the April 4, 2023 (Joint Council with Denton ISD), and April 4, 2023 (Regular) Meetings.

APPROVED

- B. ID 23-741 Consider approval of a resolution of the City of Denton providing the March 27, 2023 meeting absence of a Public Utilities Board Member be excused; and providing an effective date.

ASSIGNED RESOLUTION NO. 23-741

- D. ID 23-659 Consider approval of a resolution of the City of Denton adopting a new Policy No. 100.3 "Commitment to Inclusion" as a personnel policy for the organization and including it in the City of Denton Policies and Procedures; and declaring an effective date.

ASSIGNED RESOLUTION NO. 23-659

- E. ID 23-675 Consider adoption of an ordinance of the City of Denton establishing classifications and positions in the Denton Fire Department; creating certain positions; repealing Ordinance No. 22-957 relating to establishing the classifications and prescribing the number of positions in each classification for the Denton Fire Department; providing repealer, cumulative, and severability clauses; and declaring an effective date.

PULLED FROM CONSIDERATION AT THE REQUEST OF STAFF

- F. ID 23-709 Consider adoption of an ordinance of the City of Denton granting Denton Cinco de Mayo, a three-year noise exception for the Cinco de Mayo Celebrations on Saturday, May 13, 2023, Sunday, May 5, 2024, and Sunday, May 4, 2025, from 11 a.m. to 10 p.m., at Quakertown Park; and providing an effective date. The Parks, Recreation, and Beautification Board voted to approve (4-0).

ASSIGNED ORDINANCE NO. 23-709

- G. ID 23-737 Consider approval of a resolution by the City of Denton authorizing the City Manager to apply for funding under the Denton County Transportation Reinvestment Program (TRiP), providing financial assistance to member cities for transit-supportive projects, through the Denton County Transportation Authority (DCTA) in the amount of \$5,589,560.00 for the Fiscal Year (FY) 2023 funding period; and providing an effective date.

ASSIGNED RESOLUTION NO. 23-737

- H. ID 23-751 Consider approval of a resolution of the City of Denton authorizing the submission of an application to the Texas Parks and Wildlife Department (TPWD) Boating Access Grant 2023 in the amount of \$205,189 to construct fishing docks and kayak launch sites at various parks; and providing an effective date.

ASSIGNED RESOLUTION NO. 23-751

- I. ID 23-406 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 Mesa Design Associates, Inc., for professional design services for the

proposed North Lakes Park Inclusive Playground for the Parks and Recreation Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7850-005 - Professional Services Agreement for professional design services awarded to Mesa Design Associates, Inc., in the not-to-exceed amount of \$122,500.00).

ASSIGNED ORDINANCE NO. 23-406

- J. ID 23-742 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 Kimley-Horn and Associates, Inc., for the Wastewater Lift Station Condition Assessment Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-024 - Professional Services Agreement for assessment services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$460,000.00). The Public Utilities Board recommends approval (6 - 0).

ASSIGNED ORDINANCE NO. 23-742

- K. ID 23-743 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 Kimley-Horn and Associates, Inc., for asset inventory, prioritization, condition assessment, and risk analysis with recommendations for the Pecan Creek Water Reclamation Plant Condition Assessment Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-026 - Professional Services Agreement for professional services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$330,000.00). The Public Utilities Board recommends approval (6 - 0).

ASSIGNED ORDINANCE NO. 23-743

- L. ID 23-744 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive proposals under RFP 8138 for general Substation Construction and Site Preparation services; and providing an effective date (RFP 8138). The Public Utilities Board recommends approval (6 - 0).

ASSIGNED ORDINANCE NO. 23-744

- M. ID 23-745 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a ninth amendment to a Professional Services Agreement between the City of Denton and Peak Program Value, LLC, amending the contract approved by City Council on October 13, 2020, in the not-to-exceed amount of \$696,074.00; amended by amendments 1-8 approved by Purchasing and City Council; said ninth amendment for additional program management services for the construction phase of the Public Safety Buildings (Police Headquarters, Police Substation, and Firing Range); providing for the expenditure of funds therefor; and providing an effective date (RFQ 7425 - providing for an additional ninth amendment expenditure amount not-to-exceed \$317,490.00, with the total contract amount not-to-exceed \$2,771,350.00).

ASSIGNED ORDINANCE NO. 23-745

- N. ID 23-746 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a second amendment to a Professional Services Agreement between the City of Denton and Howell Design Group, LLC (HDG), amending the contract approved by Purchasing on May 28, 2021, in the not-to-exceed amount of \$45,000.00; amended by Amendment 1 approved by the City Council; said second amendment for additional security consulting and design services for the Facilities Management Department; providing for the expenditure of funds therefor; and providing an effective date (PSA 7723 - providing for an additional second amendment expenditure amount not-to-exceed \$527,300.00, with the total contract amount not-to-exceed \$647,300.00).

ASSIGNED ORDINANCE NO. 23-746

- O. ID 23-759 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a third amendment to a Professional Services Agreement between the City of Denton and Freese & Nichols, Inc., amending the contract approved by the City Council on September 22, 2020, in the not-to-exceed amount of \$1,472,700.00; amended by Amendments 1 and 2 approved by City Council; said third amendment to provide additional professional, construction, and bid phase services for the Lake Ray Roberts Water Treatment Plant Capacity Uprate, Regulatory and Performance Upgrade Project; providing for the expenditure of funds therefor; and providing an effective date (File 6590-093 - providing for an additional third amendment expenditure amount not-to-exceed \$95,060.00, with the total contract amount not-to-exceed \$3,701,547.00). The Public Utilities Board recommends approval (6 - 0).

ASSIGNED ORDINANCE NO. 23-759

- P. ID 23-761 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to increase the spend authority with Grid Training Corporation dba Northwest Lineman College, for lineman apprentice training, electrical safety courses, and lineman journeyman continuous improvement safety training for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (File 8172 - awarded to Grid Training Corporation dba Northwest Lineman College, providing for an additional expenditure amount not-to-exceed \$1,150,000.00, with the total contract amount not-to-exceed \$1,250,000.00). The Public Utilities Board recommends approval (6 - 0).

ASSIGNED ORDINANCE NO. 23-761

- Q. ID 23-780 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 Closner Equipment Company, Inc., through the Buy Board Cooperative Purchasing Network Contract # 685-22, for the acquisition of a cold planer and track paver for the Streets Department; and execute a contract with Closner Equipment Company, Inc., who is an authorized distributor of Dynapac North America, through the Buy Board Cooperative Purchasing Network Contract # 685-22, for the acquisition of an asphalt roller for the Streets Department; providing the expenditure of funds therefor; and providing an effective date

(File 8230 - awarded to Closner Equipment Company, Inc., in the not-to-exceed amount of \$1,190,740.00).

ASSIGNED ORDINANCE NO. 23-780

- R. ID 23-788 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 KBS Electrical Distributors, Inc., for the purchase of Electric Utility Distribution Hardware, Connectors, Arms, and Accessories to be stocked in the City of Denton Warehouse, Section L, Section M, Section U, and Section W lines 1-3 and 19; providing for the expenditure of funds therefor; and providing an effective date (IFB 8176 - awarded to KBS Electrical Distributors, Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$300,000.00).

ASSIGNED ORDINANCE NO. 23-788

- S. ID 23-790 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 Paradigm Traffic Systems, Inc., amending the contract approved by City Council on September 1, 2020, in the not-to-exceed amount of \$2,250,000.00, said first amendment to continue to provide traffic signals and hardware for the Warehouse Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7398 - providing for an additional first amendment expenditure amount not-to-exceed \$562,500.00, with the total contract amount not-to-exceed \$2,812,500.00).

ASSIGNED ORDINANCE NO. 23-790

- T. ID 23-789 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 Techline, Inc., for the purchase of Electric Utility Distribution Hardware, Connectors, Arms, and Accessories to be stocked in the City of Denton Warehouse, Sections A, B, C, D, E, F, G, H, I, J, K, N, O, P, Q, R, S, T, V, and W Lines 4-18; providing for the expenditure of funds therefor; and providing an effective date (IFB 8176 - awarded to Techline, Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$5,440,000.00).

ASSIGNED ORDINANCE NO. 23-789

- U. ID 23-769 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a power purchase agreement between the City and TT of Denton, Inc., (Toyota of Denton) a Texas corporation; providing for the expenditure of funds; and providing an effective date.

ASSIGNED ORDINANCE NO. 23-769

- V. ID 23-821 Consider adoption of an ordinance of the City of Denton granting Greenberg Farrow a noise exception pursuant to Section 17-20 of the City of Denton Code of Ordinances, with respect to sound levels and hours of operation for concrete foundation pours and slabs related to construction of a new retail building located at 2950 W University Dr; granting an increase in sound levels and a variance in the hours of operation which may be

affected by weather, from 12:00 A.M. to 8:30 P.M., with sound not to exceed 85 decibels; and providing an effective date.

ASSIGNED ORDINANCE NO. 23-821

- W. ID 23-838 Consider approval of a resolution of the City of Denton, Texas, recognizing May 13, 2023, as World Migratory Bird Day; establishing the critical bird migration periods as "Lights Out Nights;" authorizing staff to pursue the "Bird City Texas" certification; and, providing an effective date.

ASSIGNED RESOLUTION NO. 23-838

ITEM PULLED FOR INDIVIDUAL CONSIDERATION

- C. ID 23-762 Consider adoption of an ordinance of the City of Denton approving a Joint Election Agreement and Contract with Denton County for joint election services for the regular municipal election being held on May 6, 2023 for the purpose of electing Council Members to Districts 1, 2, 3, and 4, and for a run-off election, if necessary, at a total estimated cost of \$80,686.63; and providing an effective date.

ASSIGNED ORDINANCE NO. 23-762

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

Pulled for Individual Consideration by Council Member Davis.

Council Member Davis had a conflict of interest and left the Council Chambers.

The item was presented and no discussion followed.

Mayor Pro Tem Beck moved to adopt the item as presented. Motion seconded by Council Member McGee. Motion carried.

AYES (5): Mayor Hudspeth, Mayor Pro Tem Beck and Council Members Byrd, Davis, and McGee

NAYS (0): None

VACANT (1): District 4

ABSTAIN (1): Davis

5. PUBLIC HEARINGS

- A. ID 23-532 Hold a public hearing and consider adoption of an ordinance of the City of Denton adopting Standards of Care for recreational care programs administered by Denton's Parks and Recreation department pursuant to Texas Human Resources Code Section 42.041(b)(14); and providing an effective date.

ASSIGNED ORDINANCE NO. 23-532

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

The item was presented and no discussion followed.

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

Mayor Pro Tem Beck moved to adopt the item as presented. Motion seconded by Council Member Davis. Motion carried.

AYES (6): Mayor Hudspeth, Mayor Pro Tem Beck and Council Members Byrd, Davis, McGee, and Watts

NAYS (0): None

VACANT (1): District 4

- B. PD22-0010f 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 on approximately 12.77 acres of land from a Planned Development - Mixed-Use Neighborhood (PD-MN) District to an overlay Planned Development - Suburban Corridor (PD-SC) District. The site is generally located at the northwest and southwest corners of Teasley Lane (F.M. 2181) and Hunter Creek Road 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 for severability clause and an effective date. The Planning and Zoning Commission voted 5 - 2 to recommend approval of the request. Motion for approval by Commissioner Pruett and second by Commissioner Smith. (PD22-0010f, Denton West Joint Venture, Mia Hines).

ASSIGNED ORDINANCE NO. PD22-0010f

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

The item was presented and discussion followed.

The public hearing was opened and citizen comments received are noted on Exhibit A.

With no other callers on queue, the public hearing was closed.

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

AYES (6): Mayor Hudspeth, Mayor Pro Tem Beck and Council Members Byrd, Davis, McGee, and Watts

NAYS (0): None

VACANT (1): District 4

6. CONCLUDING ITEMS

Council Members expressed items of interest.

With no further business, the meeting was adjourned at 7:49 p.m.

GERARD HUDSPETH
MAYOR
CITY OF DENTON, TEXAS

JESUS SALAZAR
INTERIM CITY SECRETARY
CITY OF DENTON, TEXAS

MINUTES APPROVED ON: _____

April 18, 2023 City Council Regular Meeting - EXHIBIT A

Citizen Registrations Online, Email, Phone

NAME	LAST	ADDRESS	CITY	AGENDA ITEM	POSITION	METHOD
Deb	Armintor	2003 Mistywood Ln.	Denton	Open Mic	N/A	In-Person
Greg	Johnson (Representing the Applicant)	3190 Teasley	Denton	PD22-0010f	Support	In-Person
Kristine	Bray	1204 Cordell St.	Denton	Open Mic	N/A	In-Person

NOTES:

- Information contained within this exhibit includes information regarding citizens who participated in the meeting by giving commentary during Open Microphone, Consent, Individual Consideration and Public Hearing Items, or by submitting eComments in advance.

- Full agenda, meeting video, and system transcript are available by visiting the City of Denton Public Meetings Page at www.cityofdenton.com/242/Public-Meetings-Agendas, going to the Archived Meetings Section, and selecting the applicable meeting date.

- eComments, if submitted, can be found here: <https://denton-tx.granicusideas.com/meetings?scope=past>



City of Denton

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

Legislation Text

File #: ID 23-059, **Version:** 1

AGENDA CAPTION

Consider nominations/appointments to the City's Boards, Commissions, and Committees: Special Citizens Bond Advisory Committee and Public Art Committee.

**BOARDS & COMMISSIONS - NOMINATIONS LIST
MAY 2, 2023**

BOARD/COMMITTEE/COMMISSION	COUNCIL PLACE	NOMINATING AUTHORITY	NOMINEE	PRESENT TERM	NEW TERM	STATUS & QUALIFICATION OR PREFERENCE, IF ANY
Public Art Committee	GDAC - 1	Greater Denton Arts Council	Francesca Romano	N/A	UNEXPIRED September 1, 2022 through August 31, 2024	New
Special Citizen's Bond Advisory Committee	4-1	Watts - City Council	Julianne Remski	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-01	Bond Oversight Committee	John Cartwright	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-02	Bond Oversight Committee	Clay Thurman	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-03	Bond Oversight Committee	Tamsyn Price	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-04	Bond Oversight Committee	Marty Rivers	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-05	Bond Oversight Committee	Greg Johnson	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-06	Bond Oversight Committee	Randall Robinson	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-07	Bond Oversight Committee	Rob Houdek	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-08	Bond Oversight Committee	Patricia Haworth	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-09	Bond Oversight Committee	Janet Shelton	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-10	Bond Oversight Committee	Tim Crouch	N/A	Appointment through August 21, 2023	New
Special Citizen's Bond Advisory Committee	BOC-12	Bond Oversight Committee	Gary Henderson	N/A	Appointment through August 21, 2023	New



City of Denton

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Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: ID 23-727, Version: 1

AGENDA CAPTION

Consider adoption of an ordinance of the City Council of the City of Denton designating the City Secretary as the public information coordinator pursuant to Texas Government Code Section 552.012 (c); designating an electronic mailing address for all public information requests by electronic mail; designating a mailing address for all public information requests received by mail; designating a portal for other electronic submission and designating a physical address for hand delivery, as authorized by the Texas Government Code Section 552.234; and providing an effective date.



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: May 2, 2023

SUBJECT

Consider adoption of an ordinance of the City Council of the City of Denton designating the City Secretary as the public information coordinator pursuant to Texas Government Code Section 552.012 (c); designating an electronic mailing address for all public information requests by electronic mail; designating a mailing address for all public information requests received by mail; designating a portal for other electronic submission and designating a physical address for hand delivery, as authorized by the Texas Government code section 552.234; and providing an effective date.

BACKGROUND

With the exponential growth in open records requests over the past several years, there is a need to funnel requests to a central location so they are not delayed or missed. Failure to timely respond to a request within the strict timeframes required by law could result in litigation. Texas Government Code Sec. 552.234 allows governmental bodies to designate one mailing address; one hand delivery location, one electronic mail address, and other methods for accepting requests for public information. Texas Government Code Sec. 552.012 provides a governmental body may designate a person to receive open records requests on behalf of the City and public officials. Designating one person to receive all requests on behalf of the City and designating one mailing address, one hand delivery location, one electronic mail address, and an electronic portal will be beneficial to the City by lowering the risk of litigation surrounding public information requests and providing residents with centralized ways to request public information.

EXHIBITS

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – Draft Resolution

Respectfully submitted:
Jesus Salazar
Interim City Secretary

ORDINANCE NO. 23-727

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENTON DESIGNATING THE CITY SECRETARY AS THE PUBLIC INFORMATION COORDINATOR PURSUANT TO TEXAS GOVERNMENT CODE SECTION 552.012 (C); DESIGNATING AN ELECTRONIC MAILING ADDRESS FOR ALL PUBLIC INFORMATION REQUESTS BY ELECTRONIC MAIL; DESIGNATING A MAILING ADDRESS FOR ALL PUBLIC INFORMATION REQUESTS RECEIVED BY MAIL; DESIGNATING A PORTAL FOR OTHER ELECTRONIC SUBMISSION AND DESIGNATING A PHYSICAL ADDRESS FOR HAND DELIVERY, AS AUTHORIZED BY THE TEXAS GOVERNMENT CODE SECTION 552.234; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Texas Public Information Act (the Act) allows a member of the public to submit a request for public information in writing, hand delivery, by mail, electronic mail (email) and facsimile; and

WHEREAS, the City of Denton has a duty to respond to any written requests for open records, including those submitted by email; and

WHEREAS, the City has experienced an increase in the number of requests for public information over the last few years; and

WHEREAS, the Act provides a governmental body may designate a person to receive open records requests on behalf of the City and public officials and the Act provides a City may designate a mailing address, an electronic mailing address, and other methods for accepting such requests; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1: The City Secretary is hereby designated by the City of Denton as the public information coordinator for the City of Denton and the single recipient for all requests for public information. Requests made by hand delivery must be made during hours the office is open by delivering to:

City Secretary's Office
215 E. McKinney St., Suite 100A
Denton, Texas 76201

The designated electronic mailing (email) address for receiving requests for public information must be delivered to: openrecords@cityofdenton.com.

The designated mailing address for receiving requests for public information must be mailed to:

City Secretary's Office
215 E. McKinney St., Suite 100A
Denton, Texas 76201

The designated electronic portal for other electronic submission of requests for public information must be made by using:

[https://dentontx.mycusthelp.com/WEBAPP/_rs/\(S\(52kbpflma0m5d1pkndqc54nm\)\)/SupportHome.aspx?lp=2&sSessionID=](https://dentontx.mycusthelp.com/WEBAPP/_rs/(S(52kbpflma0m5d1pkndqc54nm))/SupportHome.aspx?lp=2&sSessionID=)

SECTION 2: The City of Denton will not respond to requests for public information delivered to any other physical address or person, any other mailing address, electronic mailing address, or any other electronic submission that has not been designated. The City will not accept public information requests sent by facsimile (fax) transmission.

SECTION 3: 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
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM: MACK
REINWAND, CITY ATTORNEY

A handwritten signature in blue ink, appearing to read "Amanda Brown". The signature is written in a cursive style with a large initial "A" and "B".

BY: _____



City of Denton

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

Legislation Text

File #: ID 23-884, Version: 1

AGENDA CAPTION

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 environmental engineering and consulting services for the Environmental Services and Sustainability Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8171 - Professional Services Agreement for engineering and consulting services awarded to Freese and Nichols, Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$750,000.00). The Public Utilities Board recommends approval (7 - 0).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 environmental engineering and consulting services for the Environmental Services and Sustainability Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8171 – Professional Services Agreement for engineering and consulting services awarded to Freese and Nichols, Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$750,000.00). [The Public Utilities Board recommends approval \(7 - 0\).](#)

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The Department of Environmental Services and Sustainability provides assistance to all City departments. City staff requires assistance at times with environmental and sustainability issues that are outside of staff's training, certifications, licenses, or experience. This contract will provide the resources needed to meet environmental compliance across City operations. City departments are tasked with environmental compliance for their assigned area such as wastewater operations, however, there are times they may need to acquire property, handle hazardous waste, or work through an air permit question which all would be beyond the regulatory framework of wastewater operations. The expected spend is \$150,000 per year.

Under the U.S. Environmental Protection Agency (EPA) All Appropriate Inquiries (AAI) Rule the City must have an environmental professional perform due diligence prior to purchasing the property. This contract will allow the City to have due diligence performed to meet the AAI requirements and protect the City's liabilities. The initial step is a Phase I Environmental Site Assessment (ESA) that looks at how the site is currently operating and has operated historically. If the Phase I ESA identifies any Recognized Environmental Conditions (REC) then a Phase II ESA could be needed which may include groundwater, soil, or surface water samples.

Under the EPA Spill Prevention Control and Countermeasures (SPCC) regulations require the City to have SPCC Plans prepared and certified by a Professional Engineer if a facility has aggregate oil storage of 1,320 gallons or more. SPCC rules set forth facility operation reviews, staff training, and formal re-certification

requirements. The state and federal stormwater regulations have regulatory requirements the City must meet. This contract will provide qualified resources to assist as needed in those efforts.

Hazardous waste, non-hazardous waste, special waste, and universal waste all have training, storage, handling, and disposal requirements that must be met by the City. The City is regulated as one entity and actions by one department affect the entire City for waste generation. This contract provides the resources to assist the City meet waste compliance and possible training resources.

This contract will provide environmental technical support that can be used by all City departments and the Environmental Services and Sustainability Department will coordinate the efforts. For example, with a single consultant Phase I ESA Reports will be received in one format which will reduce staff review time. There is no guaranteed work under this contract and all work will be requested on a Task Order (i.e., project-specific) basis.

Request for Qualifications (RFQ) for engineering and consulting services was sent to 808 prospective firms for these services, including 25 Denton firms. In addition, the RFQ was placed on the Procurement website for prospective respondents to download, and advertised in the local newspaper. Fourteen (14) statement of qualifications (SOQ) were received. The SOQs were evaluated based on published criteria including past performance and experience, qualifications of key personnel, work history, legal history, and references. Based upon this evaluation, the recommended award is to Freese and Nichols, Inc., and is determined to be the most qualified firm for the City.

NIGP Code Used for Solicitation:	925, 958, 969
Notifications sent for Solicitation sent in IonWave:	808
Number of Suppliers that viewed Solicitation in IonWave:	66
HUB-Historically Underutilized Business Invitations sent out:	112
SBE-Small Business Enterprise Invitations sent out:	306
Responses from Solicitation:	14

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On April 24, 2023, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award a contract with Freese and Nichols, Inc., for environmental engineering and consulting services for the Environmental Services and Sustainability Department, in a three (3) year, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$750,000.

PRINCIPAL PLACE OF BUSINESS

Freese and Nichols, Inc.
Fort Worth, TX

ESTIMATED SCHEDULE OF PROJECT

This is an initial three (3) 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 products and services will be funded through the using department's budget 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: Evaluation Sheet

Exhibit 3: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Michael Gange, 940-349-7165.

Legal point of contact: Marcella Lunn at 940-349-8333.

Exhibit 2
RFQ 8171 - Evaluation Sheet for Environmental Engineering and Consulting

Respondent's Business Name:		Freese and Nichols, Inc.	Terracon Consultants, Inc.	Enercon Services, Inc.	Modern Geosciences	Raba Kistner, Inc.	Burns & McDonnell	Stanley Consultants, Inc.
Principal Place of Business (City and State):		Fort Worth, TX	Fort Worth, TX	Dallas, TX	Colleyville, TX	San Antonio, TX	Fort Worth, TX	Muscataine, IA
Item #	Scoring Criteria							
1	Provider's Experience with the Scope of Work-40%	32.00	32.00	29.33	29.33	26.67	26.67	29.33
2	Provider's Personnel Experience/Resumes with the Scope of Work-35%	32.67	30.33	28.00	25.67	28.00	25.67	23.33
3	Provider's Work History with Local Government-10%	9.33	8.67	9.33	9.33	7.33	8.00	6.67
4	Provider's Legal History-10%	8.00	5.33	7.33	8.00	8.00	8.67	8.00
5	Reference Letters/Client Letters-5%	3.33	4.33	4.67	4.33	3.67	4.33	3.67
Total Score:		85.33	80.67	78.67	76.67	73.67	73.33	71.00

Respondent's Business Name:		POWER Engineers, Inc.	LCA Environmental Inc	SCS Engineers	AARC Consultants	Adams Engineering	Braun Intertec Corporation	ECS Southwest, LLP
Principal Place of Business (City and State):		Hailey, ID	Farmers Branch, TX	Bedford, TX	Houston, TX	Dallas, TX	Allen, TX	Chantilly, VA
Item #	Scoring Criteria							
1	Provider's Experience with the Scope of Work-40%	29.33	24.00	29.33	24.00	24.00	24.00	24.00
2	Provider's Personnel Experience/Resumes with the Scope of Work-35%	21.00	25.67	23.33	23.33	28.00	23.33	18.67
3	Provider's Work History with Local Government-10%	7.33	8.00	6.67	6.00	6.00	6.00	4.67
4	Provider's Legal History-10%	8.00	8.00	6.00	7.33	4.00	7.33	8.00
5	Reference Letters/Client Letters-5%	4.33	3.67	3.67	3.67	2.00	3.33	3.00
Total Score:		70.00	69.33	69.00	64.33	64.00	64.00	58.33

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 ENVIRONMENTAL ENGINEERING AND CONSULTING SERVICES FOR THE ENVIRONMENTAL SERVICES AND SUSTAINABILITY DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8171 – PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING AND CONSULTING SERVICES AWARDED TO FREESE AND NICHOLS, INC., FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$750,000.00).

WHEREAS, Freese and Nichols, Inc., the professional 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, this procurement was undertaken as part of the City’s governmental function; 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 authorized to enter into the professional service contract attached hereto with Freese and Nichols, Inc., for environmental engineering and consulting services for the Environmental Services and Sustainability Department.

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, Texas 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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

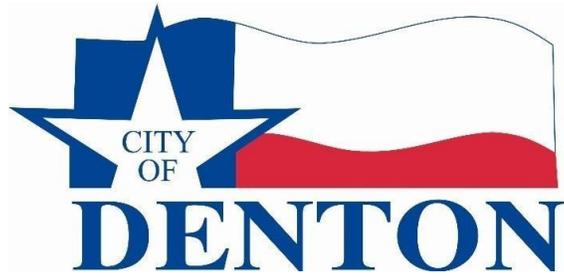
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  Digitally signed by Marcella Lunn
 DN: cn=Marcella Lunn, o=City of Denton, email=marcella.lunn@cityofdenton.com, c=US
 Date: 2023.04.07 11:00:54 -05'00'



DocuSign City Council Transmittal Coversheet

RFQ	8171
File Name	ENVIRONMENTAL ENGINEERING AND CONSULTING
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

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 801 Cherry St., STE 2800, Fort Worth, TX 76102 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Environmental Engineering and Consulting (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 \$750,000 in the manner and in accordance with the fee schedule as set forth in Attachment B. 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:

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.

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 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.

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.

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,

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

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 its 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.

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 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

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

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:

- 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

CONSISTENT 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.

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 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

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 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.

R. 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
- Attachment B - Compensation

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.

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.

Jimmy Gibson III

73CC0DA189CB4E0...
JIMMY GIBSON, P.E.
VICE PRESIDENT

Date: 4/3/2023

2023-1002095

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.


BBFD333DB5A946A...

Signature

Director of Environmental Services & Sustainability

Title

Department of Environmental Services & Sustainability

Department

Date Signed: 4/3/2023

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:

4B070831B4AA438...

BY: _____

**ATTACHMENT A
SCOPE OF SERVICES
ON-CALL PROFESSIONAL SERVICES**

The scope set forth herein defines the work to be performed by the ENGINEER in completing the PROJECT. Both the CITY and ENGINEER have attempted to clearly define the work to be performed and address the needs of the PROJECT.

OBJECTIVE

The objective of the projects completed under this AGREEMENT is to provide environmental engineering and consulting services on an as needed basis. Due to the uniqueness and variability of projects subject to this AGREEMENT, the CITY will issue a Task Order that defines the scope of work, project dates, project contacts, etc. The ENGINEER and the CITY will negotiate and agree upon in writing the responsibilities, project scope, schedule, and budget at the time services are required the CITY. The professional services may include Phase I Environmental Site Assessments, Phase II Environmental Site Assessments, Leaking Petroleum Storage Tank services, Spill Prevention, Control and Countermeasures Plans, Air Permitting, Hazardous, Non-Hazardous, Special and Universal Waste Management, Soil, Groundwater, and Surface Water Remediation, National Environmental Protection Act documentation, Air Pollution Modeling, Stormwater compliance, and Watershed evaluations, and other duties as requested by the City with compliance under Texas Commission on Environmental Quality (TCEQ) regulations set forth under Title 30 of the Texas Administrative Code (TAC) or US Environmental Protection Agency (EPA) regulations set forth under Title 40 of the Code of Federal Regulations (CFR).

WORK TO BE PERFORMED

ENGINEER hereby agrees to perform On-Call Professional Services on a Task Order basis as may be requested by the CITY during the term of this AGREEMENT. The CITY will request services for each Task Order. The ENGINEER shall prepare scope, fee, and schedule as necessary to perform the services requested for each Task Order within 10 working days of the CITY's request.

A Task Order submitted as Attachment A shall be provided and include the following information:

Each Task Order shall include a scope for services defining the tasks required to complete the Task Order. For each task the scope shall include a detailed description of the task, outline any assumptions, and list the required deliverables.

Each Task Order shall include detailed compensation and level of effort for the services to be performed under the Task Order. Compensation will be based upon hours agreed to by the CITY and the ENGINEER for each Task Order. Compensation will be based on the Schedule of Rates in Attachment B of this AGREEMENT. The compensation fee will include an estimate of reimbursable and subconsultant cost for each Task Order. Compensation for each Task Order shall be cost-plus with a maximum. The Task Order shall also include a project Schedule.

**ATTACHMENT B
COMPENSATION
ON-CALL PROFESSIONAL SERVICES**

I. Compensation

- A. For each Task Order, the fee shall be cost-plus with a maximum based on an agreed upon scope of services and will be considered enough compensation for the services described in each Task Order including all labor materials, supplies, and equipment necessary to deliver the services.
- B. The ENGINEER agrees to the fixed rate schedule on the following page for all services rendered under this AGREEMENT.
- C. The ENGINEER shall be paid monthly payments as described in Section II – Method of Payment.

II. Method of Payment

- A. The ENGINEER shall be paid by the CITY based upon an invoice created on the basis of statements prepared from the books and records of account of the ENGINEER, based on the actual hours and costs expended by the ENGINEER in performing the work
- B. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved amendments.
- C. Each invoice shall be verified as to its accuracy and compliance with the terms of this AGREEMENT by an officer of the ENGINEER.
- D. Payment of invoices will be subject to certification by the CITY that such work has been performed.

III. Progress Reports

- A. The ENGINEER shall prepare and submit monthly progress reports and schedules in the format required by the CITY.

COMPENSATION

Compensation to ENGINEER for each Task Order negotiated shall be computed on the basis of the following Schedule of Charges.

<u>Position</u>	<u>Hourly Rate</u>
Professional 1	\$119
Professional 2	\$144
Professional 3	\$164
Professional 4	\$187
Professional 5	\$219
Professional 6	\$252
Construction Manager 1	\$103
Construction Manager 2	\$128
Construction Manager 3	\$138
Construction Manager 4	\$173
Construction Manager 5	\$209
Construction Manager 6	\$240
Construction Representative 1	\$92
Construction Representative 2	\$103
Construction Representative 3	\$128
Construction Representative 4	\$138
CAD Technician/Designer 1	\$101
CAD Technician/Designer 2	\$132
CAD Technician/Designer 3	\$161
Corporate Project Support 1	\$97
Corporate Project Support 2	\$117
Corporate Project Support 3	\$155
Intern / Coop	\$60
Senior Advisor	\$175

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>			<u>Equipment</u>		
Standard IRS Rates		<u>B&W</u>	<u>Color</u>	Valve Crew Vehicle (hour)		\$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each)		\$200
<u>Technology Charge</u>	Large Format (per sq. ft.)			Water Quality Meter (per day)		\$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each)		\$150
	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder (per day)		\$100
	Vinyl / Adhesive	\$1.50	\$2.00	Ultrasonic Thickness Gauge (per day)		\$275
	Mounting (per sq. ft.)	\$2.00		Coating Inspection Kit (per day)		\$275
	Binding (per binding)	\$0.25		Flushing / Cfactor (each)		\$500
				Backpack Electrofisher (each)		\$1,000
					<u>Survey Grade</u>	<u>Standard</u>
				Drone (per day)	\$200	\$100
				GPS (per day)	\$150	\$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the ENGINEER office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.10. For Resident Representative services performed by non-ENGINEER employees and CAD services performed in-house by non-ENGINEER employees where ENGINEER provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to ENGINEER if an ENGINEER employee was performing the same or similar services.

Freese and Nichols, Inc.

Mapping of HR Classifications to Bill Rate Classifications

	Professional 1	Professional 2	Professional 3	Professional 4	Professional 5	Professional 6
Engineer		I - III	IV	V	VI	VII - VIII
Environmental Scientist	I - III		IV	V - VI	VII	VIII
Architecture	I - II	III	IV	V	VI	VII
Landscape Architecture	I - II	III - IV	V		VI	VII
Hydrologist	I - III	IV	V		VI	VII
Planner	I - III	IV		V	VI	VII
GIS Analyst	I - III	IV	V			
Designer		I	II	Senior		
Program Manager			I			II - III
Other	Estimator Scheduler Utility Coordinator	Safety Coordinator	Lead Estimator Sr. Geologist 3D Visualization Coordinator Data Scientist Eng. Technician	Manager Total Talent	Geotechnical Eng. VI	Lead Technical Professional Practice Leader Group/Division Manager Project Controls Manager
	Construction Manager 1	Construction Manager 2	Construction Manager 3	Construction Manager 4	Construction Manager 5	Construction Manager 6
Construction Management	Construction Manager I	Construction Manager II	Construction Manager III	Construction Manager IV	Construction Manager V	Construction Manager VI
	Construction Rep 1	Construction Rep 2	Construction Rep 3	Construction Rep 4		
Construction Representative	Construction Representative I	Construction Representative II	Construction Representative III	Construction Representative IV		
	CAD Technician/Designer 1	CAD Technician/Designer 2	CAD Technician/Designer 3			
CAD	CAD Technician I - III	CAD Technician IV CAD Designer I	CAD Designer II Senior CAD Designer CAD Manager/Supervisor			
	Corporate Project Support 1	Corporate Project Support 2	Corporate Project Support 3			
Project Support	Some Support Specialists (various departments)	Most Support Specialists (various departments)	Operations Analysts Funding Specialist			

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.

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:

Jimmy Gibson III

4/3/2023

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm>. 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: 6D18166BEB054A208E6BC53531D14B25

Status: Sent

Subject: Please DocuSign: City Council Contract 8171 Environmental Engineering and Consulting

Source Envelope:

Document Pages: 25

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Crystal Westbrook

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

crystal.westbrook@cityofdenton.com

IP Address: 198.49.140.104

Record Tracking

Status: Original

Holder: Crystal Westbrook

Location: DocuSign

3/28/2023 2:51:31 PM

crystal.westbrook@cityofdenton.com

Signer Events

Signature

Timestamp

Crystal Westbrook
crystal.westbrook@cityofdenton.com

Completed

Sent: 3/28/2023 2:56:18 PM

Senior Buyer

Viewed: 3/28/2023 2:57:12 PM

City of Denton

Using IP Address: 198.49.140.104

Signed: 3/28/2023 2:59:20 PM

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell
lori.hewell@cityofdenton.com
Purchasing Manager



Sent: 3/28/2023 2:59:23 PM

City of Denton

Viewed: 3/28/2023 4:25:38 PM

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Signed: 3/28/2023 4:26:09 PM

Using IP Address: 198.49.140.104

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn
marcella.lunn@cityofdenton.com
Mack Reinwand City Attorney

DocuSigned by:
Marcella Lunn
4B070831B4AA438...

Sent: 3/28/2023 4:26:11 PM

City of Denton

Viewed: 3/31/2023 2:03:33 PM

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Signed: 3/31/2023 2:06:05 PM

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Jimmy Gibson III
Jimmy.Gibson@freese.com
Security Level: Email, Account Authentication (None)

DocuSigned by:
Jimmy Gibson III
73CC0BA189CB4E0...

Sent: 3/31/2023 2:06:09 PM

Signature Adoption: Pre-selected Style

Viewed: 4/3/2023 11:07:36 AM

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Electronic Record and Signature Disclosure:
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ID: a6978176-a394-4fa6-ac8a-c379f0b2d186

Signer Events	Signature	Timestamp
<p>Michael Gange michael.gange@cityofdenton.com Director of Environmental Services & Sustainability Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:  BBFD333DB5A946A... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 4/3/2023 1:41:40 PM Viewed: 4/3/2023 2:27:29 PM Signed: 4/3/2023 2:44:54 PM</p>

Electronic Record and Signature Disclosure:
Accepted: 4/3/2023 2:27:29 PM
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<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	<p>Sent: 4/3/2023 2:44:56 PM</p>
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Hensley
sara.hensley@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Rosa Rios
rosa.rios@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 3/22/2023 4:54:23 PM
ID: 0d5a6bde-68bc-4154-a19f-463ee1264a12

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

<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	<p>COPIED</p>	<p>Sent: 3/28/2023 2:59:23 PM</p>
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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 City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div style="border: 2px solid blue; padding: 5px; display: inline-block;"> COPIED </div>	Sent: 4/3/2023 2:44:57 PM Viewed: 4/3/2023 3:11:44 PM

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	3/28/2023 2:56:18 PM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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:	<ul style="list-style-type: none"> •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 76201
www.cityofdenton.com

Legislation Text

File #: ID 23-885, Version: 1

AGENDA CAPTION

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 OW Investors, LLC dba Mars Company, for a meter test bench and mobile testers for the Water Meter Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 8173 - awarded to OW Investors, LLC dba Mars Company, for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$796,435.00). The Public Utilities Board recommends approval (7 - 0).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 OW Investors, LLC dba Mars Company, for a meter test bench and mobile testers for the Water Meter Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 8173 – awarded to OW Investors, LLC dba Mars Company, for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$796,435.00). [The Public Utilities Board recommends approval \(7 - 0\).](#)

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

This is an upgrade to our current computerized automated gravimetric water meter indoor test bench and field testers. The current test bench is over 25 years old and is not compliant with current American Water Works Association (AWWA) standards. Water Metering needs a test bench with more capacity to meet the current and future number of connections in the system and a field and indoor unit that are compatible, using the same software and database.

Project Description	Total Expenditure
Truck-Mounted Mobile Meter Test System	\$83,121.00
Test Bench System	\$228,390.00
Software Suite	\$262,560.00
Installation Training	\$86,988.00
Maintenance/Software-5 Year Spend	\$85,376.00
Additional Cost-Repair/Replacement Parts	\$50,000.00
Total Cost	\$796,435.00

Invitation for Bids was sent to 206 prospective suppliers of this item, including two (2) Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download, and advertised in the local newspaper. One (1) bid was received, and references were checked to ensure the vendor can provide the services requested in the Scope of Work. The department is awarding the contract to OW Investors, LLC dba Mars Company.

NIGP Code Used for Solicitation:	890 -Water Supply, Groundwater, Sewage Treatment, and Related Equipment (Not for Air Conditioning, Steam Boiler, or Laboratory Reagent Water)
Notifications sent for Solicitation sent in IonWave:	206
Number of Suppliers that viewed Solicitation in IonWave:	13
HUB-Historically Underutilized Business Invitations sent out:	9
SBE-Small Business Enterprise Invitations sent out:	68
Responses from Solicitation:	1

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On April 24, 2023, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award a contract with OW Investors, LLC dba Mars Company, for a meter test bench and mobile testers for the Water Meter Department, in a three (3) year, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$796,435.

PRINCIPAL PLACE OF BUSINESS

OW Investors, LLC dba Mars Company
Ocala, FL

ESTIMATED SCHEDULE OF PROJECT

This is an initial three (3) 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/services will be funded from Water Meter account 630515517.1350.40100. Requisition #159000 has been entered into the Purchasing software system in the amount of \$796,435.00 The budgeted amount for this item is \$796,435.

EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: LLC Members
- Exhibit 3: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Casey Bowles, 940-349-8489.

Legal point of contact: Marcella Lunn at 940-349-8333.



Texas Secretary of State

Jane Nelson

[UCC](#) [Business Organizations](#) [Trademarks](#) [Notary](#) [Account](#) [Help/Fees](#) [Briefcase](#) [Logout](#)

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTIT

Filing Number: 802208363
Original Date of Filing: May 4, 2015
Formation Date: N/A
Tax ID: 32057133178
Name: OW Investors, LLC
Address: 3925 SW 13th Street
Ocala, FL 34474 USA
Fictitious Name: N/A
Jurisdiction: FL, USA
Foreign Formation Date: June 18, 2014

Entity Type: Foreign Limited Liability Company (LLC)
Entity Status: In existence
FEIN: 471203475

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT
Last Update October 6, 2022	Name HAMILTON E HUNT Jr		Title MANAGER

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH OW INVESTORS, LLC DBA MARS COMPANY, FOR A METER TEST BENCH AND MOBILE TESTERS FOR THE WATER METER DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 8173 – AWARDED TO OW INVESTORS, LLC DBA MARS COMPANY, FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$796,435.00).

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, Building Codes and Inspection; 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:

<u>BID NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8173	OW Investors, LLC dba Mars Company	\$796,435.00

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 _____ 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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

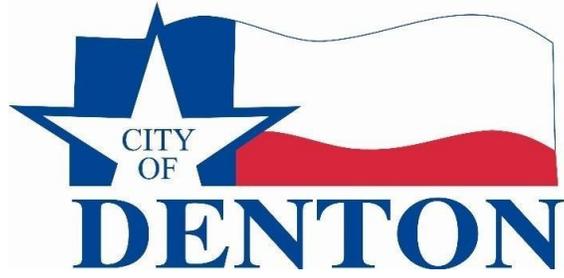
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

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: 2023.04.07 11:02:09 -05'00'



DocuSign City Council Transmittal Coversheet

IFB	8173
File Name	METER TEST BENCH & MOBILE TESTER
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND OW INVESTORS, LLC dba MARS COMPANY
(CONTRACT 8173)**

THIS CONTRACT is made and entered into this date _____, by and between **OW INVESTORS, LLC dba MARS COMPANY** a limited liability company, whose address is 3925 SW 13th Street, Ocala, FL 34474 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 and/or services in accordance with the City's document IFB #8173 – Meter Test Bench & Mobile Tester, 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 #8173 (**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"**);
- (h) MARS Company Warranty, General Terms and Conditions (**Exhibit "H"**);

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 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.

CONTRACTOR

BY: 
510EE66EC6E546E...
AUTHORIZED SIGNATURE

Printed Name: Jeff Butt

Title: Vice President Operations
813-414-7710

PHONE NUMBER

jbutt@marswater.com

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TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: 
4B079831B4AA438...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.


9EBFF5668E56492...
SIGNATURE Stephen D. Gay
PRINTED NAME

Director,

TITLE

warer Utilities

DEPARTMENT

Exhibit A Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed \$796,435. Pricing shall be per Exhibit F attached.

2. The Quantities

The quantities indicated on Exhibit F are estimates based upon the best available information. Individual purchase orders will be issued on an as needed basis.

3. 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.

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 as per Contractor's statement of work, close-out procedure. The City shall have accepted the Test Bench Solution ("Accepted") the earlier of (i) Completion of Acceptance Testing constituting City's / Licensee's full acceptance of the Test Bench Solution; (ii) IF, THROUGH NO FAULT OF Contractor, SITE ACCEPTANCE

TESTING IS NOT COMPLETED WITHIN THIRTY (30) DAYS AFTER ARRIVAL OF THE EQUIPMENT AT THE DESIGNATED SITE OR IN THE CASE OF SOFTWARE, AFTER TEN (10) DAYS AFTER SOFTWARE INSTALLATION, THE SITE ACCEPTANCE TESTING SHALL BE DEEMED COMPLETED AND THE EQUIPMENT OR SOFTWARE SHALL BE DEEMED ACCEPTED BY PURCHASER. "Acceptance Date" means the date the Equipment and Software was Accepted.

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 Contract # 8173

delivering goods or services under a City of Denton contract or on the City's property .

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

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

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

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

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, 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 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.

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 Contract # 8173

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

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

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

17. RIGHT TO AUDIT:

A. Subject to reasonable security and confidentiality procedures, the City shall have the right to audit and make copies of the documents limited to the Contract, invoices, and time sheets from the Contractor solely pertaining to the Contract. Contractor confidential employee and/or customer records will not be made available. The Contractor shall retain such documents limited to the Contract, invoices, and time sheets for a period of three 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 limited Contract documents, invoices, and time sheets shall be available, within ten (15) business days of written request. The audit cost will be solely borne by the City and at no expense to the contractor.

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.

18. SUBCONTRACTORS:

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

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract Contract # 8173

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.

a) B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. The City shall have accepted the Test Bench Solution ("Accepted") the earlier of (i) Completion of Acceptance Testing constituting City's / Licensee's full acceptance of the Test Bench Solution; (ii) IF, THROUGH NO FAULT OF Contractor, SITE ACCEPTANCE TESTING IS NOT COMPLETED WITHIN THIRTY (30) DAYS AFTER ARRIVAL OF THE EQUIPMENT AT THE DESIGNATED SITE OR IN THE CASE OF SOFTWARE, AFTER TEN (10) DAYS AFTER SOFTWARE INSTALLATION, THE SITE ACCEPTANCE TESTING SHALL BE DEEMED COMPLETED AND THE EQUIPMENT OR SOFTWARE SHALL BE DEEMED ACCEPTED BY PURCHASER. "Acceptance Date" means the date the Equipment and Software was Accepted.

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 give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty.

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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 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 and Contractor 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 or City, within such ten (10) day period, cures such default, or provides evidence sufficient to prove reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City or Contractor shall be entitled to recover all actual damages, costs, losses and expenses, incurred as a result of the opposing parties 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.-In the event the Contract spans multiple fiscal years, the City's continuing performance under the Contract is contingent upon the appropriation of funds to fulfill the requirements of the Contract by the City Council of the City of Denton. If the City Council of the City of Denton fails to appropriate or allot the necessary funds, City shall issue written notice to Contractor that City may terminate the Contract without penalty, further duty, or obligation.

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

30. DELAYS:

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

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

31. INDEMNITY:

A. Definitions:

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

strict liability standard.

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

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

A. General Requirements:

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

City of Denton
Materials Management Department
901B Texas Street

Denton, Texas 76209

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

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

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

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

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

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

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

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

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse 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

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in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

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

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

37. CONFIDENTIALITY: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

38. OWNERSHIP AND USE OF DELIVERABLES: The City shall own all rights, title, and interests in and to the City data recorded via the Mars test bench and any other deliverables contemplated hereby, except for software (including firmware) which is licensed to the City. The City shall not challenge the validity of any of the Contractor's intellectual property, including without limitation any trademarks, service marks, trade dress, patents, copyrights, trade secrets, or licenses. The City acknowledges that the Contractor's intellectual property is the sole property of the Contractor. By sale of deliverables and services to City, the Contractor does not transfer any of the Contractor's intellectual property rights (including without limitation rights to designs or other work product). The City shall not remove or alter any trademarks, service marks, or trade dress that identify the Contractor, nor use any trademarks, service marks, trade dress, or any other intellectual property that, in the sole discretion of the Contractor, is confusingly similar to those of the Contractor. Any software (including firmware) included with deliverables or services is owned by the Contractor (or its licensors) and is licensed, not sold, to the City. The City may use such software only as intended by the Contractor.

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

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

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

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

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation 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

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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 their 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 Contract.

48. INTERPRETATION: The Contract is intended by the parties as a final, complete and Contract # 8173

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

49. DISPUTE RESOLUTION:

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

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

51. INVALIDITY: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken

provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

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

- | |
|-----------------------------|
| New Year's Day (observed) |
| 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 their 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 # 8173

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.

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: City and Contractor shall comply with all applicable laws in performance of its obligations under this Agreement. Contractor does not assume any responsibility for compliance with any laws and regulations relating to the operation or use of the Equipment, which is the sole responsibility of the City. All laws and regulations referenced herein shall be those in effect as of the Acceptance Date. If Purchaser desires a modification as a result of any such change or revision, it shall be

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treated as a change. Nothing contained herein shall be construed as imposing responsibility or liability upon Contractor for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment.

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**

Exhibit D
INSURANCE REQUIREMENTS AND
WORKERS' COMPENSATION REQUIREMENTS

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

STANDARD PROVISIONS:

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

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

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
 - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.
 - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
 - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

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

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

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.

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.

Builders' Risk Insurance

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

Environmental Liability Insurance

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

Riggers Insurance

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

Commercial Crime

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

Additional Insurance

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

ATTACHMENT 1

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

A. Definitions:

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

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

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

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

project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

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

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

Exhibit E
Certificate of Interested Parties Electronic Filing

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

Contractor will be required to furnish 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.

EXHIBIT F

				OW INVESTORS, LLC dba MARS COMPANY	
Line #	Description	QTY	UOM	UNIT PRICE	
1	Truck-Mounted Mobile Meter Test System- <i>*PRICING ALSO INCLUDES ALL THE COMPONENTS NEEDED FOR A RECIRCULATION SYSTEM.</i>	1	EA	\$83,121.00	
2	Test Bench System	1	EA	\$228,390.00	
3	Software Suite	1	EA	\$262,560.00	
4	Installation Training	1	EA	\$86,988.00	
5	Maintenance- <i>*1ST YR UNDER WARRANTY NO COST, MAINTENANCE FEE IS ONLY ON YR 2-5--PRE-PAID</i>			\$85,376.00	
6	Software Licence			NO COST	
7	Repair	1	Per Hour	\$250.00	
8	Replacement Parts	1	EA	20.0%	

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.

OW INVESTORS, LLC DBA MARS COMPANY

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

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

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

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes No

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

4 I have no Conflict of Interest to disclose.

5
DocuSigned by:


3/31/2023

Signature of Vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm>. 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.



MARS COMPANY

WARRANTY, GENERAL TERMS AND CONDITIONS

1) General. The terms and conditions of the Contract By and Between City of Denton, Texas and OW Investors, LLC dba MARS Company shall take precedence over these terms and conditions (these "Terms"), the Equipment, Software and Services Contract (the "Contract") and its Schedules, the M3 Enterprise Software End User License Agreement (the "EULA"), MARS Calibration Certification - General Conditions of Service and Maintenance Agreement (the "MCC"), any proposal from MARS Company received by Purchaser (the "Proposal"), any purchase order and any change orders attached and incorporated hereto, (collectively, this "Agreement") are the only terms that govern Equipment and Services sold or provided by MARS Company and comprise the entire agreement between the parties regarding the Equipment and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. "MARS On-Premise Equipment" means computer, software and related equipment including but not limited to (i) computer servers and server operating system software, (ii) test bench computers and operating system software, and (iii) routers, and (iv) mobile test bench laptop computers and operating system software that are owned by MARS and provided to the Licensee (defined hereafter) to use during the M3 Software subscription or usage term. "Equipment" means the hardware, parts, iPads, cables, printers, and accessories, excluding MARS On-Premise Equipment, sold under the purchase order accompanying these Terms. "Software" means the M3 enterprise software, including any updates, upgrades, versions, enhancements, and/or any new features (collectively, the "Software" and together with the Equipment and the MARS On-Premise Equipment, the "MARS Test Bench Solution"). "Purchaser" means the entity buying the Equipment or Software pursuant to the Contract or purchase order accompanying these Terms. "Licensee" means the entity identified on the Contract by and between these parties. "Services" means all labor, supervisory, technical and engineering, installation, repair, consulting or other services provided by MARS Company related to the Equipment. PURCHASER WILL BE DEEMED TO HAVE ACCEPTED THESE TERMS UNLESS MARS COMPANY RECEIVES WRITTEN NOTICE OF ANY OBJECTION WITHIN THREE (3) BUSINESS DAYS AFTER PURCHASER'S RECEIPT..

2) Delivery of Equipment and Performance of Services.

- All Equipment to fulfill MARS' obligations under this Agreement is delivered F.O.B. to destination designated by Purchaser. The date on which the Equipment (which may include pre-loaded Software) is delivered to Purchaser is the "Delivery Date."
- If the scheduled Delivery Date is delayed by Purchaser or by a force majeure event, MARS Company may move the Equipment to a temporary storage location approved by the Purchaser for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered, the date of such deemed delivery shall be the Delivery Date, and payment for the delivered Equipment and Software shall be due in accordance with Section 5(b). All expenses for the temporary storage transportation, storage fees, redelivery fees, etc. shall be the sole responsibility of Purchaser and payable to MARS Company together with payment for Equipment and Software in accordance with Section 5(b).
- Shipping and delivery times are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for MARS Company's performance hereunder.
- Claims for shortages or other errors in delivery must be made in writing to MARS Company within ten (10) days of the Delivery Date. Claims for damage caused by delivery shall be made directly by Purchaser with the common carrier.
- Except as expressly set forth herein, Purchaser may not return any goods without MARS's written consent. All returns are subject to a restocking fee/handling charge of 25%, which may change from time to time. Contact MARS to determine the exact amount. If the goods are specially ordered by the Purchaser, they cannot be returned to MARS. MARS shall have no obligation to accept the return of the goods, and Purchaser shall remain liable for the entire purchase price of the goods.
- MARS Company shall provide, and Purchaser shall pay for MARS Company's performance of, the Services described in one or more statements of work executed by MARS Company and any person listed as Purchaser's authorized representative in writing by Purchaser. With respect to the Services, Purchaser shall (i) cooperate with MARS Company in all matters relating to the Services and provide such reasonable access to Purchaser's premises, and such office accommodation and other facilities as may reasonably be requested by MARS Company, for the purposes of performing the Services; (ii) respond promptly to any MARS Company request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for MARS Company to perform Services in accordance with the requirements of this Agreement; (iii) provide such materials or information as MARS Company may reasonably request to perform the Services in a timely manner; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3) Purchase Order and Acceptance.

- Purchaser shall be deemed to irrevocably accept these Terms, and MARS Company's furnishing of Equipment, Software and Services in accordance with these Terms, upon the earlier to occur of the following: (i) Purchaser's issuance of a purchase order; (ii) Purchaser's non-rejection of Equipment, Software or Services on the earliest Delivery Date; or (iii) Purchaser's payment for Equipment, Software or Services, in whole or in part.

4) Purchase Price and Service and Software Fees.

- The purchase price of the Equipment and the hourly rates for Services are set forth in the Contract. Unless otherwise agreed by the parties in writing, all Proposals expire thirty (30) days from the date thereof.
- Unless otherwise stated in a statement of work, the hourly rates set forth in the Contract is based on Services performed during normal business hours (8 a.m. to 5 p.m. Monday through Friday). Any Services performed on: (i) a business day outside of normal business hours or on a Saturday will be billed at one and one-half (1 1/2) times the hourly rate; (ii) Sunday will be billed at two (2) times the hourly rate; and (iii) a federal holiday, including any falling on a Saturday or Sunday, will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet. Service rates are subject to change without notice.
- The purchase price of the Equipment does not include any federal, state or local property, license, permits, privilege, sales, use, excise, gross receipts, manufacturer's tax, occupation tax, transfer tax, privilege tax, excise tax, duty, custom, tariff, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever, whether international, national, state, or local, however designated, which is levied or imposed by any governmental authority, on or measured by the transaction between MARS Company and Purchaser, shall be paid by Purchaser in addition to the prices quoted or invoiced, or in lieu thereof the Purchaser shall supply MARS Company with an appropriate tax exemption certificate. In the event MARS Company is required to pay any such tax, fee, interest or charge, Purchaser shall reimburse MARS Company therefore. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon submitting a purchase order, provide MARS Company a copy, acceptable to the relevant governmental authorities of any such certificate or permit. Purchaser agrees that, in the event of a Significant Cost Increase, MARS may increase the price of the MARS Test Bench Solution in an equitable amount for so long as such Significant Cost Increase is occurring. A "Significant Cost Increase" for purposes of this Agreement and any

purchase order or similar issued hereunder shall be an increase of five percent (5%) or more of the then-prevailing aggregate cost to MARS of raw materials, energy and transportation costs incurred in connection with the manufacture, delivery and/or servicing of any component of the MARS Test Bench Solution. In the event a Significant Cost Increase is no longer occurring, the price of the MARS Test Bench Solution shall revert back to that of the applicable purchase order.

- Services fees, including but not limited to MARS calibration certification equipment maintenance and services (MCC) fees, shall be (i) designated in the manner set forth on the Proposal or the MCC. and (ii) payable ANNUALLY IN ADVANCE of performance of Services.
- Software fees shall be (i) designated in the manner set forth on the Proposal or the Contract, and (ii) payable ANNUALLY IN ADVANCE of Software activation, renewal, re-activation, etc.; as appropriate.
- In the event Purchaser prepays Software fees to be applied against future MARS Services projects, Purchaser shall have twelve (12) months from the effective date of the Schedule of Software and Services to utilize the prepaid Fees towards a Services project. Any Fee credits shall expire after twelve (12) months and Purchaser shall not be entitled to any refund.
- If Licensee purchased an On-Premise Subscription Usage License, then:
 - Software fees shall be calculated based upon the monthly pro-rated amount of M3 Annual Meter Testing Usage and respective M3 Usage Tier and Usage Tier Discount as follows: the multiplication of each of the amounts: (i) One (1) subtracted by the Usage Tier Discount, and (ii) prevailing annual On-Premise Subscription Term License.
 - By way of example, if Licensee M3 Annual Meter Testing Usage exceeds Usage Tier I during five months into a 12-month renewal term and does not exceed Usage Tier 2 during the following seven months, then the Software Fee calculation would be: [(1-Usage Tier I Discount) x (5/12)] + [(1-Usage Tier Discount II) x (7/12)]. Licensee agrees that Usage Tiers may be increased but not decreased.
- MARS may increase its license and other fees, not included in this Agreement, at any time without notice so fees due for new or additional Software license or subscription purchases may be more than a previous purchase.
 - If Licensee purchased an On-Premise Subscription License, MARS may not increase the associated license fees more than once in any 12-month period following Licensee's initial purchase by more than ten percent (10%). MARS will notify Licensee of a price increase at least 90 days before the increase takes effect.
- You are responsible for providing MARS with the most current contact and billing information. Purchaser may provide updates to Purchaser's contact information to MARS at Sales@MARSwater.com and updates to Purchaser's billing information to MARS. You agree that, so long as the On-Premise Subscription Term License is active, MARS may, on a monthly basis, automatically bill the same credit card or bank account Purchaser provides to MARS.

5) Payment.

- Unless specified to the contrary in writing by MARS Company, payment terms are net cash, payable without offset, in United States Dollars, thirty (30) days from date of invoice by ACH or wire transfer to the account designated by MARS Company in the Proposal.
- Notwithstanding Section 5(b) above, payment terms for Equipment and Software are net cash, payable without offset, in United States Dollars and due on the Delivery Date by ACH or wire transfer to the account designated by MARS Company to Purchaser in writing (which may be delivered by email).
- If Purchaser fails to pay any reasonably undisputed invoice by the due date, MARS Company may require payment in advance, payment security satisfactory to MARS Company, or may terminate the purchase order, whereupon MARS Company shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall be due on the date MARS Company is prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.
- Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus MARS Company's attorneys' fees and court costs incurred in connection with collection. If Purchaser's account is overdue (except with respect to amounts subject to a bona fide dispute), in addition to any of its other rights or remedies, MARS reserves the right to (i) dispend any MARS Services to Purchaser, and (ii) terminate Your use of the software and Purchaser shall pay a non-refundable, software reactivation fee ("Software Reactivation Fee") calculated as follows: (i) twenty-five hundred dollars (\$2,500) if reactivation is within 30 days of license expiration, plus (ii) five thousand dollars (\$5,000) for each subsequent 30 days, payable in advance of software reactivation, without liability, until such amounts are paid in full. By way of example, if Licensee reactivates the software 90 days after license expiration, then Software Reactivation Fee calculation would be: [(\$2,500) + (2 x \$5,000) = \$12,500.

6) Changes.

- Any changes to a statement of work requested by Purchaser must be accepted by MARS Company and resulting adjustments to affected provisions, including price, schedule, and guarantees mutually agreed in writing prior to implementation of the change (the "Change Order"), and comply with the provisions of Section 27(e)(i).
- MARS Company may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the applicable specifications agreed upon by the parties. If Purchaser objects to any such changes, MARS Company shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.
- MARS Company may, at any time while the Equipment is under warranty, make such changes in design and construction of Equipment that it deems, in its sole discretion, to be an improvement. MARS Company may furnish suitable substitutes for materials that are unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

7) Title & Risk of Loss.

- Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon delivery.
- Title to the Equipment shall remain with MARS Company until Purchaser has paid MARS Company the full purchase price of the Equipment.

8) Bonding. Any cost related to Payment Bonds, Performance Bonds, Labor and Material Bonds, hereinafter referred to as "BONDS" or any such financially bonding documents and/or mechanism required by Contract are not included unless specified to the contrary in writing by MARS Company. BONDS, if applicable, will be provided for either, (i) 12 months from the issuance / requirement date from Purchaser, or (ii) Contract Completion, whichever occurs first. Any costs to extend the requirement or to maintain or extend BONDS coverage beyond 12 months will be paid by Purchaser.

9) Inspection, Testing, Installation and Acceptance.



**MARS COMPANY
WARRANTY, GENERAL TERMS AND CONDITIONS**

- a) Any inspection by Purchaser of Equipment on MARS Company's premises shall be scheduled in advance to be performed during normal working hours.
- b) If the purchase order provides for factory acceptance testing of the Equipment, MARS Company shall notify Purchaser when MARS Company will conduct such testing, which will be prior to shipment. UNLESS PURCHASER PROVIDES MARS COMPANY WITH WRITTEN NOTICE OF SPECIFIC OBJECTIONS WITHIN TEN (10) DAYS AFTER COMPLETION OF FACTORY ACCEPTANCE TESTING, COMPLETION OF THE FACTORY ACCEPTANCE TEST CONSTITUTES PURCHASER'S FULL ACCEPTANCE OF THE EQUIPMENT AND ITS AUTHORIZATION FOR SHIPMENT.
- c) MARS Company agrees to supply and install the MARS Test Bench Solution at a mutually agreeable location on the Purchaser's facility. For such installation, the Purchaser, at its sole cost and expense, shall: (i) provide a mutually agreeable electrical source and a water source to the MARS Test Bench Solution and (ii) engage a licensed plumber and licensed electrician to connect the MARS Test Bench Solution with such electrical and water sources (collectively, the "Purchaser Installation Responsibilities").
- d) After the Purchaser completes the Purchaser Installation Responsibilities to MARS Company's reasonable satisfaction and MARS Company installs the MARS Test Bench Solution, MARS Company and the Purchaser will perform testing in accordance with the detailed process and specification in accordance with acceptance test procedure ("ATP") addendum at marswater.com/ATP. A summary of the ATP is outlined as follows: (i) phase one - calibrate the MARS Test Bench Solution for accuracy (collectively, "Accuracy Calibration"). MARS shall be responsible for hiring a licensed, independent scale calibration and accuracy company ("Licensed Accuracy Calibration Company") to provide test bench scale system calibration to confirm that the Test Bench Solution meets NIST traceability and accuracy and adheres to local licensing requirements and industry standards. MARS and the Licensed Accuracy Calibration Company shall document the accuracy testing in accordance with scale system calibration & accuracy that is set forth on ATP Schedule A. If the test results conform to ATP Schedule A, the parties mutually agree the Test Bench Solution will be deemed to have successfully passed this Accuracy Calibration phase; (ii) Following the completion of the Accuracy Calibration, MARS shall then perform phase two - Test Bench Solution testing for repeatability based on the Accuracy Calibration data. The repeatability testing ("Repeatability Testing") shall document the performance of the Test Bench Solution using statistical process control model detailed in the ATP. If the test results conform to ATP Schedule B, the parties mutually agree that the Test Bench Solution will be deemed to have successfully passed this Test Bench Solution Repeatably phase; (iv) MARS Company and Purchaser will jointly perform phase three - operator training and variable meter size acceptance testing of the MARS Test Bench Solution to ensure that the MARS Test Bench Solution conforms to the specifications set forth in the Agreement and per AWWA M6 Manual, Fifth Edition pages 63 & 64, Table 5-3. The data from phase three will be made available to the Purchaser and upon receipt will be deemed accepted in so far as operator training and variable meter testing. Upon successful completion of the ATP of this Section, the parties mutually agree that the MARS Test Bench Solution will be deemed acceptable by the Purchaser (collectively, the "Acceptance Testing").
- e) The Purchaser shall have accepted the Test Bench Solution ("Accepted") the earlier of (i) Completion of Acceptance Testing constituting Purchaser's / Licensee's full acceptance of the Test Bench Solution; (ii) IF, THROUGH NO FAULT OF MARS COMPANY, SITE ACCEPTANCE TESTING IS NOT COMPLETED WITHIN THIRTY (30) DAYS AFTER ARRIVAL OF THE EQUIPMENT AT THE DESIGNATED SITE OR IN THE CASE OF SOFTWARE, AFTER TEN (10) DAYS AFTER SOFTWARE INSTALLATION, THE SITE ACCEPTANCE TESTING SHALL BE DEEMED COMPLETED AND THE EQUIPMENT OR SOFTWARE SHALL BE DEEMED ACCEPTED BY PURCHASER. "Acceptance Date" means the date the Equipment and Software was Accepted.

10) Operational Control. OPERATIONAL CONTROL MEANS THE RIGHT TO CONDUCT ANY AND ALL OPERATIONS AND UTILIZE EQUIPMENT AND SERVICES FOR THE INTENDED PURPOSE OF CONDUCTING WATER METER TESTING, INCLUDING ANY AND ALL OPERATIONS OF SOFTWARE (EXCLUDING INSPECTION, TESTING AND ACCEPTANCE). OPERATIONAL CONTROL SHALL REMAIN WITH MARS COMPANY UNTIL PURCHASER HAS ACCEPTED THE EQUIPMENT OR SOFTWARE PURSUANT TO SECTION 9).

11) Limited Warranties and Remedies (unless otherwise stated).

- a) **Equipment and Services Warranty.** MARS Company warrants that Equipment shall be delivered free of defects in material and workmanship. The Warranty Period for Equipment (excluding, spare parts and refurbished or repaired parts) shall end twelve (12) months after the Acceptance Date. The Warranty Period for new spare parts shall end twelve (12) months after date of shipment. The Warranty Period for refurbished or repaired parts shall end ninety (90) days after date of shipment. The Warranty Period for Services shall end ninety (90) days after the date of completion of Services or one-hundred and twenty (120) days after Services are initiated, whichever comes first.
- b) **MARS On-Premise Equipment Warranty.** MARS Company warrants that MARS On-Premise Equipment shall be delivered free of defects in material and workmanship.
- c) **Equipment and Services Remedy.** If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to MARS Company promptly after such discovery and within the applicable Warranty Period, MARS Company shall, at its option, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services, (ii) refund the portion of the purchase price applicable to the nonconforming portion of Equipment or Services, or (iii) refund the full purchase price of the Equipment if any nonconformance with the above warranty causes the Equipment to be inoperable. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to MARS Company promptly after discovery and within the original Warranty Period applicable to such Equipment or Services or thirty (30) days from completion of such repair, replacement or re-performance, whichever is later, MARS Company will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Period shall not otherwise be extended.
- d) **Exceptions.** MARS Company shall have no obligation hereunder with respect to any Equipment which (i) has been installed by non-MARS authorized entities; (ii) has been improperly repaired or altered by Purchaser or a third party; (iii) has been subjected to misuse, negligence or accident; (iv) has been used in a manner contrary to MARS Company's instructions; (v) is comprised of materials provided by or a design specified by Purchaser; or (vi) has failed as a result of ordinary wear and tear. Equipment supplied by MARS Company but manufactured by others is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

The Warranty Period is void if the Purchaser does not adhere to storage instructions specifying both storage time and temperature or if MARS Company determines, at its sole discretion, that the AMR Radio equipment is improperly maintained, modified, subjected to

excessive operating conditions, incidental damage, intentional or unintentional destruction, act of God, abuse or physically damaged. If any portion of the AMR Radio so repaired or replaced fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to MARS Company promptly after discovery and within the original Warranty Period applicable to such AMR Radio or thirty (30) days from the shipment date of such repair or replacement, whichever is later, MARS Company will repair or replace such nonconforming AMR Radio. The original Warranty Period shall not otherwise be extended.

- e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND MARS COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

12) End User License Agreement. BY CLICKING THE "I ACCEPT THE TERMS..." CHECKBOX ON THE M3 SOFTWARE LICENSE DIALOG BOX, BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, LICENSEE IS CONSIDERED TO HAVE READ, AND LICENSEE AGREES TO BE BOUND BY THE TERMS OF THE END USER LICENSE AGREEMENT ("EULA"). IF LICENSEE IS NOT WILLING TO BE BOUND BY THE TERMS OF THE EULA, LICENSEE SHALL NOT INSTALL, COPY OR USE THE SOFTWARE. THE SOFTWARE, INCLUDING ANY UPDATES, ENHANCEMENTS, NEW FEATURES, AND/OR THE ADDITION OF ANY NEW SERVICES, ARE SUBJECT TO THESE TERMS AND CONDITIONS OF THE EULA.

13) Care and Use of MARS On-Premise Equipment. MARS Company shall maintain and service the MARS On-Premise Equipment from the Delivery Date until either: a) the expiration of the applicable EULA license Term, or b) the date of earlier termination in accordance with the EULA.

In all other respects, except for damage or repairs due to the acts or omissions of MARS Company or its employees, agents, or contractors, Purchaser shall maintain in good operating condition, repair, and appearance, the MARS On-Premise Equipment at Purchaser's own cost and expense, and Purchaser shall protect the MARS On-Premise Equipment from damage and deterioration, other than that caused by normal wear and tear.

Purchaser shall use the MARS On-Premise Equipment in the regular course of business only, within its normal capacity, without abuse, and in the manner contemplated by the parties as of the date of this Agreement. Purchaser shall comply with all laws, ordinances, regulations, requirements and rules with respect to the use and operation of the MARS On-Premise Equipment, and shall not make any modification, alteration or addition to the MARS On-Premise Equipment without prior written approval by MARS Company. Neither Purchaser nor its employees, agents or representatives shall tamper with, disassemble, revise, engineer or otherwise examine the manual workings of the MARS On-Premise Equipment. If through the negligence of Purchaser or the breach of this Agreement by Purchaser repairs are required of MARS Company, then Purchaser shall reimburse MARS Company for all reasonable costs incurred by MARS Company to repair, replace, or perform such maintenance to correct any faults. If Purchaser has not corrected such repairs or performed such maintenance to MARS Company's satisfaction within ten (10) calendar days following MARS Company's written notice to Purchaser, MARS Company shall have the right during normal business hours, with reasonable prior notice to Purchaser and subject to applicable laws and regulations, to enter the Facility in order to inspect, observe, or upon termination or expiration of Licensee's EULA, remove the MARS On-Premise Equipment or otherwise protect MARS Company's interests, and Purchaser shall cooperate fully in affording MARS Company the opportunity to do the same. Purchaser shall permit MARS Company to review all documentary and electronic information relating to the MARS On-Premise Equipment and the operation of it. In the event of theft or loss of the MARS On-Premise Equipment while in use and control of the Purchaser, Purchaser agrees to reimburse MARS Company for all reasonable costs incurred by MARS Company to replace MARS On-Premise Equipment.

In the event the Licensee (i) terminates the license subscription, except if terminated for breach or cause by MARS, or (ii) does not renew the M3 license pursuant to Section 4. Licensee shall pay an equipment decommissioning fee ("Equipment Decommissioning Fee" or "EDF") for the expenses related to the return and recovery of MARS owned, MARS On-Premise Equipment. The EDF includes but is not limited to labor, travel, and expenses associated with the decommissioning, de-installation, shipping and return of the MARS On-Premise Equipment from the Licensee location to MARS located at 3925 SW 13th St., Ocala, Florida 34474. Further, Licensee agrees to pay MARS a non-refundable EDF fee in the amount of \$5,000 (five-thousand dollars) for each decommissioned Test Bench System within 30 days of the date of equipment decommissioning. By way of example, if Licensee does not renew the M3 annual subscription on two 2400 Series test benches and a single large test bench, the EDF for the three separate system would be: (3 x \$5,000) = \$15,000.

14) Inventions and Information. Unless otherwise agreed in writing by MARS Company and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with MARS Company. Any design, manufacturing drawings or other information submitted to the Purchaser remains the exclusive property of MARS Company. Purchaser shall not, without MARS Company's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.

15) Patent Indemnity.

- a) MARS Company shall defend at its own expense, and shall indemnify and hold Purchaser harmless from, any action brought against Purchaser alleging that the Equipment or the use of the Equipment to practice any process for which such Equipment is specified by MARS Company (a "Process") directly infringes any claim of a patent of the United States of America and to pay all damages and costs finally awarded in any such action, provided that Purchaser has given MARS Company prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action in behalf of Purchaser.
- b) MARS Company shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including Equipment or Processes which have been modified or combined with other equipment or process not supplied by MARS Company; (ii) any Equipment or Process supplied according to a design, other than an MARS Company design, required by Purchaser; (iii) any products manufactured by the Equipment or Process; (iv) any patent issued after the date hereof; or (v) any action settled or otherwise terminated without the prior written consent of MARS Company.
- c) If, in any such action, the Equipment is held to constitute an infringement, or the practice of any Process using the Equipment is finally enjoined, MARS Company shall, at its option and its own expense, procure for Purchaser the right to continue using said Equipment; or modify or replace it



**MARS COMPANY
WARRANTY, GENERAL TERMS AND CONDITIONS**

with non-infringing equipment or, with Purchaser's assistance, modify the Process so that it becomes non-infringing; or remove it and refund the portion of the price allocable to the infringing Equipment. THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF MARS Company AND EQUIPMENT MANUFACTURER FOR ANY PATENT INFRINGEMENT.

d) To the extent that said Equipment or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that MARS Company is a contributory infringer) or said Equipment or any part thereof is used by Purchaser to perform a process not furnished hereunder by MARS Company or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against MARS Company, Purchaser shall defend and indemnify MARS Company in the same manner and to the same extent that MARS Company would be obligated to indemnify Purchaser under this "Patent Indemnity" provision.

16) Limitation of Liability.

a) EXCEPT FOR CLAIMS AGAINST YOU THAT ANY PART OF THE EQUIPMENT OR THE USE OF THE EQUIPMENT TO PRACTICE A PROCESS INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT, IN NO EVENT SHALL MARS COMPANY, ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, DELAYS, AND CLAIMS OF CUSTOMERS OF THE PURCHASER OR OTHER THIRD PARTIES FOR ANY DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MARS COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CLAIMS AGAINST YOU THAT ANY PART OF THE EQUIPMENT OR THE USE OF THE EQUIPMENT TO PRACTICE A PROCESS INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT, MARS COMPANY'S LIABILITY FOR ANY CLAIM WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, MANUFACTURE, SALE, DELIVERY, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, OPERATION OR USE OF ANY EQUIPMENT COVERED BY OR FURNISHED UNDER THIS AGREEMENT, OR FROM ANY SERVICES RENDERED IN CONNECTION THEREWITH, SHALL IN NO CASE (EXCEPT AS PROVIDED IN THE SECTION ENTITLED "PATENT INDEMNITY") EXCEED ONE-HALF (1/2) OF THE PURCHASE PRICE ALLOCABLE TO THE EQUIPMENT OR PART THEREOF OR SERVICES WHICH GIVES RISE TO THE CLAIM.

b) ALL CAUSES OF ACTION AGAINST MARS COMPANY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF SHALL EXPIRE UNLESS BROUGHT WITHIN ONE YEAR OF THE TIME OF ACCRUAL THEREOF.

17) .

18) OSHA. MARS Company warrants that the Equipment will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the Proposal Date. Upon prompt written notice from the Purchaser of a breach of this warranty, MARS Company will replace the affected part or modify it so that it conforms to such standard or regulation. MARS Company's obligation shall be limited to such replacement or modification. IN NO EVENT SHALL MARS COMPANY BE RESPONSIBLE FOR LIABILITY ARISING OUT OF THE VIOLATION OF ANY OSHA STANDARDS RELATING TO OR CAUSED BY PURCHASER'S DESIGN, LOCATION, OPERATION, OR MAINTENANCE OF THE EQUIPMENT, ITS USE IN ASSOCIATION WITH OTHER EQUIPMENT OF PURCHASER, OR THE ALTERATION OF THE EQUIPMENT BY ANY PARTY OTHER THAN MARS COMPANY.

19) Force Majeure. MARS Company shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, pandemic, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and the purchase price will be adjusted to compensate MARS Company for such delay.

20) Cancellation. Any purchase order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified in the purchase order incurred prior to the effective date of notice of termination and all expenses incurred by MARS Company attributable to the termination, plus a fixed sum of ten (10) percent of the final total purchase price to compensate for disruption in scheduling, planned production and other indirect costs.

21) Termination. In addition to any remedies that may be provided under these Terms, MARS Company may terminate this Agreement with immediate effect upon written notice to Purchaser if Purchaser: (a) fails to pay any reasonably undisputed amount when due under this Agreement; (b) has not otherwise materially performed or complied with any of these Terms, in whole or in part; or (b) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Purchaser may terminate this Agreement for MARS Company's material breach if MARS Company fails to cure or begin taking reasonable steps to cure any such material breach within fifteen (15) days after receiving written notice from Purchaser specifying such breach

22) Export Control.

a) Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by MARS Company or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such Regulations.

b) If applicable, MARS Company shall file for a U.S. export license, but only after appropriate documentation for the license application has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after acceptance of the purchase order. Any delay in obtaining such license shall suspend performance of this Agreement by MARS Company. If an export license is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by MARS Company without liability for damages of any kind resulting from such cancellation. At MARS Company's request, Purchaser shall provide to MARS Company a Letter of Assurance and End-User Statement in a form reasonably satisfactory to MARS Company.

23) Assignment. Neither Party shall assign this Agreement or of any rights or obligations under this Agreement without prior written notice of the other Party.

24) Warranty of Capacity to Execute Agreement. Each of the parties warrants and represents on behalf of itself that it has full power and authority to enter into this Agreement and to bind the parties, that any and all necessary consents and approvals have been obtained, and that no other consent, approval or action is required.

25) Severability. If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.

26) Entire Agreement. This Contract By and Between City of Denton, Texas and OW Investors, LLC dba MARS Company shall take precedence over these terms and conditions (these "Terms"), the Equipment, Software and Services Contract (the "Contract") and its Schedules, the M3 Enterprise Software End User License Agreement (the "EULA"), MARS Calibration Certification - General Conditions of Service and Maintenance Agreement (the "MCC"), any proposal from MARS Company received by Purchaser (the "Proposal"), any purchase order and any change orders attached and incorporated hereto, (collectively, this "Agreement") is a legal agreement and constitutes the complete and exclusive agreement between Purchaser and MARS Company with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written communications, proposals, representations, understandings, or agreements not specifically incorporated herein. This Agreement may not be amended or modified except in a writing duly signed by the authorized representative of Purchaser and an authorized representative of MARS Company.

27) Miscellaneous.

- a) Equipment consumables including printer ink, paper, etc. are Purchaser responsibility at all times.
- b) This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation.
- c) Neither party shall be deemed to have waived any of its rights under this Agreement without specifically agreeing to do so in writing. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of this Agreement.
- d) If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.
- e) Conflicts. MARS Company and Purchaser agree and acknowledge that due to the nature of the commercial relationship, and the public or quasi-public sector nature of Purchaser, this transaction will be regulated by multiple documents. Occasionally, conflicts will arise between different documents, or between different versions of the same document. The purpose of this Section 27(e) is to provide simple rules for resolving such conflicts.
 - i) Change Order – A Change Order shall only be effective to prevail over a conflicting term if such Change Order contains an express statement of the Parties' intent for the Change Order provision to control over the conflicting provision in the other document. Such statements must be prominently and conspicuously in BOLD CAPITAL LETTERS, must be in a font no smaller than that of this Section of this Agreement, and must expressly reference the section and page number of the conflicting provision in the other document that the Change Order provision prevails over. Any effective statement shall only be effective as to that provision in that Change Order; it shall have no force or effect relative to previous or subsequent agreements or addendums thereto.
 - ii) Conflicts Between Different Dated Versions of Same Document – For conflicts between versions of the same document (i.e., a EULA) that bear different dates, the most recent version will prevail.
 - iii) Conflict Between Different Documents – For conflicts between different documents (i.e., a term in the EULA and a conflicting term in the Proposal), such conflicts shall be resolved by reference to the chart below. Utilizing the foregoing example, a conflict between a EULA term and a Proposal term would place in conflict "4" with "G" and the chart shows that 4, the EULA, would prevail.

	A	B	C	D	E	F	G
1	-	1	1	1	1	1	1
2	A	-	2	2	2	2	2
3	A	B	-	3	3	3	3
4	A	B	C	-	4	4	4
5	A	B	C	D	-	5	5
6	A	B	C	D	E	-	6
7	A	B	C	D	E	F	-

1-Change Order	A-Change Order
2-Contract	B-Contract
3-Terms	C-Terms
4-EULA	D-EULA
5-MCC	E-MCC
6-Purchase Order	F-Purchase Order
7-Proposal	G-Proposal

- f) All notices hereunder shall be made by certified or registered airmail, return receipt requested, by recognized overnight courier, by facsimile transmission, answer back requested, but excluding e-mail, and shall be sent to the parties at the addresses indicated in the purchase order (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof). MARS Company's address is 3925 SW 13th St, Ocala, Florida 34474.
- g) During the term of this Agreement and for one (1) year thereafter, neither party shall solicit the other parties' current employees or full-time consultants for employment, directly or indirectly, without such other parties' written consent. For the purposes of this provision, placing a general advertisement for employment shall not be considered solicitation for employment. This provision does not apply in the event of a breach by either party
- h) This Agreement may only be modified by written agreement of the parties.
- i) Separate Execution; Reproduced Signatures. This Agreement may be separately executed in identical counterparts, each of which shall be considered an original and all of which together shall collectively be considered an effective and binding agreement on the part of each of the undersigned. For the avoidance of doubt, an electronically reproduced signature, such as by facsimile or PDF copy shall have the same force and effect as execution of an original.

Certificate Of Completion

Envelope Id: 1E5B3E2C8CB841EC965CF5FAE4C006F9	Status: Sent
Subject: Please DocuSign: City Council Contract 8173 Meter Test Bench & Mobile Tester	
Source Envelope:	
Document Pages: 38	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Crystal Westbrook
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	crystal.westbrook@cityofdenton.com
	IP Address: 198.49.140.104

Record Tracking

Status: Original	Holder: Crystal Westbrook	Location: DocuSign
3/28/2023 3:19:24 PM	crystal.westbrook@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.104	Sent: 3/28/2023 3:30:48 PM Viewed: 3/28/2023 3:30:56 PM Signed: 3/28/2023 3:32:39 PM
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)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/28/2023 3:32:41 PM Viewed: 3/28/2023 4:24:34 PM Signed: 3/28/2023 4:25:18 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Marcella Lunn marcella.lunn@cityofdenton.com Mack Reinwand City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/28/2023 4:25:21 PM Viewed: 3/31/2023 2:07:25 PM Signed: 3/31/2023 2:10:42 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Jeff Butt jbutt@marswater.com Vice President Operations Security Level: Email, Account Authentication (None)	 Signature Adoption: Uploaded Signature Image Using IP Address: 47.204.220.120	Sent: 3/31/2023 2:10:44 PM Viewed: 3/31/2023 2:33:31 PM Signed: 3/31/2023 6:04:37 PM
Electronic Record and Signature Disclosure: Accepted: 3/31/2023 2:33:31 PM ID: 94a7ce82-ca41-4137-b880-94fb6fe66a7b		

Signer Events	Signature	Timestamp
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Stephen D. Gay
 stephen.gay@cityofdenton.com
 Director,
 Security Level: Email, Account Authentication (None)

DocuSigned by:

 9EBFF5658E56492...
 Signature Adoption: Pre-selected Style
 Using IP Address: 47.186.197.168
 Signed using mobile

Sent: 3/31/2023 6:04:40 PM
 Viewed: 3/31/2023 6:43:09 PM
 Signed: 3/31/2023 6:44:07 PM

Electronic Record and Signature Disclosure:
 Accepted: 3/31/2023 6:43:09 PM
 ID: 594fa57b-85f8-476b-8c60-ca2af10cb3b1

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

Sent: 3/31/2023 6:44:10 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Rosa Rios
 rosa.rios@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Accepted: 3/22/2023 4:54:23 PM
 ID: 0d5a6bde-68bc-4154-a19f-463ee1264a12

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

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Sent: 3/28/2023 3:32:42 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

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)

COPIED

Sent: 3/31/2023 6:44:10 PM
Viewed: 4/3/2023 9:04:43 AM

Electronic Record and Signature Disclosure:
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

Casey Bowles
casey.bowles@cityofdenton.com
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	3/28/2023 3:30:48 PM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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:	<ul style="list-style-type: none"> •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 76201
www.cityofdenton.com

Legislation Text

File #: ID 23-886, **Version:** 1

AGENDA CAPTION

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 KBS Electrical Distributors, Inc., for the purchase of Electric Utility Substation Switches for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (IFB 8178 - awarded to KBS Electrical Distributors, Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$2,693,820.00). The Public Utilities Board recommends approval (7-0).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 KBS Electrical Distributors, Inc., for the purchase of Electric Utility Substation Switches for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (IFB 8178 – awarded to KBS Electrical Distributors, Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$2,693,820.00). [The Public Utilities Board recommends approval \(7 - 0\).](#)

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

Denton Municipal Electric (DME) has planned substation projects in its approved five-year Capital Improvement Plan (CIP) that require the purchase of substation switches and accessories including interrupters, motor operators, and auxiliary switches. Projects include the new Underwood Substation to accommodate the planned Hunter Ranch and Cole Ranch developments. Other projects include upgrades to the existing Bonnie Brae and RD Wells substations to increase capacity and reliability and a new proposed substation in the southwestern service area. DME solicited an Invitation for Bid (IFB) to provide 25kV, 138kV, and 345kV switches and associated operators and accessories.

Substation switches are installed to allow for the isolation of transmission lines, substation buses, and equipment for repairs and maintenance. Switches under this solicitation are air-insulated, three-phase, and gang operated. Sulfur Hexafluoride (SF₆) switch interrupters extinguish arcs when opening energized switches that cannot be de-energized before operation. Motor operators for controlling switches remotely will be provided for operating switches with interrupters. Auxiliary switches are also included in this solicitation which serves to indicate the switch's position for the Supervisory Control and Data Acquisition (SCADA) system.

The technical specifications indicated that only Southern States Switches and accessories will be accepted. DME's system includes 400+ switches with 99% manufactured by Southern States. Maintaining the same manufacturer allows DME to make additions and/or replace existing switches without altering or replacing steel structures and operating hardware. In addition, planned substation designs are based on the installation requirements of Southern States.

Invitation for Bids was sent to 318 prospective suppliers of this item, including ten (10) Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download, and advertised in the local newspaper. Five (5) bids were received, with four (4) meeting specifications. The lowest bid was received by KBS Electrical Distributors, Inc.

NIGP Code Used for Solicitation:	285 - Electrical Equipment and Supplies (Except Cable and Wire)
Notifications sent for Solicitation sent in IonWave:	318
Number of Suppliers that viewed Solicitation in IonWave:	12
HUB-Historically Underutilized Business Invitations sent out:	32
SBE-Small Business Enterprise Invitations sent out:	134
Responses from Solicitation:	5
Responses Meeting Specifications:	4

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On April 24, 2023, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award a contract with KBS Electrical Distributors, Inc., for the purchase of Electric Utility Substation Switches for Denton Municipal Electric, in a three (3) year, with the option for two (2) additional one (1) year extensions, in the total five year not-to-exceed amount of \$2,693,820.

PRINCIPAL PLACE OF BUSINESS

KBS Electrical Distributors, Inc.
Bryan, TX

ESTIMATED SCHEDULE OF PROJECT

This is an initial three (3) year contract with options to extend the contract for two (2) additional one (1) year periods, with all terms and conditions remaining the same. Orders will be placed as project schedules require and will be delivered within 28-30 weeks.

FISCAL INFORMATION

The costs for material purchased under the proposed agreement will be funded out of amounts budgeted for specific projects. The work proposed will be in the transmission category. These costs for transmission projects will ultimately be recovered through the Public Utility Commission Transmission Cost of Service Program (TCOS).

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: Mark Zimmerer, 940-349-7169.

Legal point of contact: Marcella Lunn at 940-349-8333.

Exhibit 2

IFB 8178 - Bid Tabulation for Electric Utility Substation Switches

Respondent's Business Name:				KBS Electrical Distributors, Inc.		Texas Electric Cooperatives		WESCO Utility (WESCO Distribution, Inc)		REAL POWER TECHNOLOGIES (Jasco Enterprises, Inc.)		PASCOR (Pacific Air Switch Corporation)	
Principal Place of Business (City and State):				Bryan, TX		Georgetown, TX		Denton, TX		Allen, TX		Forest Grove, OR	
Line #	Description	QTY	UOM	Unit	Extended	Unit	Extended	Unit	Extended	Unit	Extended	Unit	Extended
Supply of Electric Utility Substation Switches Product Proposal Pricing (PRICING SHALL INCLUDE ALL COSTS TO DELIVER GOODS AS SPECIFIED F.O.B DESTINATION) *												Non-Responsive due to	
Estimated annual quantity is the best estimate available at the time the IFB was issued and may vary significantly up or down from year to year.												No bids	
SECTION A: SWITCHES													
1	25 kV, 2000 Amp, Vertical Break	48	EA	\$19,240.00	\$923,520.00	\$19,748.00	\$947,904.00	\$21,505.00	\$1,032,240.00	\$29,472.42	\$1,414,676.16	\$13,527.00	\$649,296.00
2	138kV, 2000 Amp, Vertical Break	6	EA	\$21,355.00	\$128,130.00	\$21,921.00	\$131,526.00	\$23,870.00	\$143,220.00	\$32,372.58	\$194,235.48	\$18,925.00	\$113,550.00
3	138kV, 3000 Amp, Vertical Break	12	EA	\$23,410.00	\$280,920.00	\$24,026.00	\$288,312.00	\$26,159.00	\$313,908.00	\$35,482.50	\$425,790.00	\$20,346.00	\$244,152.00
4	138kV, 4000Amp, Vertical Break	20	EA	\$31,025.00	\$620,500.00	\$31,845.00	\$636,900.00	\$34,675.00	\$693,500.00	\$47,029.56	\$940,591.20	\$25,908.00	\$518,160.00
5	138kV, 3000Amp, Center Break Vee	1	EA	\$24,560.00	\$24,560.00	\$25,206.00	\$25,206.00	\$27,445.00	\$27,445.00	\$37,224.42	\$37,224.42	\$20,238.00	\$20,238.00
6	345kV, 3000 Amp, Vertical Break	2	EA	\$52,530.00	\$105,060.00	\$53,912.00	\$107,824.00	\$58,700.00	\$117,400.00	\$79,617.60	\$159,235.20	\$30,519.00	\$61,038.00
7	345kV, 3000 Amp, Double End Break	2	EA	\$51,060.00	\$102,120.00	\$52,408.00	\$104,816.00	\$57,061.00	\$114,122.00	\$77,396.88	\$154,793.76	No Bid	\$154,793.76
SECTION B: OPERATORS & ACCESSORIES													
8	Motor Operator	6	EA	\$6,665.00	\$39,990.00	\$6,842.00	\$41,052.00	\$7,450.00	\$44,700.00	\$10,106.10	\$60,636.60	\$6,754.00	\$40,524.00
9	Manual Crank Operator	81	EA	\$1,710.00	\$138,510.00	\$1,754.00	\$142,074.00	\$1,915.00	\$155,115.00	\$2,593.50	\$210,073.50	\$996.00	\$80,676.00
10	Manual Swing Handle Operator	4	EA	\$1,025.00	\$4,100.00	\$1,052.00	\$4,208.00	\$1,160.00	\$4,640.00	\$1,556.10	\$6,224.40	\$500.00	\$2,000.00
11	138kV, 2000 Amp, Interrupter	6	EA	\$40,510.00	\$243,060.00	\$41,578.00	\$249,468.00	\$45,270.00	\$271,620.00	\$61,406.10	\$368,436.60	No Bid	\$368,436.60
12	Grounding Mat	4	EA	\$1,925.00	\$7,700.00	\$1,973.00	\$7,892.00	\$2,175.00	\$8,700.00	\$2,907.00	\$11,628.00	No Bid	\$11,628.00
13	Auxiliary Switch for Indicating GOAB Switch Position	85	EA	\$890.00	\$75,650.00	\$912.00	\$77,520.00	\$995.00	\$84,575.00	\$1,350.90	\$114,826.50	\$302.00	\$25,670.00
Total:				\$2,693,820.00		\$2,764,702.00		\$3,011,185.00		\$4,098,371.82		Non-Responsive	

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH KBS ELECTRICAL DISTRIBUTORS, INC., FOR THE PURCHASE OF ELECTRIC UTILITY SUBSTATION SWITCHES FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 8178 – AWARDED TO KBS ELECTRICAL DISTRIBUTORS, INC., FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$2,693,820.00).

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:

<u>BID NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8178	KBS Electrical Distributors, Inc.	\$2,693,820.00

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 _____ 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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

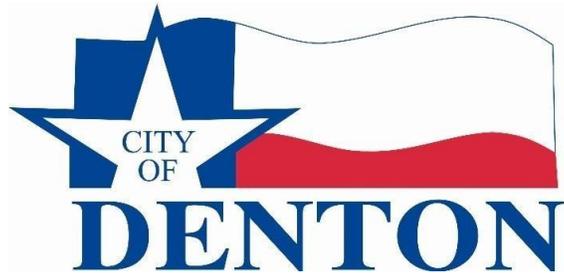
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

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@cityofdent
on.com, c=US
Date: 2023.04.07 11:03:29 -05'00'



DocuSign City Council Transmittal Coversheet

IFB	8178
File Name	ELECTRIC UTILITY SUBSTATION SWITCHES
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND KBS ELECTRICAL DISTRIBUTORS, INC
(Contract # 8178)**

THIS CONTRACT is made and entered into this date _____, by and between **KBS ELECTRICAL DISTRIBUTORS, INC** a Texas Corporation whose address is 7554 HWY 21E, Bryan, Texas 77805, 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 # 8178 – Electrical Utility Substation Switches, 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 8178 (**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 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 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.

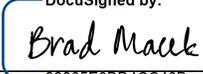
Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

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.

**KBS ELECTRICAL DISTRIBUTORS,
INC**

BY: 
82865F0BD4CC46B
AUTHORIZED SIGNATURE

Printed Name: Brad Macek

Title: Account Manager

903-951-8734

PHONE NUMBER

bradm@kbselectric.com

EMAIL ADDRESS

2023- 1001522

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

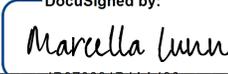
CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: 
4B070831B4AA438...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.


E3760944C2BE4B5...
SIGNATURE

Antonio Puente
PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT

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 three (3) years, 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 \$2,693,820.00. Pricing shall be per Exhibit E attached.

7. Delivery Lead Time

Current lead-times are 28-30 weeks ARO.

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.

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.

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

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

12. INVOICES:

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

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

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

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

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

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

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

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

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

14. TRAVEL EXPENSES: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by Contractor 8178

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.

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 Contract 8178

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

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

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

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

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

27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

30. DELAYS:

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

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

31. INDEMNITY:

A. Definitions:

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

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS,

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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.

- 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.

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

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

37. CONFIDENTIALITY: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees

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

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

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

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

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

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

percentage, brokerage or contingent fee.

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

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation 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 Contract 8178

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

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, Contract 8178

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 Contract 8178

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**

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.

EXHIBIT E

				KBS Electrical Distributors, Inc.
Line #	Description	QTY	UOM	Unit
1	Supply of Electric Utility Substation Switches Product Proposal Pricing (PRICING SHALL INCLUDE ALL COSTS TO DELIVER GOODS AS SPECIFIED F.O.B DESTINATION) * Estimated annual quantity is the best estimate available at the time the IFB was issued and may vary significantly up or down from year to year.	1	EA	
2	SECTION A: Switches	1		
3	25 kV, 2000 Amp, Vertical Break	48	EA	\$19,240.00
4	138kV, 2000 Amp, Vertical Break	6	EA	\$21,355.00
5	138kV, 3000 Amp, Vertical Break	12	EA	\$23,410.00
6	138kV, 4000Amp, Vertical Break	20	EA	\$31,025.00
7	138kV, 3000Amp, Center Break Vee	1	EA	\$24,560.00
8	345kV, 3000 Amp, Vertical Break	2	EA	\$52,530.00
9	345kV, 3000 Amp, Double End Break	2	EA	<u>\$51,060.00</u>
10	SECTION B: OPERATORS & ACCESSORIES	1		
11	Motor Operator	6	EA	<u>\$6,665.00</u>
12	Manual Crank Operator	81	EA	\$1,710.00
13	Manual Swing Handle Operator	4	EA	\$1,025.00
14	138kV, 2000 Amp, Interrupter	6	EA	<u>\$40,510.00</u>
15	Grounding Mat	4	EA	<u>\$1,925.00</u>
16	Auxiliary Switch for Indicating GOAB Switch Position	85	EA	\$890.00

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.
KBS ELECTRICAL DISTRIBUTORS, 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.

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
Bradley Maccek

Signature of vendor doing business with the governmental entity

02/14/2023

Date

Certificate Of Completion

Envelope Id: 1BE21457512F4F0EA7801BB416F6879B	Status: Sent
Subject: Please DocuSign: City Council Contract 8178 - Electric Utility Substation Switches	
Source Envelope:	
Document Pages: 29	Signatures: 3
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Christa Christian
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	Christa.Christian@cityofdenton.com
	IP Address: 198.49.140.10

Record Tracking

Status: Original	Holder: Christa Christian	Location: DocuSign
3/24/2023 10:24:52 AM	Christa.Christian@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Christa Christian christa.christian@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.104	Sent: 3/24/2023 10:31:43 AM Viewed: 3/27/2023 10:45:04 AM Signed: 3/27/2023 10:45:10 AM

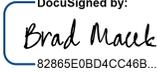
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/27/2023 10:45:13 AM Viewed: 3/28/2023 9:23:22 AM Signed: 3/28/2023 9:24:06 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Mack Reinwand City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/28/2023 9:24:09 AM Resent: 3/31/2023 2:09:42 PM Viewed: 3/31/2023 2:22:20 PM Signed: 3/31/2023 2:24:52 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Brad Macek bradm@kbselectric.com Account Manager Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 98.97.83.75	Sent: 3/31/2023 2:24:56 PM Viewed: 3/31/2023 2:31:26 PM Signed: 3/31/2023 2:42:23 PM
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Electronic Record and Signature Disclosure:
Accepted: 3/31/2023 2:31:26 PM
ID: 5bd656c3-33eb-4b0f-898e-c93b32a3fa4d

Signer Events	Signature	Timestamp
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Antonio Puente
 Antonio.Puente@cityofdenton.com
 DME General Manager
 Security Level: Email, Account Authentication (None)

DocuSigned by:

 E3760944C2BF4B5...
 Signature Adoption: Pre-selected Style
 Using IP Address: 174.240.18.167
 Signed using mobile

Sent: 3/31/2023 2:42:27 PM
 Viewed: 3/31/2023 2:43:14 PM
 Signed: 3/31/2023 2:43:40 PM

Electronic Record and Signature Disclosure:
 Accepted: 3/31/2023 2:43:14 PM
 ID: 9e703c4b-37f4-4aee-83f6-fa227930c806

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

Sent: 3/31/2023 2:43:44 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Rosa Rios
 rosa.rios@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Accepted: 3/22/2023 4:54:23 PM
 ID: 0d5a6bde-68bc-4154-a19f-463ee1264a12

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

COPIED

Sent: 3/27/2023 10:45:14 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

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)

COPIED

Sent: 3/31/2023 2:43:42 PM
 Viewed: 4/3/2023 9:09:37 AM

Electronic Record and Signature Disclosure:
 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

Laura Cheek
 laura.cheek@cityofdenton.com
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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:	<ul style="list-style-type: none"> •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 76201
www.cityofdenton.com

Legislation Text

File #: ID 23-887, Version: 1

AGENDA CAPTION

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 Stearns, Conrad and Schmidt Consulting Engineers, Inc., for the engineered design of a concrete road and a vehicle undercarriage wash (wheel-wash) for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7109-032 - Professional Services Agreement for design services awarded to Stearns, Conrad and Schmidt Consulting Engineers, Inc., in the not-to-exceed amount of \$205,245.00). The Public Utilities Board recommends approval (7 - 0).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 Stearns, Conrad and Schmidt Consulting Engineers, Inc., for the engineered design of a concrete road and a vehicle undercarriage wash (wheel-wash) for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7109-032 – Professional Services Agreement for design services awarded to Stearns, Conrad and Schmidt Consulting Engineers, Inc., in the not-to-exceed amount of \$205,245.00). [The Public Utilities Board recommends approval \(7 - 0\).](#)

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The Landfill is located at the Solid Waste facilities, 1527 South Mayhill Road, Denton, TX. Solid Waste staff is continuously monitoring waste disposal growth and the resulting increase in traffic, as well as state permit compliance on controlling mud tracking. This professional service proposal is to mitigate traffic congestion and mud tracking out of the landfill facility. It includes the preparation of construction plans, technical specifications and bid documents, bid-support services, and construction quality assurance (CQA) services.

For traffic mitigation, a 10-foot-wide paved lane will be added to the existing paved lane. The additional paved lane will give support to the hauling road. Other proposed work includes the rehabilitation of approximately 4,000 square feet of existing pavement, demolition of two (2) concrete pads, reshaping of existing stormwater channels in landfill cell 0 areas, the addition of new stormwater channels, and a new wheel-wash facility.

Per the Texas Commission on Environmental Quality, Municipal Solid Waste Permit #1590B, Volume 2, in order to minimize the tracking of mud onto public roadways, the facility provides an on-site wheel wash. The wheel wash removes accumulated mud from the vehicle wheels, tires, and undercarriage. The landfill traffic exits along the paved site entrance road which provides an adequate distance for any residual mud and dirt to be shed from the vehicle. On days when mud and associated debris are tracked onto the access road and public roadway, facility staff will remove such mud and debris at least once per day. By mitigating mud tracking, the landfill meets state permit requirements as well as City code requirements. The main

objective is to correct traffic safety and flow issues, ultimately providing good customer service, as well as a good flow of revenue.

Professional services for this project will also include assigning a Project Manager (PM) who will be a licensed Professional Engineer in the State of Texas. The PM will handle the scheduling of Stearns, Conrad, and Schmidt personnel, monitor the project budget, assist in material submittal reviews, participate in project meetings, and certify the construction record report and that the work is completed in accordance with the contract documents.

Request for Qualifications for professional engineering services was solicited using the City’s formal solicitation process. City Council approved a pre-qualified list of engineering firms on October 8, 2019 (Ordinance 19-2305).

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On October 8, 2019, City Council approved RFQ 7109 for a prequalified list of professional engineering firms (Ordinance 19-2305).

On April 24, 2023, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award a contract with Stearns, Conrad and Schmidt Consulting Engineers, Inc., for the engineered design of a concrete road and a vehicle undercarriage wash (wheel-wash) for the Solid Waste and Recycling Department, in a not-to-exceed amount of \$205,245.

SUSTAINABILITY MEASURES

By constructing the additional paved roads, traffic will flow smoother, therefore, waiting lines will be less, therefore, greenhouse gas emissions will be less. The undercarriage wash will use recirculated non-potable water. Potable water consumption will be zero.

PRINCIPAL PLACE OF BUSINESS

Stearns, Conrad and Schmidt Consulting Engineers, Inc.
Bedford, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with an approximate completion date of August 31, 2023.

FISCAL INFORMATION

These services will be funded from a combination of 20YR SW Road & Infrastructure accounts.

20YR SW Road & Infrastructure	660908595.1365.20100	\$46,600.00
20YR SW Road & Infrastructure	660908595.1365.21100	\$30,500.00
20YR SW Road & Infrastructure	660908595.1365.47710	\$128,125.00

Requisition #159498 has been entered into the Purchasing software system in the amount of \$205,245. The budgeted amount for this item is \$205,245.

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: Arturo Garcia, 940-349-8021.

Legal point of contact: Marcella Lunn 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 STEARNS, CONRAD AND SCHMIDT CONSULTING ENGINEERS, INC., FOR THE ENGINEERED DESIGN OF A CONCRETE ROAD AND A VEHICLE UNDERCARRIAGE WASH (WHEEL-WASH) FOR THE SOLID WASTE AND RECYCLING DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7109-032 – PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES AWARDED TO STEARNS, CONRAD AND SCHMIDT CONSULTING ENGINEERS, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$205,245.00).

WHEREAS, on October 8, 2019, the City Council approved a pre-qualified professional and engineer list (Ordinance 19-2305); and

WHEREAS, 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; 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 Stearns, Conrad and Schmidt Consulting Engineers, Inc., to provide professional services for the engineered design of a concrete road and a vehicle undercarriage wash (wheel-wash) for the Solid Waste and Recycling 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, Texas 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, Texas, 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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

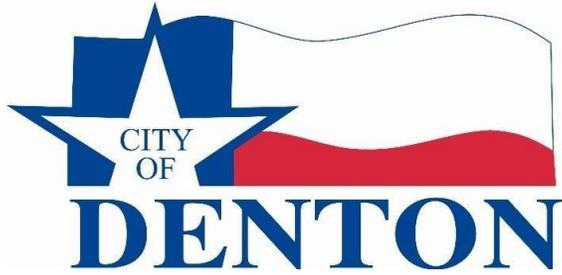
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o=City of Denton, ou=City of Denton, email=marcella.lunn@cityofdenton.com, c=US
Date: 2023.04.17 14:50:13 -05'00'



DocuSign City Council Transmittal Coversheet

PSA	7109-032
File Name	ROADS & VEHICLE UNDERCARRIAGE WASH
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

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 Stearns, Conrad and Schmidt Consulting Engineers, Inc., with its corporate office at 1901 Central Drive, Suite550, Bedford, Texas 76021 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Roads & Vehicles Undercarriage Wash (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 \$205,245 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:

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.

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 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.

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.

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,

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

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 its 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.

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

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 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 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:

- 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.

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 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

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 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.

R. 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, 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.

Duly executed by each party's designated representative to be effective on _____.

BY:
CITY OF DENTON, TEXAS

Sara Hensley, City Manager

BY:
ENGINEER
Stearns, Conrad and Schmidt Consulti
Engineers, Inc.



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RYAN KUNTZ, P.E.
VICE PRESIDENT/PJT DIRECTOR

Date: 4/11/2023

2023-1005596

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

DocuSigned by:
Brian Boerner

Signature

Director of Solid waste

Title

SWR

Department

Date Signed: 4/11/2023

ATTEST:
JESUS SALAZAR, INTERIM CITY
SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn

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ATTACHMENT A**SCS ENGINEERS**

Environmental Consulting & Contracting

February 28, 2023, revised March 10, 2023
Proposal No. 160218222

Mr. Art Garcia
Site Operations/Project Manager
City of Denton
1527 S. Mayhill Road
Denton, Texas 76208

(sent via email)

Re: Proposal for Engineering Design, Bid-Support, and Construction Quality Assurance Services
Roadway Expansion and Wheel wash Facility
City of Denton Landfill

Dear Art:

Per your request, SCS Engineers is pleased to present this proposal to you for engineering design, including preparation of construction plans, technical specifications and bid documents, bid-support services, and construction quality assurance (CQA) services for adding a 15-foot wide (12-foot paved and 3-foot shoulder) driving lane to existing haul road constructed in 2022, adding a 10-foot wide paved lane to existing roadway to brush management facility, rehabilitation of approximately 4,000 square feet of existing pavement, demolition of two (2) concrete pads, reshaping of existing stormwater channels in Cell O area, addition of new stormwater channels, and addition of a new wheel wash facility southeast of Cell O.

Based on our understanding of the project objectives we have developed the following scope of services. **This approach will provide the City with professional engineering services in the areas of design and project bidding to qualified contractors.**

SCOPE OF SERVICES

This scope of services includes the preparation of a design basis memorandum (DBM); soil analysis; construction plans, specifications and bid documents; bid-support services; and CQA services required for the project. This scope of services has been separated into the following five (5) tasks:

1. Design Basis Memorandum for Wheel Wash Facility;
2. Soil Analysis of Available Borrow Source(s);
3. Engineering Design, Construction Plans, and Technical Specifications and Bid Documents;
4. Bid-support Services; and
5. Construction-phase Engineering and CQA Services.

Based on discussion with you onsite on January 27, 2023 and subsequent phone calls on February 21 and February 22, 2023, we understand that the proposed work should include the following design elements for preparation of the construction plans, specifications, and bid documents:

- **Expansion of Existing Haul Road:** Approximately 1,100 feet of existing haul road will be expanded by an additional 15-foot wide, 10-inch thick reinforced concrete lane between the flare station and fleet maintenance building on the north side of Cell O (see Figure 1). Proposed

Mr. Art Garcia
February 28, 2023, revised March 10, 2023
Page 2

lane construction will follow the same design prepared by SCS in October 2021. As part of this portion of the project, the following will be performed:

- **Evaluation of Existing Stormwater Management System:** A portion of the proposed 15-foot additional lane will be constructed within the footprint occupied by an existing stormwater channel. As such, SCS will evaluate the sizing and capacity of the stormwater channel for consistency with the permitted stormwater management system design. Additionally, we will include a grading plan for reshaping approximately 220 feet of existing stormwater channel located west of the flare station facility. Furthermore, we will prepare grading plans for the construction of approximately 300 feet of an operational channel directly north of the flare station and 320 feet of channel directly north of the existing power pole (see Figure 1). This channel will be sized to convey the 25-year, 24-hour storm event consistent with TCEQ regulations.
 - **Design around and protection for existing gas monitoring probes and groundwater monitoring wells** by retrofitting for below-grade monitoring for traffic rated lids, if needed.
 - **Prepare a traffic control plan** to include with the construction plans. This plan will assist the City with control of vehicles using the haul road during construction of the expansion lane.
 - **Striping Plan.** A striping plan for the entire length of the perimeter haul road constructed in 2022 (approximately 3,700 feet) will be included in the construction plan set.
- **Expansion of Brush Management Area Road:** As discussed in the January 27 meeting and subsequently during the February 21 phone call, the City would like to expand approximately 520 feet of its existing 8-inch thick asphalt paved road at the brush management area by adding a 10-foot wide lane made of 12-inch thick lime stabilized structural fill and overlain by 8-inch thick reinforced concrete (see Figure 1). **Please note that this proposal does not include a traffic analysis of the brush management area to evaluate adequacy of reinforced concrete pavement in the proposed additional lane.** As part of this portion of the project, the following will be performed:
 - **Design of Stormwater Channel:** SCS will evaluate existing flow patterns and surface water runoff volume across the brush management area paved road to design a stormwater channel to provide adequate storage capacity to convey a 25-year, 24-hour storm event consistent with TCEQ regulations. Additionally, SCS will include construction details that depict extension of two (2) existing culverts located along the roadway.
 - **Rehabilitation of Existing Pavement:** Approximately 4,000 square feet of 8-inch thick asphalt or concrete pavement, located west of the flare station (see Figure 1) has been damaged from wear and tear and needs to be replaced. SCS will include construction level details for the rehabilitation of this damaged pavement with 10-inch thick reinforced concrete with stabilized subgrade. Similar to the proposed lane expansion at the brush management area road, **please note that this proposal does not include a traffic analysis of the rehabilitation area to evaluate adequacy of reinforced concrete pavement.**

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- **Demolition of Existing Concrete Pads:** Removal of two concrete pads (approximately 1,050 square feet in area), located north of the flare station (see Figure 1). These areas will be backfilled with structural fill as needed.
- **Design of a New Wheel Wash Facility:** SCS will prepare a design basis memorandum for a new wheel wash facility suitable for use at the landfill, as described in Task 1 of this proposal. This memorandum will be summarize research of available facility types, electrical and water requirements, pump sizes, installed cost, operational procedures, and warranty. Additionally, if selected by the City, wheel wash facility engineering design and construction plans will be prepared as discussed in subtask 3.1B.

Based on our discussions with you, it is our understanding that the City wants the proposed construction project to be covered under one (1) set of construction plans, specifications, and bid documents.

Task 1 – Design Basis Memorandum for Wheel Wash Facility.

The work associated with this task includes preparation of a DBM for the wheel wash facility (facility) for the landfill. The facility will be located southeast of Cell 0 as shown in Figure 1.

As previously described, SCS will research available facilities designed for use at a large landfill (greater than 100 vehicles using the landfill on a daily basis at an average) and gather information related to different facility types (permanent versus portable), pump sizes, electrical and water requirements, installed cost, operational procedures, and warranty.

SCS will prepare a design basis memorandum to summarize their findings for City's review. **Our fee estimate assumes that construction of the electrical service required for the facility will be performed by others and will be based on design performed by SCS.** Following the City's review of the DBM, and if City decides to proceed with the construction of the facility, SCS will incorporate the comments received from the City into the final construction plans developed in Task 3.1.

A preliminary engineer's estimate of probable construction costs (EOPCC) for the City's use in developing their budget estimates for this project will be included in the DBM.

Task 2 – Soil Analysis of Available Borrow Source(s)

This task includes soil analysis of available borrow source(s) that may be used during the construction of the perimeter road and wheel wash facility. The objective of this task will be to prequalify the available soil ahead of construction and will be conducted during performance of Task 3 (engineering design and preparation of construction plans). As such, following confirming the location of the available borrow sources, an SCS employee (Associate Staff Professional) will collect soil samples from up to three (3) locations throughout the available borrow source(s). Our fee estimate for this effort assumes that the City will provide an excavator and operator to assist in collecting these soil samples. Representative samples will be collected from each test pit location. The following tests will be performed with the number of tests identified in the table below:

- Gradation to P-200 (ASTM D422);
- Gradation with Hydrometer to 0.002 mm (ASTM D422);
- Atterberg limits (ASTM D4318); and

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- Standard Proctor (ASTM D698).

All 3 samples collected will be tested for gradation to P-200 and Atterberg limits. As discussed with you in phone call on February 21, 2023, the purpose of performing these tests is to verify that the soils available for this project are similar to those encountered during haul roadway construction in 2022. Upon verification of soil properties, SCS assumes that soil stabilization will be achieved by adding 6% lime by volume, consistent with pavement design for perimeter haul road construction in 2022. **An contingency budget has also been included in this task to perform additional tests if soils do not meet project requirements. SCS will confirm approval of additional tests with the City prior to performing them.**

The following table includes our unit rates for perform this task.

Description	Unit	Quantity	Rate per Unit	Cost
Project Manager	Hour	4	\$180.00	\$ 720.00
Associate Staff Engineer	Hour	8	\$110.00	\$ 880.00
Gradation to P-200	Each	3	\$55.00	\$ 165.00
Gradation with Hydrometer to 0.002 mm	Each	3	\$145.00	\$ 435.00
Atterberg Limits	Each	3	\$35.00	\$ 105.00
Standard Proctor	Each	3	\$165.00	\$ 495.00
Supplies/Shipping	Lump Sum	1	\$300.00	\$ 300.00
Contingency	T&M	1	\$3,000.00	\$3,000.00
TASK 2 TOTAL				\$6,100.00

Task 3 – Engineering Design, Construction Plans, Technical Specifications, and Bid Documents.

Subtask 3.1 – Engineering Design and Construction Plans for Roadway

This task includes the engineering design and preparation of construction plans required for the lane expansion of existing haul road and brush area road; reshaping of existing and construction of new stormwater channels; demolition of existing concrete pads; and rehabilitation of existing pavement.

Based on our understanding of the project objectives, one (1) set of the following construction plans will be developed for the project:

- Cover Sheet;
- General Notes;
- Site Plan/Existing Conditions (Topography);
- Site Plan/Existing Conditions (Aerial);
- Site Layout Plan for Haul Road and Brush Area Road;
- Proposed Haul Road Expansion Plan/Profile Sheets (up to 2 drawings);
- Proposed Brush Area Road Expansion Plan/Profile Sheets (up to 2 drawings);
- Concrete Pad Demolition and Pavement Rehabilitation Plan (up to 2 drawings);

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- Haul Road Details (proposed section, tie-in, and termination details);
- Traffic Control Plan;
- Striping Plan (up to 4 drawings) for the entire length of perimeter haul road constructed in 2022 (approximately 3,700 feet) and details;
- Wheel Wash Facility Drawings (Optional, see subtask 3.1B);
- Stormwater Management Details (up to 2 drawings);
- Construction Survey Control.

Subtask 3.1B – Engineering Design and Construction Plans for Wheel Wash Facility (Optional)

This task includes the engineering design and preparation of construction plans for the wheel wash facility based on DBM prepared in Task 1, and if selected by the City. It is anticipated that the construction plans will include the following drawings, which will be incorporated within the overall project construction plan set prepared in subtask 3.1A:

- Waterline Extension Plan and Profile (1 drawing);
- Wheel Wash Facility Site Plan and Details (up to 2 drawings);
- Stormwater Control and Management Plan;
- Structural Design and Miscellaneous Details; and
- Construction Survey Control;

SCS will submit construction plans for roadway and wheel wash facility (if selected) to the City for review at 90 percent completion. Following submittal of the 90 percent drawing set, SCS will meet with the City to discuss the contents of the plans. Following the 90 percent completion review, SCS will incorporate the final modifications and sign/seal the documents by a Professional Engineer registered in the State of Texas. Any other design reviews can be provided as an additional service.

Subtask 3.2 – Technical Specifications, Bid Documents, and Engineer’s Estimate of Probable Construction Cost

SCS will prepare one (1) set of technical specifications and bid documents for the project. Bid documents will be developed based on the City’s standards (Division 0), as provided by the City, including but not limited to bid advertisement, information to bidders, general and special conditions, bonds, etc. The necessary technical specifications will be developed using SCS’ standards for General Requirements (Division 1) and materials and work required for the project (Division 2 through Division 16). Bid items will be clearly identified during preparation of the specifications. SCS specifications will be developed to be compatible with applicable industry standards (American Society of Testing and Materials [ASTM], American Concrete Institute, etc.).

It is anticipated that the following Division 2 through Division 16 technical specifications will be incorporated into this project:

- Clearing and Grubbing;
- Excavation, Backfill, Fill, and Grading;
- Geotextiles (Woven Geotextile);
- Erosion and Sedimentation Controls;
- Erosion Control Blanket;

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- Seed, mulch, and fertilizer;
- Concrete;
- Reinforced Concrete Pipe; and
- PVC Pipe, Fittings, and Valves.

SCS will prepare the technical specifications and bid documents concurrently with the construction plans (Subtask 3.1). At 90 percent completion, we will present the technical specifications and bid documents for the City's review along with the construction plans. Following the 90 percent completion review, SCS will incorporate the final modifications and sign/seal the documents by a Professional Engineer registered in the State of Texas.

SCS will also perform the necessary quantity take-offs for bid items included in the project. SCS will provide an EOPCC, which will be supported by our quantity take-offs for each bid item. SCS will prepare an EOPCC at 90 percent completion for review and comment along with the construction plans, specifications, and bid documents. Following the City's review, SCS will incorporate the final modifications into the estimate and provide a final estimate at the completion of the construction plans, specifications, and bid documents.

Task 4 – Bid-Support Services

This task includes bid-support services during the advertisement and award-phase of the construction project. SCS will provide the following support services to the City during this task:

- Assist the City during advertisement for bid, including development of the invitation for bid as well as notification to Contractors experienced with this type of construction project.
- Assist or perform, at the discretion of the City, the distribution of the Bid Documents to interested Contractors through "E-Bid Denton County."
- SCS will conduct and participate in a pre-bid meeting, which we recommend be mandatory for bidders.
- Respond to technical questions or requests-for-clarification on the construction plans, technical specifications, and bid documents on E-Bid Denton County.
- Issue addenda, if required, to all contractors who attend the pre-bid conference and are on the plan holders list (our fee estimate assumes issuance of up to one addendum).

After the bid opening, SCS will review and tabulate the bid submittals, identify the apparent low bidder, evaluate the qualifications of the low bidder, and make a recommendation of award of contract.

Task 5 – Construction Quality Assurance (CQA) Services

This task includes construction-phase engineering and construction quality assurance services (CQA) services for the project.

The project team will be supervised by Sandeep Saraf, P.E., as a senior CQA advisor, who has 20 years of experience in construction management and CQA. SCS has assigned a Project Manager (PM), who will be a licensed Professional Engineer in the State of Texas, to handle the scheduling of the SCS personnel, monitor the project budget, assist in material submittal reviews, participate in project meetings, and certify the construction record report and that the work was completed in accordance with the Contract Documents. Additionally, an Associate Project Professional (ASP) has been assigned

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to this project who will assist the PM, review of material submittals, review field reports, review of as-built information, and preparation of construction record report. Additionally, a CQA technician will be assigned to the project, and will be responsible for conducting and documenting all CQA field testing and sampling, preparing daily construction reports, photographic documentation, distributing field documentation to the PM, and keeping the City and PM informed as to the status of the project.

SCS' Field CQA services technician for this project will perform on-site testing services, and collection of samples for laboratory testing. Test results will be sent to the PM and ASP to confirm that they comply with the Contract Documents.

To provide these services to the City, this phase of the work has been separated into the following tasks:

1. Field CQA Services; and
2. Construction-Phase Engineering Services.

As described below, SCS proposes to provide these services on a time-and-material basis using the rates provided in the table applicable for each task.

Subtask 5.1 – Field CQA Services

This task includes the full-time field CQA services required during the project, including necessary expenses for mobilization, vehicle, and density gauge equipment. The CQA Technician shall be responsible for the following:

- Observe and document materials and workmanship are consistent with the construction plans and technical specifications;
- Conducting and documenting applicable CQA field testing and sampling;
- Conduct and document field moisture/density testing using a Nuclear Density Gauge during placement of structural fill and lime-stabilized structural fill;
- Conduct and document field pH testing of lime-stabilized structural fill;
- Conduct and document field concrete testing;
- Observe and document installation of drainage structures and other miscellaneous items are consistent with the construction plans and technical specifications;
- Preparing daily construction reports and photographic documentation;
- Distributing field documentation to the PM, and keeping the City and PM informed as to the status of the project; and
- Attend construction progress meetings administered by the PM.

For this proposal, it is assumed that full time onsite CQA technician will be required for the entire duration of roadway construction, pavement rehabilitation, channel construction, and demolition of concrete pads, which is assumed to be 6 weeks.

If the City selects to include construction of wheel wash facility with this project, the total construction duration will increase by an additional 4 weeks for a total of 10 weeks. As such, the hours and expenses for this task have been provided into two separate tables (Table 5.1A and 5.1B), corresponding to roadway construction and wheel wash facility construction. **Please note that the hours and expenses for wheel wash facility (Table 5.1B) have been provided with the assumption that**

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the City will select to construct a permanent concrete facility, which will include soil and concrete testing for structural fill and concrete pad, respectively.

Note the assumptions made on construction duration indicated in the note section below; as such, invoiced amount will be based on the actual quantities and schedule performed during construction.

Table 5.1A: Field CQA Services for Roadway Improvement, Channel Construction, and Concrete Pad Demolition				
Description	Unit	Quantity	Rate per Unit	Cost
CQA Technician ⁽¹⁾	Hour	360	\$72.00	\$25,920.00
CQA Field Vehicle	Day	36	\$70.00	\$2,520.00
Soil Testing ⁽²⁾	Weeks	5	\$410.00	\$2,050.00
Concrete Testing ⁽³⁾	Day	14	\$105.00	\$1,470.00
Compressive Strength Testing For Concrete in Accordance with ASTM C39 ⁽⁴⁾	Set	14	\$90.00	\$1,260.00
Contingency ⁽⁵⁾	LS	1	\$8,000.00	\$8,000.00
Subtotal:				\$41,220.00

Notes:

1. SCS has assumed six (6), ten (10) hour days per week (Monday through Saturday) for a 6-week duration.
2. Cost includes a nuclear density gauge and pH meter, required during placement of structural fill for road construction, for a 5-week duration.
3. Cost includes equipment for concrete slump testing, percent voids, and temperature for a 14-day duration.
4. Cost includes laboratory testing of concrete cylinders, taken at an interval of 1 set of 3 cylinders per day for 14 days.
5. Contingency budget is included for unforeseen delays in the construction duration and will be used only upon approval by City.

Table 5.1B: Field CQA Services for Wheel Wash Facility Construction (Optional)				
Description	Unit	Quantity	Rate per Unit	Cost
CQA Technician ⁽¹⁾	Hour	240	\$72.00	\$17,280.00
CQA Field Vehicle	Day	24	\$70.00	\$1,680.00
Soil Testing ⁽²⁾	Week	2	\$410.00	\$ 820.00
Concrete Testing ⁽³⁾	Day	7	\$105.00	\$ 735.00
Compressive Strength Testing For Concrete in Accordance with ASTM C39 ⁽⁴⁾	Set	7	\$90.00	\$ 630.00
Contingency ⁽⁵⁾	LS	1	\$5,000.00	\$5,000.00
Subtotal:				\$26,145.00

Notes:

1. SCS has assumed six (6), ten (10) hour days per week (Monday through Saturday) for a 4-week duration.
2. Cost includes a nuclear density gauge and pH meter, required during placement of structural fill for wheel wash facility foundation, for a 2-week duration.
3. Cost includes equipment for concrete slump testing, percent voids, and temperature for a 7-day duration.
4. Cost includes laboratory testing of concrete cylinders, taken at an interval of 1 set of 3 cylinders per day for 7 days.
5. Contingency budget is included for unforeseen delays in the construction duration and will be used only upon approval by City.

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Subtask 5.2 – Construction-Phase Engineering Services

This task includes the construction-phase engineering services, which include the following services:

- Project Management and Oversight; and
- Surveying.

Project Management and Oversight: The PM will be responsible for the overall operations of the project. This will include handling the scheduling and management of SCS' CQA technician and laboratory testing, assisting in the review of project submittals, including review and approval of Manufacturer's Product or Quality Control Data, review of laboratory test results, modify construction plans and technical specifications (if necessary), and certifying the documentation record report. The PM will keep the City informed with the progress of the work. Any problems or conflicts which may arise during the project will be brought to the attention of the PM.

The PM will be also be responsible for general construction-phase services and verifying that the project is being performed in accordance with the Contract Documents. This individual will make sufficient visits to the site to be familiar with the work and to review the documentation process. The PM will, upon completion of the project, certify that the work does meet the Contract Documents, including construction plans and technical specifications. The PM also will assist in the preparation of the construction record report, and certify and sign/seal the report following receipt of comments from the City. The PM is a licensed Professional Engineer in the State of Texas. In addition, the PM will perform the general construction-phase CQA services, which will include the following services:

- Telephone calls among the City, Contractor, and/or SCS' CQA team to answer questions and resolve issues.
- Review and respond to all contractor submittals and requests-for-information or clarifications.
- Coordinate interpretations of construction plans and specifications.
- Maintain files for correspondence, photographs, requests-for-information or clarifications, submittal responses, and other construction project related documentation.
- Review and evaluate Contractor change order proposals (if any), pay applications, and final verification for measurement and payment, if requested by City.
- Administer bi-weekly progress meetings. Progress meetings will be documented by distribution of meeting minutes. Progress meetings will be attended by the PM in person or by telephone, as necessary, to be familiar with the progression and certification of work being completed.
- Performance of up to 5 site visits, including a pre-construction meeting, 3 intermediate visits, and substantial walkthrough. The PM will schedule sites during normal bi-weekly progress meetings, if practical.

Surveying: Surveying for this project will be performed by Coleman & Associates Land Surveying and includes the following services:

- Existing Topographic Survey. This survey will include existing ground elevation in areas where proposed roadway expansion/rehabilitation and wheel wash facility construction will be performed as shown on the construction drawings (assume 1 site visit).
- Roadway Survey: The following survey will be performed for the roadway expansion/rehabilitation:
 - a. Top of subgrade and top of structural fill (assume 2 site visits);

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- b. Top of final road surface taken once every 100 feet and at each curve (assume 1 site visit);
- c. Each surveyed location shall include elevation of the shoulder, where applicable, and elevation of the edge of pavement, and curvature of road.
- d. Construction tolerance for top of road surface is ± 0.1 feet; and
- e. Surveyor shall verify that points meet or do not meet the required tolerance while onsite, and indicate to the contractor which points meet and do not meet these tolerances.
- Wheel Wash Facility Survey: The following survey will be performed for the wheel wash facility:
 - a. Top of subgrade and top of structural fill (assume 2 site visits); and
 - b. Top of concrete slab. Construction tolerance for top of slab is ± 0.1 feet (assume 1 site visit);
- Miscellaneous As-Built Surveys for the following (assume 1 site visit):
 - a. Inlet and outlet invert elevations of drainage culverts along with existing ground elevation at each location to verify cover above pipe; and
 - b. Rip-rap installed at each drainage pipe inlet and outlet, where applicable, and at other locations.

Record survey drawing(s), to include each aforementioned item, will be prepared to be included within the record report.

The following table indicates the hours and expenses required for this subtask. **Please note that this table has been prepared for a project duration of 12 weeks, which includes 2 weeks for project coordination (meetings, submittal review, etc.) prior to Contractor mobilization, and 10 weeks for the roadway and wheel wash facility construction. Only actual time spent on the project will be billed to the City on a time and material basis.**

Description	Unit	Quantity	Rate per Unit	Cost
Senior CQA Advisor ⁽¹⁾	Hour	20	\$190.00	\$3,800.00
Project Manager ⁽¹⁾	Hour	30	\$180.00	\$5,400.00
Associate Staff Professional ⁽¹⁾	Hour	22	\$110.00	\$2,420.00
Office Services Manager	Hour	12	\$120.00	\$1,440.00
Site Visits ⁽²⁾	Each	5	\$1,000.00	\$5,000.00
Surveying ⁽³⁾	LS	1	\$27,720.00	\$27,720.00
Contingency ⁽⁴⁾	T&M	1	\$15,000.00	\$15,000.00
Subtask 5.2 Total:				\$60,780.00

Note:

1. SCS has assumed up to six (6) hours per week combined, over a 12 week period, for project coordination and construction oversight by the Senior CQA Advisor, PM, and ASP.
2. Site visits will be performed by PM or ASP, and include up to 6 hours per visit, including travel time and onsite time.
3. Cost includes survey items discussed in Subtask 5.2 and reflects a 10% mark-up for SCS.
4. Contingency budget is provided for unforeseen complications that may arise during construction that may require additional project oversight, engineering, or design for field adjustments. Contingency budget will not be used until receiving approval from the City and will be billed on a time and material basis.

Subtask 5.3 – Construction Documentation Report

This subtask includes the preparation of the construction documentation report for construction, related to road and wheel wash facility construction. This report will include the following:

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- A narrative describing the construction, test methods and results;
- All material submittal correspondence and documentation;
- Daily progress reports;
- Laboratory test results, including pre-construction testing and construction testing;
- Field testing results, logs and location maps;
- Photographic documentation;
- Summary of design and field adjustment, if any;
- Record survey drawings and documentation; and
- Certification of final construction.

The construction documentation report shall be sealed by a licensed Professional Engineer in the State of Texas, and submitted to the City within 21 days following the receipt of the final record survey drawings from the surveyor. Up to three (3) hard copies of the report will be reproduced for the City's records. Additionally, SCS will provide an electronic version (PDF) format of the final signed/sealed report to the City.

PROPOSED FEE AND SCHEDULE

SCS' proposed fees for the above scope of services are provided in the table below. Additionally, SCS proposes to perform each task on either a lump sum or time-and-material (T&M) basis as indicated in the table below. Our current fee schedule is attached.

Task No.	Task Title	Proposed Fee	Billing Basis
1	Design Basis Memorandum	\$7,500.00	Lump Sum
2	Soil Analysis of Available Borrow Source(s)	\$6,100.00	T&M
3.1	Engineering Design, Construction Plans, Technical Specifications, and Bid Documents.		
3.1A	Engineering Design and Construction Plans for Roadway	\$33,000.00	Lump Sum
3.1B	Engineering Design and Construction Plans for Wheel Wash Facility (Optional)	\$10,000.00	Lump Sum
3.2	Technical Specifications and Bid Documents	\$5,500.00	Lump Sum
4	Bid-Support Services	\$5,500.00	T&M
5	Construction Quality Assurance (CQA) Services		
5.1A	Field CQA Services for Roadway Construction	\$41,220.00	T&M
5.1B	Field CQA Services for Wheel Wash Facility Construction (Optional)	\$26,145.00	T&M
5.2	Construction-Phase Engineering Services	\$60,780.00	T&M
5.3	Construction Documentation Report	\$9,500.00	Lump Sum
Project Total for Roadway Construction (Tasks 1, 2, 3.1A, 3.2, 4, 5.1A, 5.2, and 5.3):		\$169,100.00	
Project Total for Roadway and Wheel Wash Facility Construction (All tasks):		\$205,245.00	

The following includes a preliminary schedule for completion of the work:

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- Task 1: 4 weeks following notice to proceed.
- Task 2: 3 weeks following notice to proceed.
- Task 3: 90% submittal 12 weeks following completion of Task 1.
- Task 5: anticipated 12 week duration (assuming that wheel wash facility will be constructed).

CLOSING

We appreciate this opportunity to provide this proposal to you. If you have any questions, please contact Sandeep Saraf, P.E. at (407) 923-7013.

Sincerely,



Brett DeVries, Ph.D., P.E.
Project Engineer
SCS ENGINEERS
TBPE Registration No. F-3407



Sandeep Saraf, P.E.
Senior Project Manager
SCS ENGINEERS

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SCS ENGINEERS

SCS ENGINEERS FEE SCHEDULE

(Effective April 1, 2022 through March 31, 2023)

<u>Labor Category</u>	<u>Rate/Hour (\$)</u>
Business Unit Director	245
Project Advisor	235
Satellite Office Manager	235
Project Director II.....	225
Project Director I.....	210
Project Manager II	190
Project Manager I	180
CQA Manager.....	175
Project Professional III	175
Project Professional II	150
Project Professional I	145
Staff Professional III.....	135
Staff Professional II.....	130
Staff Professional I.....	125
Associate Staff Professional.....	110
CAD Designer.....	135
CAD Draftsperson.....	90
Office Service Manager.....	120
Secretarial/Clerical	80
Sr. Field Services Technician.....	110
Field Services Technician	100
Lead CQA Monitor	75
CQA Monitor.....	70

1. The hourly rates are effective through March 31, 2023. Work performed thereafter is subject to a new Fee Schedule issued for the period beginning April 1, 2023. Consistent with federal regulations, a factor of 150% will be applied to overtime hours for field personnel.
2. The above rates include salary, overhead, administration, and profit. Other direct expenses, such as analyses of air, water and soil samples, reproduction, travel, subsistence, subcontractors, long distance telephone, computers, etc., are billed at actual cost plus 15 percent. Vehicle mileage is billed at \$0.72 per mile for autos and \$0.82 per mile for company trucks. Daily rates apply on long-term projects.
3. Invoices will be prepared monthly for work in progress unless otherwise agreed. Invoices are due and payable upon receipt.
4. Payment of SCS Invoices for services performed will not be contingent upon the client's receipt of payment from other parties, unless otherwise agreed. Client agrees to pay legal costs, including attorney's fees, incurred by SCS in collecting any amount past due and owing on client's account.
5. For special situations, such as expert court testimony and limited consultation, hourly rates for principals of the firm will be on an individually-negotiated basis.

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.
STEARNS, CONRAD AND SCHMIDT CONSULTING 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.

Not Applicable

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?
 Yes No
- B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?
 Yes No
- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?
 Yes No
- D. Describe each employment or business and family relationship with the local government officer named in this section.

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

5 DocuSigned by:


Signature of vendor doing business with the governmental entity 4/11/2023

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm>. 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: FBF554FF87B8462F907173A0BF638787	Status: Sent
Subject: Please DocuSign: City Council Contract 7109-032 Roads & Vehicles Undercarriage Wash	
Source Envelope:	
Document Pages: 34	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Crystal Westbrook
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	crystal.westbrook@cityofdenton.com
	IP Address: 198.49.140.104

Record Tracking

Status: Original	Holder: Crystal Westbrook	Location: DocuSign
4/6/2023 10:27:08 PM	crystal.westbrook@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.104	Sent: 4/6/2023 10:36:11 PM Viewed: 4/6/2023 10:36:23 PM Signed: 4/6/2023 10:39:01 PM

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)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 4/6/2023 10:39:04 PM Viewed: 4/7/2023 8:07:04 AM Signed: 4/7/2023 8:08:23 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Mack Reinwand City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/7/2023 8:08:26 AM Viewed: 4/10/2023 3:51:04 PM Signed: 4/10/2023 4:10:08 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 4/11/2023 11:35:13 AM Viewed: 4/11/2023 11:35:47 AM Signed: 4/11/2023 11:40:59 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Signer Events	Signature	Timestamp
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Ryan Kuntz
 rkuntz@scsengineers.com
 VP
 Security Level: Email, Account Authentication (None)

DocuSigned by:

 94C3B6546787442...
 Signature Adoption: Uploaded Signature Image
 Using IP Address: 99.48.161.145

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 Signed: 4/11/2023 12:09:21 PM

Electronic Record and Signature Disclosure:
 Accepted: 4/11/2023 10:06:08 AM
 ID: 45a7a014-ebc8-41b7-bf9d-ab1848d4385c

Brian Boerner
 brian.boerner@cityofdenton.com
 Director of Solid Waste
 Security Level: Email, Account Authentication (None)

DocuSigned by:

 DCD14331B89A4A9...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

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 Signed: 4/11/2023 12:13:35 PM

Electronic Record and Signature Disclosure:
 Accepted: 4/11/2023 12:10:07 PM
 ID: 4d3637bc-686c-4184-8a59-ab7699286728

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

Sent: 4/11/2023 12:13:38 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Jesus Salazar
 jesus.salazar@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Accepted: 4/12/2023 11:29:26 AM
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In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
<p>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</p>	COPIED	Sent: 4/6/2023 10:39:05 PM
<p>Brett DeVries bdevries@scsengineers.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	Sent: 4/10/2023 4:19:27 PM Viewed: 4/10/2023 4:20:19 PM
<p>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</p>	COPIED	Sent: 4/11/2023 12:13:38 PM Viewed: 4/17/2023 1:17:13 PM
<p>City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		
<p>Arturo Garcia Arturo.Garcia@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 1/30/2023 2:00:45 PM ID: 36ce59d4-4ecf-423d-b7dc-96ec8b9a8f02</p>		

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	4/11/2023 11:35:12 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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:	<ul style="list-style-type: none"> •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 76201
www.cityofdenton.com

Legislation Text

File #: ID 23-888, Version: 1

AGENDA CAPTION

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 Core and Main LP, amending the contract approved by City Council on March 17, 2020, in the not-to-exceed amount of \$5,800,000.00, said first amendment to continue to provide Water and Wastewater Inventory for the Warehouse Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7187 - providing for an additional first amendment expenditure amount not-to-exceed \$1,450,000.00, for a total contract amount not-to-exceed \$7,250,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 contract between the City of Denton and Core and Main LP, amending the contract approved by City Council on March 17, 2020, in the not-to-exceed amount of \$5,800,000.00, said first amendment to continue to provide Water and Wastewater Inventory for the Warehouse Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7187 – providing for an additional first amendment expenditure amount not-to-exceed \$1,450,000.00, for a total contract amount not-to-exceed \$7,250,000.00).

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 used by the Water and Wastewater Departments in their daily operations and for repair and maintenance of their distribution and collection systems. Water and Sewer Inventory items are purchased using the Warehouse Capital Funding Account, stocked in the Warehouse, and charged back to the using department on an as-needed basis.

Due to increased new lay construction projects, maintenance of existing infrastructure, and price increases across the board on water and wastewater materials, the initial spend of the contract was utilized faster than originally anticipated. The Warehouse is requesting an NTE increase of 25% of the total contract amount to continue to provide materials to the internal departments through the duration of the contract which expires in March 2024.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On March 17, 2020, City Council approved a contract with Core and Main LP, in the not-to-exceed amount of \$5,800,000 (Ordinance 20-611).

RECOMMENDATION

Award Amendment No. 1 with Core and Main LP, to continue to provide Water and Wastewater Inventory for the Warehouse Department, in a not-to-exceed amount of \$1,450,000, for a total amended contract amount of \$7,250,000.

PRINCIPAL PLACE OF BUSINESS

Core and Main LP
Kruegerville, TX

ESTIMATED SCHEDULE OF PROJECT

This contract expires on March 17, 2024.

FISCAL INFORMATION

These items will be funded from the Warehouse Working Capital account and charged back to the using department. Requisitions will be entered on an as-needed basis. The total amended amount of this contract is \$7,250,000. 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: Keith Kading, 940-349-7178.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. 20-611

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CORE & MAIN LP, FOR THE SUPPLY OF WATER AND SEWER INVENTORY PARTS TO BE STOCKED IN THE CITY OF DENTON DISTRIBUTION CENTER; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 7187 – AWARDED TO THE LOWEST RESPONSIVE BIDDER FOR EACH SECTION : CORE & MAIN LP, IN A TOTAL FOUR (4) YEAR, NOT-TO-EXCEED AMOUNT OF \$5,800,000).

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 therefor; 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 numbered items in the following numbered bids for materials, equipment, supplies, or services, shown in the "Bid Proposals" on file in the office of the City Purchasing Agent, are hereby accepted and approved as being the lowest responsible bids for such items:

<u>BID NUMBER</u>	<u>SECTION NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
7187	A, B, C, E, F, J, M, O & P	Core & Main LP	\$5,800,000

SECTION 2. By the acceptance and approval of the above numbered items of the submitted 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 his designated representative, is hereby authorized to execute a written contract 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 his designee.

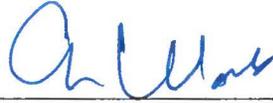
SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

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

The motion to approve this ordinance was made by John Ryan and seconded by Jesse Davis, the ordinance was passed and approved by the following vote [6 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Chris Watts:	<u>✓</u>	_____	_____	_____
Gerard Hudspeth, District 1:	<u>✓</u>	_____	_____	_____
Keely G. Briggs, District 2:	_____	_____	_____	<u>✓</u>
Jesse Davis, District 3:	<u>✓</u>	_____	_____	_____
John Ryan, District 4:	<u>✓</u>	_____	_____	_____
Deb Armintor, At Large Place 5:	<u>✓</u>	_____	_____	_____
Paul Meltzer, At Large Place 6:	<u>✓</u>	_____	_____	_____

PASSED AND APPROVED this the 17th day of March, 2020.



CHRIS WATTS, MAYOR

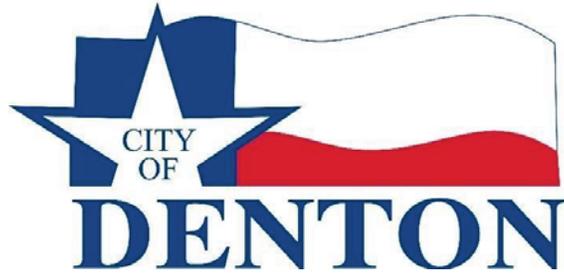
ATTEST:
ROSA RIOS, CITY SECRETARY

BY: Rosa Rios



APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: Mack Rainwood



DocuSign City Council Transmittal Coversheet

IFB	7187
File Name	Distribution Center Water and Sewer Inventory
Purchasing Contact	Laura Hermisillo
City Council Target Date	March 17, 2020
Piggy Back Option	No
Contract Expiration	March 17, 2024
Ordinance	20-611

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND CORE & MAIN LP
(Contract #7187)**

THIS CONTRACT is made and entered into this date 03/17/2020, by and between CORE AND MAIN LP a Florida limited partnership whose address is 1830 Craig Park Court, St. Louis, MO 63146, hereinafter referred to as "Supplier," 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 in accordance with the City's IFB #7187 - Distribution Center Water and Sewer Inventory, 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 7187 (**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) Supplier'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

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

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:
Larry Brock
36B34494AAA14F5...

AUTHORIZED SIGNATURE

Printed Name: Larry Brock

Title: District Manager

214-631-9410

PHONE NUMBER

Larry.brock@coreandmain.com

EMAIL ADDRESS
2020-578400

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: DocuSigned by:
Todd Hileman
E776C711BA0D454...

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 Feinwand
7F9D328BF0204E5...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

DocuSigned by:
Cassandra Ogden Cassandra Ogden
E7FF20C194EA4F9...
SIGNATURE PRINTED NAME

Director of Procurement and Compliance

TITLE

3/2/2020

DEPARTMENT

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 supplier 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 supplier's expense. Products that have been installed will be replaced at the supplier's expense.

3. Authorized Distributor

The supplier 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 four (4) years, effective from date of award or notice to proceed 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.

5. Price Escalation and De-escalation

On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment quarterly based on these special terms. The escalation/de-escalation will be based on the U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) for Data processing, hosting and related services (PCU5182105182105). The stated eligible bid price will be increased or decreased based upon the annual percentage change in the PPI so long as the change is greater than the minimum threshold value of +/- 1%. The maximum escalation will not exceed +/- 8% for any individual year. **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 office at least 20 days prior to the beginning of the next quarter. 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.

Contract 7187

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 (20) 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 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.

6. Total Contract Amount

The total contract for Section A,B,C,E,F,J,M,O, and P of IFB 7187, which Section A,B,C,E,F,J,M,O, P only is awarded by this Contract for the supply of DUCTILE IRON; BRASS ADAPTERS AND FITTINGS; PVC, ADAPTERS, BENDS, CONNECTORS; WATER METER BOXES, SEWER BOXES; MANHOLE LIDS, RINGS, AND RISERS; FLANGE PKS/MJ GLAND PKS, MEG-A-LUG GLAND PACK; GATE VALVES, BALL VALVES, STOPS; WATER METER VAULT HATCHWAYS; WATER METERS, shall not exceed \$5,800,000. Pricing shall be per Exhibit E attached.

7. Delivery Lead Time

Product or services shall be delivered to the City per the days/weeks noted in Exhibit E after receipt of the order.

8. Cooperative Purchasing/Piggyback Option

This contract is not available for use by other governmental entities.

9. Supplier Exceptions to City IFB 7187 General Provisions – Terms and Conditions

The following provisions of IFB 7187, Section 4, General Provisions – Terms and Conditions, are amended as follows:

a. Section 13. Patent Rights

Added to the end of the paragraph, “only when arising from designs or specifications created by Core & Main.”

10. Supplier Exceptions to City IFB 7187 General Provisions – Additional for Goods and Services

The following provisions of IFB 7187, Section 4, General Provisions – Additional for Goods and Services, are amended as follows:

a. Section 2. Performance Liquidated Damages

This section is stricken in its entirety.

b. Section 3. Warranties

Added at the end of the paragraph “Notwithstanding anything contained herein to the contrary, the manufacturer’s warranty only shall apply to all materials purchased by Buyer hereunder. Buyer acknowledges that Seller is a distributor of materials only, and therefore offers no additional warranties. SELLER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT, WHETHER ARISING OUT OF WARRANTY, INDEMNITY, TORT, CONTRACT OR OTHERWISE, SHALL SELLER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND.”

c. Section 8. Shipping, Delivery, and Packaging

This sentence is stricken “as a guideline, such charges shall not exceed 10%” and replaced with the following, “Restocking fees are subject to manufacturers restocking fees.”

Exhibit B
City of Denton's IFB 7187
(On file at the Purchasing Office)

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.

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

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

12. INVOICES:

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

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

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

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

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

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

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

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

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

14. TRAVEL EXPENSES: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by Contractor 7187

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.~~ INTENTIONALLY OMITTED

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.

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~~ "in accordance with the manufacturer's warranty". 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 Contract 7187

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 “ plus amounts for special order materials, materials not returnable to the manufacturer for credit and materials in the course of production, manufacturer cancellation fees, as well as return freight charges and reasonable restocking fees” 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~~ “actual and direct” claims, demands, suits, causes of action, judgments and liability ~~of every character~~, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties), ii. "Fault" shall include ~~the sale of defective or non-conforming deliverables~~, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

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

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

A. General Requirements:

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

City of Denton
Materials Management Department
901B Texas Street

Denton, Texas 76209

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

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

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

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

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

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

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

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

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse 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
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other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

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

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

37. CONFIDENTIALITY: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at

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least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

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

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

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

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

41. NO CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding

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for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

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

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation 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,
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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 Contract.

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

49. DISPUTE RESOLUTION:

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

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

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

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

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

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

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

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

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

54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

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

55. EQUAL OPPORTUNITY

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

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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

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

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

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

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles

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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, 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

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equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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

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

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

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

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

Exhibit D

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.

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost
2			SECTION A: DUCTILE IRON - FULL BODY DOMESTIC ONLY						
3	5 EA	EA	COD Item: 67040455; BEND,DUCTILE MIXMJ 8"X 11 1/4; DUCTILE C110, FULL BODY, TYLER		Tyler/Union	21T081ML	1 - 2 Weeks	\$ 354.40	\$ 1,772.00
4	5 EA	EA	COD Item: 67025527; BEND, 4" FLNG 45 DIP; DUCTILE IRON DOMESTIC		Tyler/Union	24T044F	1 - 2 Weeks	\$ 125.15	\$ 625.75
5	5 EA	EA	COD Item: 67040569; BEND, 45 DEG MJ 16"; SPECIAL ORDER, DOMESTIC		Tyler/Union	21T164ML	1 - 2 Weeks	\$ 1,306.40	\$ 6,532.00
6	5 EA	EA	COD Item: 67040400; BEND, DUCTILE 6" X 22 1/2"; SIGMA CAST IRON		Tyler/Union	21T062ML	1 - 2 Weeks	\$ 239.00	\$ 1,195.00
7	5 EA	EA	COD Item: 67040476; BEND, DUCTILE 6" X 90 DEG FL; SPECIAL ORDER		Tyler/Union	24T069F	1 - 2 Weeks	\$ 205.00	\$ 1,025.00
8	15 EA	EA	COD Item: 67040475; BEND, DUCTILE 6" X 90 DEG MJ		Tyler/Union	21T069ML	1 - 2 Weeks	\$ 234.15	\$ 3,512.25
9	40 EA	EA	COD Item: 67040200; BEND, DUCTILE 6"X45 CAST IRON; SIGMA DUCTILE 6X45		Tyler/Union	21T064ML	1 - 2 Weeks	\$ 202.70	\$ 8,108.00
10	10 EA	EA	COD Item: 67040560; BEND, DUCTILE 8" MJ 90 DEG; C110 FULL BODY DOMESTIC		Tyler/Union	21T089ML	1 - 2 Weeks	\$ 457.85	\$ 4,578.50
11	10 EA	EA	COD Item: 67040450; BEND, DUCTILE 8"X22 1/2 C.I.; TYLER#C-158-8-22 1/2		Tyler/Union	21T082ML	1 - 2 Weeks	\$ 370.45	\$ 3,704.50
12	30 EA	EA	COD Item: 67040250; BEND, DUCTILE 8"X45 CAST IRON; TYLER DUCTILE 8X45		Tyler/Union	21T084ML	1 - 2 Weeks	\$ 297.10	\$ 8,913.00
13	5 EA	EA	COD Item: 67040562; BEND, DUCTILE 90" 12" MJ; C110 FULL BODY DOMESTIC		Tyler/Union	21T129ML	1 - 2 Weeks	\$ 898.20	\$ 4,491.00
14	10 EA	EA	COD Item: 67040550; BEND,DUCTILE 12" X 22 1/2 C.I; TYLER#C-158-12--22 1/2		Tyler/Union	21T122ML	1 - 2 Weeks	\$ 714.35	\$ 7,143.50
15	15 EA	EA	COD Item: 67040350; BEND,DUCTILE 12"X45 CAST IRON; 12-C110-MJ-45		Tyler/Union	21T124ML	1 - 2 Weeks	\$ 744.40	\$ 11,166.00
16	5 EA	EA	COD Item: 67040205; FOSTER ADAPTER MJ 6" DI		Foster Adapter	21AM06ABC	1 - 2 Weeks	\$ 81.60	\$ 408.00
17	10 EA	EA	COD Item: 67039080; PIPE CAP MJ 12"; SIGMA# DMK12		Tyler/Union	21T12CL	1 - 2 Weeks	\$ 216.00	\$ 2,160.00
18	20 EA	EA	COD Item: 67039040; PIPE CAP MJ 8"; ITEM# 2108CT		Tyler/Union	21T08CLT	1 - 2 Weeks	\$ 122.30	\$ 2,446.00
19	5 EA	EA	COD Item: 67039000; PIPE, CAP MJ 4"		Tyler/Union	21T04CLT	1 - 2 Weeks	\$ 57.30	\$ 286.50
20	35 EA	EA	COD Item: 67039020; PIPE, CAP MJ 6"; ITEM# 2106CT/SIGMA 27080600		Tyler/Union	21T06CLT	1 - 2 Weeks	\$ 88.05	\$ 3,081.75
21	5 JT	JT	COD Item: 67025550; PIPE, SEWER 6"X20"; C900, DR18, GREEN PIPE		JM Eagle	020618G	3 - 4 Weeks	\$ 4.75	\$ 23.75
22	5 JT	JT	COD Item: 67025600; PIPE, ST CASING 5"W, 20"X20"; NO COATING, 1/2" WALL		Quality Freight	162005C500COD	3 - 4 Weeks	\$ 73.45	\$ 367.25
23	5 EA	EA	COD Item: 67044345; PLUG,PUSH IN FOR 8" DUCTILE ; SIGMA 28350800		Tyler/Union	21T08PLT	1 - 2 Weeks	\$ 127.20	\$ 636.00
24	15 EA	EA	COD Item: 67037825; REDUCER, MJ DUCTILE 8" X 6; MJ X MJ, C110, DOMESTIC		Tyler/Union	21T08R06ML	1 - 2 Weeks	\$ 314.55	\$ 4,718.25
25	15 EA	EA	COD Item: 67039340; SLEEVE, SOLID MJ 12" X 12"		Tyler/Union	21T125112LT	1 - 2 Weeks	\$ 531.20	\$ 7,968.00
26	10 EA	EA	COD Item: 67039260; SLEEVE, SOLID MJ 6" X 12"		Tyler/Union	21T045112LT	1 - 2 Weeks	\$ 158.00	\$ 1,580.00
27	30 EA	EA	COD Item: 67039300; SLEEVE, SOLID MJ 8" X 12"		Tyler/Union	21T065112LT	1 - 2 Weeks	\$ 175.45	\$ 5,263.50
28	30 EA	EA	COD Item: 67040990; SPACER, 1" FL X FL 6"; DOMESTIC C110 OR C153		Tyler/Union	21T085112LT	1 - 2 Weeks	\$ 229.25	\$ 6,877.50
29	5 EA	EA	COD Item: 67044390; TEE 8"x8"x8" MIXFLX MJ; TYLER, C-110 DOMESTIC		Tyler/Union	21T08T08OFL	1 - 2 Weeks	\$ 649.35	\$ 6,493.50
30	10 EA	EA	COD Item: 67044365; TEE, 12X12X12 (MIXFLX MJ)		Tyler/Union	21T12120FL	1 - 2 Weeks	\$ 1,423.80	\$ 7,119.00
31	5 EA	EA	COD Item: 67044359; TEE, 12X12X8 (MIXFLX MJ) DI; DOMESTIC C110		Tyler/Union	21T1208OFL	1 - 2 Weeks	\$ 1,245.60	\$ 12,456.00
32	10 EA	EA	COD Item: 67044360; TEE, 12X6X12 (MIXFLX MJ) ; SIGMA 28111206		Tyler/Union	21T1206OFL	1 - 2 Weeks	\$ 1,235.80	\$ 37,074.00
33	30 EA	EA	COD Item: 67044430; TEE, 6 x 6 x 6 (MJ X FL X MJ); SIGMA 27110606		Tyler/Union	21T06T06OFL	1 - 2 Weeks	\$ 408.90	\$ 2,044.50
34	5 EA	EA	COD Item: 67044355; TEE, 8X6X8 (MIXFLX MJ) ; SIGMA 27110806		Tyler/Union	21T08T06OFL	1 - 2 Weeks	\$ 571.10	\$ 14,277.50
35	25 EA	EA	COD Item: 67039030; VALVE PLUG MJ 6"		Tyler/Union	21T06PLT	1 - 2 Weeks	\$ 88.05	\$ 880.50
36	10 EA	EA							

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost
37	5 EA		COD Item: 67039050; VALVE PLUG MJ 8" ; SIGMA# MJ-8		Tyler/Union	21T08PLT	1 - 2 Weeks	\$ 127.20	\$ 636.00
38			Discount off List Price for Special Order. Items in this category not mentioned above.		Tyler/Union			10% off	
39			SECTION B: BRASS ADAPTERS AND FITTINGS ; Brass fittings for water service shall conform to AWWA C800 standards. ; Potable brass is not be acceptable.						
40	1100 PR		COD Item: 89045010; ADAPTER, METER 3/4" X 1"; MCDONALD#I0134 / FORD A34		Mueller	H10879N	2 - 3 Weeks	\$ 14.60	\$ 16,060.00
41	5 EA		COD Item: 67069010; ANGLE BALL VALVE 2", FLNG-IP; FORD BFA13-777W (NL)		Mueller	B24286N	2 - 3 Weeks	\$ 209.40	\$ 1,047.00
42	20 EA		COD Item: 67037330; CONNECTOR WATER 1 1/2" MIP-PJ; JONES J-2605/FRD 84-66/MUELLER		Mueller	P15428N	2 - 3 Weeks	\$ 38.20	\$ 764.00
43	15 EA		COD Item: 67037060; CONNECTOR WATER 1 1/2" PJ-PJ; FORD# FC44-66		Mueller	P15403N	2 - 3 Weeks	\$ 54.95	\$ 824.25
44	110 EA		COD Item: 67037320; CONNECTOR WATER 1" MIP-PJ ; FORD# FC8444		Mueller	P15428N	2 - 3 Weeks	\$ 13.90	\$ 1,529.00
45	70 EA		COD Item: 67037050; CONNECTOR WATER 1" PJ-PJ ; W/LOCKNUT- J2609(25)/C44-44		Mueller	P15403N	2 - 3 Weeks	\$ 16.40	\$ 1,148.00
46	150 EA		COD Item: 67037340; CONNECTOR WATER 2" MIP-PJ ; JONES# J2605 (5)/FORD C84-77		Mueller	P15428N	2 - 3 Weeks	\$ 55.70	\$ 8,355.00
47	25 EA		COD Item: 67037350; CONNECTOR WATER 2" PJ-PJ ; J2609(100)/C44-77		Mueller	P15403N	2 - 3 Weeks	\$ 74.15	\$ 1,853.75
48	150 EA		COD Item: 67037100; CONNECTOR WATER 3/4" IP-PJ ; MUELLER P15428 ; FORD C84-33-NL ; JONES# J2605(50)		Mueller	P15428N	2 - 3 Weeks	\$ 11.75	\$ 1,762.50
49	80 EA		COD Item: 67037020; CONNECTOR WATER 3/4" IP-PJ ; JONES# J2609/ FC4433/MUELLER		Mueller	P15403N	2 - 3 Weeks	\$ 14.35	\$ 1,148.00
50	15 EA		COD Item: 67037280; COUPLING BRASS, 1 1/2" FEMALE		Merit Brass	3015SNLD	2 - 3 Weeks	\$ 18.95	\$ 284.25
51	20 EA		COD Item: 67037300; COUPLING BRASS, 2" FEMALE		Merit Brass	3020SNLD	2 - 3 Weeks	\$ 31.40	\$ 628.00
52	100 EA		COD Item: 89045020; COUPLING METER 2 BOLT 1 1/2"; ROCKWELL #826-190-000		Merit Brass	4415FOBNL	2 - 3 Weeks	\$ 21.10	\$ 2,110.00
53	150 EA		COD Item: 89045040; COUPLING METER 2 BOLT 2" ; ROCKWELL 926-250-000/ SB 926-2		Merit Brass	4420FOBNL	2 - 3 Weeks	\$ 24.85	\$ 3,727.50
54	25 EA		COD Item: 89045000; COUPLING METER EXPANSION 3/4"; FORD #FC-23 3/4" STANDARD		Mueller	H14234N	2 - 3 Weeks	\$ 15.75	\$ 393.75
55	35 EA		COD Item: 67043260; COUPLING, BRASS, 1" FIP-FIP		Merit Brass	3010SNLD	2 - 3 Weeks	\$ 8.75	\$ 306.25
56	80 EA		COD Item: 67043250; COUPLING, BRASS, 3/4" FEMALE		Merit Brass	3007SNLD	2 - 3 Weeks	\$ 5.15	\$ 412.00
57	25 EA		COD Item: 67037400; ELBOW, BRASS 3/4" X 90		Merit Brass	30079NLD	2 - 3 Weeks	\$ 5.85	\$ 146.25
58	15 EA		COD Item: 67037460; ELBOW, BRASS 2" X 45 ; HUGHES# 21B45		Merit Brass	30204NLD	2 - 3 Weeks	\$ 42.00	\$ 630.00
59	30 EA		COD Item: 67037410; ELBOW, BRASS, 1" X 90 F-F		Merit Brass	30109NLD	2 - 3 Weeks	\$ 9.50	\$ 285.00
60	10 EA		COD Item: 67037420; ELBOW, BRASS, 1.5" X 90		Merit Brass	30159NLD	2 - 3 Weeks	\$ 19.00	\$ 190.00
61	40 EA		COD Item: 67037450; ELBOW, BRASS, 2" X 90		Merit Brass	30209NLD	2 - 3 Weeks	\$ 30.65	\$ 1,226.00
62	5 EA		COD Item: 89045500; FLANGE ADAPTER METER 1.5" BRAS; FORD CF31-66-crb-midland 1911 ; MUELLER MH10129HJ		Mueller	H10129HJIN	2 - 3 Weeks	\$ 40.20	\$ 201.00
63	30 EA		COD Item: 89045550; FLANGE ADAPTER, METER 2" BRASS; FORD CF31-66; MIDLAND 1911; MUELLER MH10129HK		Mueller	H10129HJIN	2 - 3 Weeks	\$ 52.00	\$ 1,560.00
64	100 EA		COD Item: 89046000; KEY, WATER METER BOX ; BASS & HAYS BKEY52 ONLY		Bass & Hays	6552BMBKEY	2 - 3 Weeks	\$ 10.35	\$ 1,035.00
65	40 EA		COD Item: 67037620; NIPPLE 1", BRASS, ALL THREAD; ITEM# 3010NCL		Merit Brass	3010NCLD	2 - 3 Weeks	\$ 1.82	\$ 72.80
66	100 EA		COD Item: 89045140; NIPPLE METER, BRASS, 1X2.5" ; FORD# C38-44-2-625-NL		Mueller	H10890N	2 - 3 Weeks	\$ 10.60	\$ 1,060.00
67	40 EA		COD Item: 89045150; NIPPLE METER, BRASS, 1X3" ; ITEM# C38-44-3-5	BRASS ONLY	Ford	C38-44-3.5-NL	2 - 3 Weeks	\$ 18.00	\$ 720.00
68	50 EA		COD Item: 89045160; NIPPLE METER, BRASS, 1X8.5" ; JONES #J130 / MUELLER	BRASS ONLY	Ford	C38-44-8.5-NL	2 - 3 Weeks	\$ 30.90	\$ 1,545.00
69	60 EA		COD Item: 89045110; NIPPLE METER, BRASS, 3/4" X 2.5"; FORD #C38-2325 ; JONES# J-130 ; MERIT BRASS X111-12	BRASS ONLY	Ford	C38-23-2.5-NL	2 - 3 Weeks	\$ 8.90	\$ 534.00
70	55 EA		COD Item: 89045115; NIPPLE METER, BRASS, 3/4X3"; FORD#C38-23-3-NL STYLE A (HEX)	BRASS ONLY	Ford	C38-23-3-NL	2 - 3 Weeks	\$ 10.75	\$ 591.25

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnf Part #	Lead Time (wks)	Unit Price	Extended Cost
71	950 EA		COD Item: 89045120; NIPPLE METER,BRASS, 3/4X8.5"; FORD C38-23-8-5-NL ; FORD C38-23-8-5-NL ; JONESHJ-130 ; MCDONALD#4124-076	BRASS ONLY	Ford	C38.23.8.5-NL	2 - 3 Weeks	\$ 22.65	\$ 21,517.50
72	30 EA		COD Item: 67037700; NIPPLE, BRASS 1" X 4"		Merit Brass	3010N040D	2 - 3 Weeks	\$ 3.95	\$ 118.50
73	30 EA		COD Item: 67037660; NIPPLE, BRASS 3/4" X 2"		Merit Brass	3007N020D	2 - 3 Weeks	\$ 1.60	\$ 48.00
74	50 EA		COD Item: 67037740; NIPPLE, BRASS,2"X2" ALL-THREAD		Merit Brass	3020NCLD	2 - 3 Weeks	\$ 5.45	\$ 272.50
75	25 EA		COD Item: 67037775; NIPPLE,BRASS, 1 1/2"X6" ; ITEM# 3010N060		Merit Brass	3015N060D	2 - 3 Weeks	\$ 10.20	\$ 255.00
76	25 EA		COD Item: 67037690; NIPPLE,BRASS, 1" X 2" ; ITEM# 3010N020		Merit Brass	3010N020D	2 - 3 Weeks	\$ 2.25	\$ 56.25
77	15 EA		COD Item: 67037780; NIPPLE,BRASS, 1"X 6"		Merit Brass	3010N060D	2 - 3 Weeks	\$ 5.80	\$ 87.00
78	15 EA		COD Item: 67037720; NIPPLE,BRASS, 1.5" X 2"		Merit Brass	3015N020D	2 - 3 Weeks	\$ 3.85	\$ 57.75
79	20 EA		COD Item: 67037730; NIPPLE,BRASS, 1.5" X 4" ; ITEM# 40148		Merit Brass	3015N040D	2 - 3 Weeks	\$ 6.90	\$ 138.00
80	40 EA		COD Item: 67037750; NIPPLE,BRASS, 2"X4" ; ITEM# 40158		Merit Brass	3020N040D	2 - 3 Weeks	\$ 8.85	\$ 354.00
81	60 EA		COD Item: 67037760; NIPPLE,BRASS, 2"X6" ; MERIT BRASS 2032-600/2132-600		Merit Brass	3020N060D	2 - 3 Weeks	\$ 13.10	\$ 786.00
82	15 EA		COD Item: 67037610; NIPPLE,BRASS, 3/4" ALL-THREAD; 3/4 XCL STD BRASS NIPPLE		Merit Brass	3007NCLD	2 - 3 Weeks	\$ 1.25	\$ 18.75
83	20 EA		COD Item: 67037670; NIPPLE,BRASS, 3/4" X 4"		Merit Brass	3007N040D	2 - 3 Weeks	\$ 2.70	\$ 54.00
84	10 EA		COD Item: 67037680; NIPPLE,BRASS, 3/4" X 6"		Merit Brass	3007N060D	2 - 3 Weeks	\$ 3.95	\$ 39.50
85	10 EA		COD Item: 67037804; PLUG BRASS 1" ; MB# NL117-16		Merit Brass	3010PNLD	2 - 3 Weeks	\$ 5.85	\$ 58.50
86	5 EA		COD Item: 67037810; PLUG BRASS 2"		Merit Brass	3020PNLD	2 - 3 Weeks	\$ 16.75	\$ 83.75
87	10 EA		COD Item: 67037802; PLUG BRASS 3/4"	PACKAGED 100/BUNDLE	Merit Brass	3007PNLD	2 - 3 Weeks	\$ 3.65	\$ 36.50
88	675 EA		COD Item: 89040026; PLUNGER, METER BOX LID ; B&H ONLY (PLUNGER51)		Bass & Hays	BH51	2 - 3 Weeks	\$ 10.15	\$ 6,851.25
89	25 EA		COD Item: 67037820; REDUCER BELL BRASS 1"X3/4"		Merit Brass	3010R07NLD	2 - 3 Weeks	\$ 9.90	\$ 247.50
90	50 EA		COD Item: 67037920; REDUCER BUSHING,BRASS, 2"X1"; HUGHES# 2X11BB		Merit Brass	3020B10NLD	2 - 3 Weeks	\$ 15.99	\$ 799.50
91	25 EA		COD Item: 67037980; REDUCER BUSHING,BRASS,1"X3/4"; FEMALE TO MALE		Merit Brass	3010B07NLD	2 - 3 Weeks	\$ 5.35	\$ 133.75
92	10 EA		COD Item: 67037960; REDUCER BUSHING,BRASS,2"X1.5"; ITEM# 3020B15 / MH NL114-3224		Merit Brass	3020N15NLD	2 - 3 Weeks	\$ 16.00	\$ 160.00
93	5 EA		COD Item: 67037870; REDUCER BUSHING BRASS 3/4X1/2"		Merit Brass	3007B05NLD	2 - 3 Weeks	\$ 4.50	\$ 22.50
94	5 EA		COD Item: 67037900; REDUCER BUSHING,BRASS 1.5X3/4"		Merit Brass	3015B07NLD	2 - 3 Weeks	\$ 12.95	\$ 64.75
95	5 EA		COD Item: 67037910; REDUCER BUSHING,BRASS, 1.5"X1"		Merit Brass	3020B10NLD	2 - 3 Weeks	\$ 12.95	\$ 64.75
96	10 EA		COD Item: 67037940; REDUCER BUSHING,BRASS, 2"X3/4"; 2X34BB		Merit Brass	3020B07NLD	2 - 3 Weeks	\$ 43.95	\$ 439.50
97	40 EA		COD Item: 67052860; SADDLE TAP,BRAS,6"X1" ; FORD # 202B-750-CC4		Mueller	BR2B0684CC100	2 - 3 Weeks	\$ 95.00	\$ 3,800.00
98	5 EA		COD Item: 67052800; SADDLE TAP,BRASS,4"X1" ; FORD # 202B-540-CC4		Mueller	BR2B0474CC100	2 - 3 Weeks	\$ 80.00	\$ 400.00
99	5 EA		COD Item: 67052820; SADDLE TAP,BRASS,4"X2" ; FRD 202B-540-CC7/McD4148-004		Mueller	BR2B0474CC200	2 - 3 Weeks	\$ 102.00	\$ 510.00
100	185 EA		COD Item: 67052920; SADDLE TAP,BRASS,8"X1" ; FORD # 202B-962-CC4		Mueller	BR2B0899CC100	2 - 3 Weeks	\$ 104.00	\$ 19,240.00
101	5 EA		COD Item: 67052970; SADDLE,TAP,10"X1" BRASS ; FORD # 202B-1212-CC4		Mueller	BR2B1104CC100	2 - 3 Weeks	\$ 145.00	\$ 725.00
102	60 EA		COD Item: 67052999; SADDLE,TAP,12"X1" BRASS ; FORD # 202B-1438-CC4		Mueller	BR2B1314CC100	2 - 3 Weeks	\$ 170.00	\$ 10,200.00
103	45 EA		COD Item: 67052995; SADDLE,TAP,12"X2" BRASS ; FORD# 202B-1438-CC7		Mueller	BR2B1314CC200	2 - 3 Weeks	\$ 195.00	\$ 8,775.00
104	5 EA		COD Item: 67052992; SADDLE,TAP,16"X2" BRASS ; FORD # 202B-1840-CC7		Mueller	BR2B1732CC200	2 - 3 Weeks	\$ 490.00	\$ 2,450.00
105	15 EA		COD Item: 67052950; SADDLE,TAP,8"X2" BRASS ; FORD # 202B-962-CC7		Mueller	BR2B0899CC200	2 - 3 Weeks	\$ 135.00	\$ 2,025.00
106	15 EA		COD Item: 67052880; SADDLE,TAP,BRASS,6"X2" ; FORD # 202B-750-CC7		Mueller	BR2B0684CC200	2 - 3 Weeks	\$ 115.00	\$ 1,725.00

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost
107	30 EA		COD Item: 67069255; STOP, CORP. 2" (CC x CTS PJ); FORD FB1000-7-NL		Mueller	P25008N	2 - 3 Weeks	\$ 185.00	\$ 5,550.00
108	15 EA		COD Item: 67038040; TEE, BRASS, 1"		Merit Brass	3010T10NLD	2 - 3 Weeks	\$ 13.15	\$ 197.25
109	25 EA		COD Item: 67038100; TEE, BRASS, 2" ; 2BTT		Merit Brass	3020T20NLD	2 - 3 Weeks	\$ 42.35	\$ 1,058.75
110	5 EA		COD Item: 67038020; TEE, BRASS, 3/4" ; US FILTER# 3007707		Merit Brass	3007707NLD	2 - 3 Weeks	\$ 7.30	\$ 36.50
111			Discount off List Price for Special Order Items in this category not mentioned above.	Discount off MSRP \$135,000				10% off	
112			SECTION C: PVC, ADAPTERS, BENDS, CONNECTORS						
113	5 EA		COD Item: 67058280; ADAPTER 10"SDR-10"SDR35 ; SHEARGUARD(ONLY)#156-ON10PK		Shearguard	156-ON10PK	1 - 2 Weeks	\$ 60.35	\$ 301.75
114	450 EA		COD Item: 67058250; ADAPTER 4"SDR 35 - 4"SDR35 ; SHEARGUARD(ONLY)#156ON4PK		Shearguard	156-ON4PK	1 - 2 Weeks	\$ 18.55	\$ 8,347.50
115	70 EA		COD Item: 67058260; ADAPTER 6"SDR35-6"SDR35 ; SHEARGUARD(ONLY)#156-ON6PK		Shearguard	281156ON6PK	1 - 2 Weeks	\$ 55.95	\$ 3,916.50
116	40 EA		COD Item: 67058270; ADAPTER 8"SDR35-8" SDR35 ; SHEARGUARD(ONLY)#156-ON8PK		Shearguard	28156ON8PK	1 - 2 Weeks	\$ 52.55	\$ 2,102.00
117	30 EA		COD Item: 67044294; ADAPTER BUSHING, 4" DWV X SDR; CHARLOTTE PIPE #118		Shearguard	2704A04HHD	1 - 2 Weeks	\$ 3.55	\$ 106.50
118	25 EA		COD Item: 67058190; ADAPTER ECC. 10"C-10" SDR35 ; SHEARGUARD#102-ON10PK		Shearguard	28102ON10PK	1 - 2 Weeks	\$ 54.40	\$ 1,360.00
119	5 EA		COD Item: 67058210; ADAPTER ECC. 12"C-12" SDR35 ; SHEARGUARD#102-ON12PK		Shearguard	28102ON12PK	1 - 2 Weeks	\$ 83.65	\$ 418.25
120	300 EA		COD Item: 67058110; ADAPTER ECC. 4"C-4" SDR35 ; SHEARGUARD#102-ON4PK		Shearguard	28102ON4PK	1 - 2 Weeks	\$ 20.60	\$ 6,180.00
121	200 EA		COD Item: 67058130; ADAPTER ECC. 6"C-6"SDR35 ; SHEARGUARD#102-ON6PK		Shearguard	28102ON6PK	1 - 2 Weeks	\$ 30.00	\$ 6,000.00
122	45 EA		COD Item: 67058170; ADAPTER ECC. 8"C-8"SDR35 ; SHEARGUARD#102-ON8PK		Shearguard	28102ON8PK	1 - 2 Weeks	\$ 41.80	\$ 1,881.00
123	10 EA		COD Item: 49500036; ADAPTER, PVC FEMALE 3" SCH 40; SPEARS PS 7680		Spears	2903040AHF	1 - 2 Weeks	\$ 2.00	\$ 20.00
124	10 EA		COD Item: 49500037; ADAPTER, PVC FEMALE 4" SCH 40; SPEARS P57690 / SPEARS 435-040		Spears	2904040AHF	1 - 2 Weeks	\$ 3.35	\$ 33.50
125	35 EA		COD Item: 67044006; BEND, 4" x 45 DEGREE BXB, SDR 35, PTI/GPK		GPK	27044GG	1 - 2 Weeks	\$ 5.75	\$ 201.25
126	5 EA		COD Item: 67044081; BEND, PVC 90 X 6" B X S ; PTI / GPK# 124-0006		GPK	27069GS	1 - 2 Weeks	\$ 14.10	\$ 70.50
127	5 EA		COD Item: 67044082; BEND, PVC 90 X 8" B X S ; PTI/GPK# 124-0008		GPK	27089GS	1 - 2 Weeks	\$ 38.00	\$ 190.00
128	70 EA		COD Item: 67044050; BEND, PVC, 22 1/2 X 4" BXB ; PTI G1704 or GPK117-0004		GPK	27042GG	1 - 2 Weeks	\$ 5.75	\$ 402.50
129	175 EA		COD Item: 67044040; BEND, PVC, 22 1/2 X 4" BXS ; PTI# G1714 OR GPK 118-0004		GPK	27042GS	1 - 2 Weeks	\$ 5.45	\$ 953.75
130	20 EA		COD Item: 67044060; BEND, PVC, 22 1/2 X 6" BXS ; PTI# G1716 OR GPK 118-0006		GPK	27062GS	1 - 2 Weeks	\$ 10.75	\$ 215.00
131	5 EA		COD Item: 67044080; BEND, PVC, 22 1/2 X 8" BXS ; PTI#G1718 OR GPK 118-0008		GPK	27082GS	1 - 2 Weeks	\$ 34.45	\$ 172.25
132	50 EA		COD Item: 67044005; BEND, PVC, 45 X 4" BXS ; SRD 26		GPK	27044GS26	1 - 2 Weeks	\$ 10.20	\$ 510.00
133	550 EA		COD Item: 67044000; BEND, PVC, 45 X 4" BXS ; PTI# G404 OR GPK 122-0004		GPK	454GS	1 - 2 Weeks	\$ 4.90	\$ 2,695.00
134	80 EA		COD Item: 67044020; BEND, PVC, 45 X 6" BXS ; PTI# G406 OR GPK 122-0006		GPK	27064GS	1 - 2 Weeks	\$ 10.35	\$ 828.00
135	15 EA		COD Item: 67044070; BEND, PVC, 45 X 8" BXS ; PTI# G408 OR GPK 122-0008		GPK	27084GS	1 - 2 Weeks	\$ 31.25	\$ 468.75
136	110 EA		COD Item: 67044289; CLEANOUT ADAPTER 4" ; FIPT X DWV(H SCH40 GPK#327-0004		GPK	2704CODVV	1 - 2 Weeks	\$ 6.15	\$ 676.50
137	375 EA		COD Item: 67044290; CLEANOUT ADAPTER 4" SDR35; PTI 1404; GPK# 227-0004	GPK, PTI OR MULTI-FITTING ONLY	GPK	2704CODVV	1 - 2 Weeks	\$ 2.80	\$ 1,050.00
138	20 EA		COD Item: 67044295; CLEANOUT ADAPTER 6" ; PTI #1406	GPK, PTI OR MULTI-FITTING ONLY	GPK	2706CO	1 - 2 Weeks	\$ 13.05	\$ 261.00

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost
139	40	EA	COD Item: 67044292; CLEANOUT PLUG 3; MULTI-FITTING/GPK ONLY		GPK	2703PSDWV	1 - 2 Weeks	\$ 1.60	\$ 64.00
140	600	EA	COD Item: 67044291; CLEANOUT PLUG 4" ; PTI 1154; GPK 228-0004	GPK, PTI OR MULTI-FITTING ONLY	GPK	2704PMR	1 - 2 Weeks	\$ 1.70	\$ 1,020.00
141	35	EA	COD Item: 67044297; CLEANOUT PLUG 6" ; PTI1156 MULTIFITTING/GPK ONLY		GPK	2706PMR	1 - 2 Weeks	\$ 8.45	\$ 295.75
142	25	EA	COD Item: 67044293; INCREASER-REDUCER, 4X3 PVC DWV; CHARLOTTE PIPE 102		GPK	2704R03HDVV	1 - 2 Weeks	\$ 2.65	\$ 66.25
143	5	EA	COD Item: 67037790; INSERTA TEE 4" SDR35 - 8" DR19; SOLID, 4IPS8PE19		GPK	2704IT08DR18	1 - 2 Weeks	\$ 60.70	\$ 303.50
144	5	EA	COD Item: 67037795; INSERTA TEE 4" SDR35 - 8" DR21; SOLID, 4IPS8PE21		GPK	2704IT0835IPS	1 - 2 Weeks	\$ 67.35	\$ 336.75
145	10	RL	COD Item: 67025000; PIPE POLY TUBING 1 1/2" X100'; DRISCOPE 5100 POLYETHYLENE		GPK	0915E200C1	1 - 2 Weeks	\$ 74.00	\$ 740.00
146	35	RL	COD Item: 67025020; PIPE, POLY TUBING 2" X 100' ; SDR 9, 200 PSI, CTS OD		GPK	0920E200C1	1 - 2 Weeks	\$ 122.00	\$ 4,270.00
147	275	FT	COD Item: 67025015; PIPE, POLY TUBING 2", SDR9; 300'/500' ROLL 200 PSI, CTS OD		GPK	9020E200C3	1 - 2 Weeks	\$ 1.22	\$ 335.50
148	15	EA	COD Item: 67058356; REDUCER, 6"X4" B X B ECCENTRIC; GPK 109-0046EEC		GPK	2704I06GGEE	1 - 2 Weeks	\$ 20.40	\$ 306.00
149	25	EA	COD Item: 67058350; REDUCER, 6"X4" BXS ECCENTRIC; GPK 110-0064EEC		GPK	2706R04SG35	1 - 2 Weeks	\$ 10.90	\$ 272.50
150	10	EA	COD Item: 67058354; REDUCER, 8"X6" B X B ECCENTRIC; GPK 109-0068EEC		GPK	2706I08GG	1 - 2 Weeks	\$ 34.00	\$ 340.00
151	20	EA	COD Item: 67058352; REDUCER, 8"X6" BXS ECCENTRIC; GPK 110-0086EEC		GPK	2708I06OSH35	1 - 2 Weeks	\$ 22.20	\$ 444.00
152	10	EA	COD Item: 67044610; WVE PVC 10" X 4" BXB X ; SDR35		GPK	2710W04GG	1 - 2 Weeks	\$ 91.30	\$ 913.00
153	5	EA	COD Item: 67044665; WVE PVC 10"X10"X4" BXB X ; SDR 26, PLASTIC TRENDS/GPK		GPK	2710W04GG26	1 - 2 Weeks	\$ 116.35	\$ 581.75
154	5	EA	COD Item: 67044672; WVE PVC 10"X6" ; SDR 35, PTI L3010-6		GPK	2710W06GG26	1 - 2 Weeks	\$ 118.25	\$ 591.25
155	5	EA	COD Item: 67044500; WVE PVC 45 4X4X4 BXB X ; PTI# 304 (PTI ONLY NO OTHER)		GPK	2710W06GG	1 - 2 Weeks	\$ 92.80	\$ 464.00
156	225	EA	COD Item: 67044520; WVE PVC 45 4X4X4 BXB X ; PTI# G324 ONLY		GPK	2704W04GG	1 - 2 Weeks	\$ 9.95	\$ 2,238.75
157	5	EA	COD Item: 67044560; WVE PVC 45 6X6X4 BXB X ; PTI# 306-4 / GPK 107-0064 ONLY		GPK	2704W04GS	1 - 2 Weeks	\$ 12.90	\$ 64.50
158	50	EA	COD Item: 67044540; WVE PVC 45 6X6X4 BXB X ; PTI G326-4 ONLY		GPK	2706W04GG	1 - 2 Weeks	\$ 20.10	\$ 1,005.00
159	5	EA	COD Item: 67044565; WVE PVC 45 6X6X6 BXB X ; PTI G326 ONLY		GPK	2706W04GS	1 - 2 Weeks	\$ 20.10	\$ 100.50
160	5	EA	COD Item: 67044580; WVE PVC 45 8X8X4 BXB X ; PTI# G308-4 /GPK 107-0084 ONLY		GPK	2706W06GS	1 - 2 Weeks	\$ 24.40	\$ 122.00
161	150	EA	COD Item: 67044575; WVE PVC 45 8X8X4 BXB X ; PTI G328-4 ONLY		GPK	2708W04GG	1 - 2 Weeks	\$ 30.00	\$ 4,500.00
162	5	EA	COD Item: 67044590; WVE PVC 45 8X8X6 BXB X ; PTI# G308-6 ONLY		GPK	2708W04GS	1 - 2 Weeks	\$ 29.90	\$ 149.50
163	20	EA	COD Item: 67044585; WVE PVC 45 8X8X6 BXB X ; PTI# G328-6 ONLY		GPK	2708W06GG	1 - 2 Weeks	\$ 35.80	\$ 716.00
164	5	EA	COD Item: 67044600; WVE PVC 45 8X8X8 BXB X ; PTI OR GPK		GPK	2708W06GS	1 - 2 Weeks	\$ 35.80	\$ 179.00
165	15	EA	COD Item: 67044650; WVE PVC 8X8X4" BXB X ; SDR 26		GPK	2708W08GG	1 - 2 Weeks	\$ 62.40	\$ 936.00
166	15	EA	COD Item: 67044570; WVE, PVC, 45 6"X6"X6" BXB X ; PTI# G628 ONLY		GPK	2708W04GG26	1 - 2 Weeks	\$ 46.00	\$ 690.00
167	15	EA	Discount off List Price for Special Order Items in this category not mentioned above.	Discount off MSRP \$56,000	GPK	2706W06GG	1 - 2 Weeks	\$ 22.75	\$ 341.25
168									
188								10% off	

SECTION E: WATER METER BOXES, SEWER BOXES ; Meter boxes shall be furnished with the lid included.

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost
189	500	EA	COD Item: 89040005; BOX WATER METER 34-A SHORT ; 18" WIDE X 14" DEEP	BASS AND HAYS ONLY	Bass and Hays	A34BODYLID	3-4 Weeks	\$ 107.10	\$ 53,550.00
190	200	EA	COD Item: 89040000; BOX VALVE BASE ; TYLER 0850-15B / BASS & HAYS	NO IMPORTED PRODUCTS ACCEPTED NO SIGMA	Bass and Hays	598155BUSA	3-4 Weeks	\$ 48.20	\$ 9,640.00
191	85	EA	COD Item: 89040050; BOX WATER METER 34-B LONG ; BASS & HAYS ONLY		Bass and Hays	4534B18D	3-4 Weeks	\$ 116.40	\$ 9,894.00
192	80	EA	COD Item: 89040040; BOX WATER METER 55A ; BASS & HAYS ONLY		Bass and Hays	45LBH3LID1	3-4 Weeks	\$ 292.70	\$ 23,416.00
193	375	EA	COD Item: 89040001; BOX METER PLASTIC "SEWER" ; BASS&HAYS# P34-P14D	MARKED SEWER	Bass and Hays	45MP34P14D	3-4 Weeks	\$ 107.25	\$ 40,218.75
194	10	EA	COD Item: 89040031; BOX VALVE TOP SECTION 16" ; BASS&HAYS/TYLER# T-16	BASS&HAYS DOMESTIC OR TYLER NO SIGMA	Bass and Hays	59BV816TSLD	3-4 Weeks	\$ 51.30	\$ 513.00
195	65	EA	COD Item: 89040100; BOX WTR METER 548A 18" HIGH ; BASS & HAYS ONLY	THESE METER BOXES NEED TO BE 18" HIGH ONLY PER MARK WHITTLE, WTR METER SHOP	Bass and Hays	45548AAMR	3-4 Weeks	\$ 288.40	\$ 18,746.00
196	900	EA	COD Item: 89040024; SPRING, METER BOX LID; B&H ONLY (BSPRING50)		Bass and Hays	BHSPRING50	3-4 Weeks	\$ 4.10	\$ 3,690.00
197			Discount off List Price for Special Order Items in this category not mentioned above.	Discount off MSRP \$157,000	Bass and Hays			10% off	
198			SECTION F: MANHOLE LIDS, RINGS, AND RISERS; Steel adjustment risers shall be furnished with set screws included.						
199	65	EA	COD Item: 89030020; MANHOLE, LID 30" ; B&H # 1480 A (SANITARY SEWER)	B&H# 1480 A SANITARY SEWER	Bass and Hays	V1480-1SANSWR	3-4 Weeks	\$ 183.55	\$ 11,930.75
200	65	EA	COD Item: 89030015; MANHOLE RING 30" ; B&H # V1420 RG		Bass and Hays	75RV1420D	3-4 Weeks	\$ 199.00	\$ 12,868.67
201	10	EA	COD Item: 89030000; MANHOLE, LID 300-24 ; B&H SANITARY SEWER COV. 300-24	NO SIGMA	Bass and Hays	7530024C7155LID	3-4 Weeks	\$ 157.45	\$ 1,574.50
202	25	EA	COD Item: 89030010; MANHOLE, LID SAN SWR 400-24 ; B&H# 40024C10 LID	NO SIGMA	Bass and Hays	7540024C10LIDSS	3-4 Weeks	\$ 194.10	\$ 4,852.50
203	5	EA	COD Item: 89030038; MANHOLE, RISER 300X24 2" ; BASS&HAYS TYPE 1 W/SET SCREWS		Bass and Hays	300-24 2	3-4 Weeks	\$ 267.80	\$ 1,339.00
204	5	EA	COD Item: 89030045; MANHOLE, RISER 300X24 4" ; BASS&HAYS TYPE 1 W/SET SCREWS		Bass and Hays	300-24 4	3-4 Weeks	\$ 432.70	\$ 2,163.50
205	5	EA	COD Item: 89030047; MANHOLE, RISER 300X24 6" ; BASS&HAYS TYPE 1 W/SET SCREWS		Bass and Hays	300-24 6	3-4 Weeks	\$ 485.65	\$ 2,428.25
206	5	EA	COD Item: 89030034; MANHOLE, RISER 400X24 1 1/2" ; BASS&HAYS TYPE 1 W/SET SCREWS		Bass and Hays	300-24 1 1/2	3-4 Weeks	\$ 342.45	\$ 1,712.25
207	15	EA	COD Item: 89030040; MANHOLE, RISER 400X24 1" ; BASS&HAYS TYPE 1 W/SET SCREWS		Bass and Hays	400-24 1	3-4 Weeks	\$ 342.45	\$ 5,136.75
208	5	EA	COD Item: 89030033; MANHOLE, RISER 400X24 2" ; BASS&HAYS TYPE 1 W/SET SCREWS		Bass and Hays	400-24 2	3-4 Weeks	\$ 358.90	\$ 1,794.50
209	5	EA	COD Item: 89030030; MANHOLE, RISER 400X24 3" ; BASS&HAYS TYPE 1 W/SET SCREWS		Bass and Hays	400-24 3	3-4 Weeks	\$ 428.10	\$ 2,140.50
210	5	EA	COD Item: 89030031; MANHOLE, RISER 400X24 4" ; BASS&HAYS TYPE 1 W/SET SCREWS		Bass and Hays	400-24 4	3-4 Weeks	\$ 358.90	\$ 1,794.50
211	20	EA	COD Item: 89030035; MANHOLE, RISER 400X24 6" ; BASS&HAYS TYPE 1 W/SET SCREWS	2.00 x 1.5	Bass and Hays	400-24 6	3-4 Weeks	\$ 471.45	\$ 9,429.00
212	5	EA	COD Item: 89030039; MANHOLE, RISER 300X24 1 1/2" ; BASS&HAYS TYPE 1 W/SET SCREWS		Bass and Hays	400-24 1 1/2	3-4 Weeks	\$ 192.90	\$ 964.50
213	20	EA	COD Item: 89030024; MANHOLE, RING 400-24 ; BASS&HAYS# 40024RO	NO SIGMA	Bass and Hays	400-24	3-4 Weeks	\$ 219.40	\$ 4,388.00
214	10	EA	COD Item: 44538090; HAMMER, MANHOLE LID EXTRACTOR; DOUG MEADOWS - MARY AF 5865425		Bass and Hays	65MARYA	3-4 Weeks	\$ 361.25	\$ 3,612.50
215	10	EA	COD Item: 89030016; MANHOLE, 1" RISER 30; W/SET SCREWS, BASS & HAYS		Bass and Hays	VRM30 1"	3-4 Weeks	\$ 361.25	\$ 3,612.50
216	10	EA	COD Item: 89030016; MANHOLE, 1" RISER 30; W/SET SCREWS, BASS & HAYS						
217	10	EA	COD Item: 89030021; MANHOLE, 2" RISER 30; W/SET SCREWS, BASS & HAYS		Bass and Hays	VRM30 2"	3-4 Weeks	\$ 384.35	\$ 3,843.50

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost
218	10 EA		COD Item: 89030001; MANHOLE, 2" RISER 30; W/SET SCREWS; BASS & HAYS COD Item: 89030018; MANHOLE, 6" RISER 30; W/SET SCREWS. BASS & HAYS				3 - 4 Weeks		\$ -
219	5 EA		Discount off List Price for Special Order Items in this category not mentioned above.		Bass and Hays	VRM30 6"	3 - 4 Weeks	\$ 506.40	\$ 2,532.00
220				Discount off MSRP \$75,000	Bass and Hays				
269			SECTION J: FLANGE PKs/MJ GLAND PKs, MEG-A-LUG GLAND PACIS ; Flange hardware sets shall be hex bolts conforming to ANSI/AWWA C111/A21.11-7 standards ; Mechanical Joint hardware sets shall be T-bolts						
270	5 EA		COD Item: 67082175; BOLT SET FOR 4" TAP VALVE ; HBS40G/150 4" X150# HEX BOLTS		EGW	24AFBNGF04RA	2 Weeks	\$ 6.30	\$ 31.50
271	10 EA		COD Item: 67082174; BOLT/GASKET SET-12" FLANGE PK; ITEM# CBNG-12		EGW	24AFBNGF12RA	2 Weeks	\$ 19.80	\$ 198.00
272	10 EA		COD Item: 67082170; BOLT/GASKET SET-4" FLANGE PK ; ITEM# CBNG-04		EGW	24AFBNGF04RA	2 Weeks	\$ 6.30	\$ 63.00
273	70 EA		COD Item: 67082171; BOLT/GASKET SET-6" FLANGE PK ; ITEM# CBNG-06		EGW	24AFBNGF06RA	2 Weeks	\$ 8.70	\$ 609.00
274	35 EA		COD Item: 67082172; BOLT/GASKET SET-8" FLANGE PK ; ITEM# CBNG-08		EGW	24AFBNGF08RA	2 Weeks	\$ 10.20	\$ 357.00
275	5 EA		COD Item: 67058640; GASKET FULLFACE RED RUB 4		EGW	24AFGR04A	2 Weeks	\$ 1.43	\$ 7.15
276	5 EA		COD Item: 67058680; GASKET FULLFACE RED RUB 8		EGW	24AFGR08A	2 Weeks	\$ 2.82	\$ 14.10
277	5 EA		COD Item: 67058740; GASKET M.J. 4		EGW	21TAMG104DOM	2 Weeks	\$ 8.20	\$ 41.00
278	5 EA		COD Item: 89045750; GASKET, MAINCASE 3" TRU-FLO ; # 44NE8341312		EGW	44NE8341312	2 Weeks	\$ 2.75	\$ 13.75
279	85 EA		COD Item: 89050100; GASKET, METER 1.5" X 1/8" OVAL; BLK RUBBER 2-BOLT, WHITE RHINO	WESTERMANN # BMG02001.50 BRAND: WHITE RHINO	EGW	4415RRF	2 Weeks	\$ 0.62	\$ 52.70
280	275 EA		COD Item: 89050300; GASKET, METER 2" X 1/8" OVAL; BLK RUBBER 2-BOLT, WHITE RHINO	WESTERMANN # BMG02002.00 BRAND: WHITE RHINO	EGW	24AFGR02A	2 Weeks	\$ 0.72	\$ 198.00
281	10 EA		COD Item: 89045760; GASKET, METER KIT 4 T/F ; # 44NE9685002MG		Neptune	44NE9685002MG	2 Weeks	\$ 65.70	\$ 657.00
282	5 EA		COD Item: 67058040; GLAND KIT M.J. 12" ; SIGMA MJ-12		Tyler	21TAMMJR12	2 Weeks	\$ 54.10	\$ 270.50
283	10 EA		COD Item: 67058000; GLAND KIT M.J. 4" ; MJ-4		Tyler	21TAMMJR04	2 Weeks	\$ 26.55	\$ 265.50
284	30 EA		COD Item: 67058010; GLAND KIT M.J. 6" ; SIGMA MJ-6		Tyler	21TAMMJR06	2 Weeks	\$ 32.65	\$ 979.50
285	30 EA		COD Item: 67058020; GLAND KIT M.J. 8" ; TYLER# MJ-8		Tyler	21TAMMJR08	2 Weeks	\$ 36.75	\$ 1,102.50
286	5 EA		COD Item: 67057940; GLAND LESS KIT M.J. 12" ; REG ACC SET L/GLAND		Tyler	21TAMMJR12LG	2 Weeks	\$ 47.95	\$ 239.75
287	20 EA		COD Item: 67057910; GLAND LESS KIT M.J. 6" ; REG ACC SET L/GLAND		Tyler	21TAMMJR06LG	2 Weeks	\$ 30.62	\$ 612.40
288	10 EA		COD Item: 67057920; GLAND LESS KIT M.J. 8" ; REG ACC SET L/GLAND		Tyler	21TAMMJR08LG	2 Weeks	\$ 34.70	\$ 347.00
289	5 EA		COD Item: 67041512; MACRO COUPLING, XL, DI, 12; ROMAC OR EQUAL, 13.15-14.40		Romac	74MACROHPL1440	2 Weeks	\$ 460.00	\$ 2,300.00
290	10 EA		COD Item: 67040750; MEG-A-LUG GLAND KIT 10" ; DOUBLE DUTY DI PIPE & C900		Tyler	TDW1500	2 Weeks	\$ 92.10	\$ 951.70
291	225 EA		COD Item: 67040800; MEG-A-LUG GLAND KIT 12" ; 2012PV/STARGRIP 4000.C-900		Tyler	21TAMF712TLP12	2 Weeks	\$ 93.05	\$ 20,936.25
292	225 EA		COD Item: 67040800; MEG-A-LUG GLAND KIT 12" ; 2012PV/STARGRIP 4000.C-900 COD Item: 67040800; MEG-A-LUG GLAND KIT 12" ; 2012PV/STARGRIP 4000.C-900						
293	20 EA		COD Item: 67040815; MEG-A-LUG GLAND KIT 16" DI ; EBBA, CL52		Tyler	21AMF7161116DEC	2 Weeks	\$ 146.55	\$ 2,931.00
294	45 EA		COD Item: 67040600; MEG-A-LUG GLAND KIT 4" C-900 ; 2004PV / 200VPEC / E2004PEC		Tyler	21TAMF804TLP4	2 Weeks	\$ 20.60	\$ 927.00
295	410 EA		COD Item: 67040650; MEG-A-LUG GLAND KIT 6" C-900 ; HUGHES # 2006PEC/STARGRIP 4000		Tyler	21TAMF804TLP6	2 Weeks	\$ 25.00	\$ 10,250.00
296	325 EA		COD Item: 67040700; MEG-A-LUG GLAND KIT 8" C-900 ; INDHE2008PTC/STARGRIP 4000		Tyler	21TAMF804TLP8	2 Weeks	\$ 51.60	\$ 16,770.00
297	10 EA		COD Item: 49500085; O-RING, VITON 1; SPEARS V-215		Spears	BPV-330	2 Weeks	\$ 14.70	\$ 147.00
298	10 EA		COD Item: 49500090; O-RING, VITON 2; SPEARS V-330		Spears	BPV-215	2 Weeks	\$ 9.65	\$ 96.50
299	30 EA		COD Item: 67037815; PLUG, GRIPPER MECH 3; CHERNE CH 4100		Tyler	65CH270237	2 Weeks	\$ 4.30	\$ 129.00

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost
300	100	EA	COD Item: 67037816; PLUG, GRIPPER MECH 4; CHERNE CH4110		Tyler	65CH270296	2 Weeks	\$ 5.25	\$ 525.00
301	30	EA	COD Item: 67037818; PLUG, GRIPPER MECH 6; CHERNE CH 4130		Tyler	65CH270253	2 Weeks	\$ 14.20	\$ 426.00
302	5	EA	COD Item: 67082730; SPACER, CASING SS 16"; CCI CSS8-CR 17.40"x29.25		Tyler	25C5163055	2 Weeks	\$ 126.20	\$ 631.00
303			Discount off List Price for Special Order Items in this category not mentioned above.	Discount off MSRP \$79,000				10% off	
341			SECTION M: GATE VALVES, BALL VALVES, STOPS; Acceptable water service valve manufacturers are: Mueller, Ford, MacDonald, Jones.						
342	40	EA	COD Item: 67069006; ANGLE BALL VALVE 2"; FLNG-PJ; FORD FV43-777W		Mueller	P14277N	2 - 3 Weeks	\$ 190.30	\$ 7,612.00
343	5	EA	COD Item: 67082559; CHECK VALVE FLXL 6" W/LVR&WH; MATCO 120WC13 FLG CI		Matco	5506120WC13	6 Weeks	\$ 530.60	\$ 2,653.00
344	5	EA	COD Item: 67082561; CHECK VALVE, 8" SWING W/L&W; DEZERRICK APCO CVS-250A	DEZERRICK APCO CVS-250A -OR- MATCO 120WC14 FLG	Matco	5508120WC14	6 Weeks	\$ 841.85	\$ 4,209.25
345	20	EA	COD Item: 67069003; STOP, ANGLE METER 1" I.P.; JONES #J-1527		Mueller	H14265N	2 - 3 Weeks	\$ 34.65	\$ 693.00
346	300	EA	COD Item: 67069005; STOP, ANGLE METER 1" P.J.; W/SADDLE NUT FORD #BA43-44W-NL	JONES #J-4201(W/SADDLE NUT)	Mueller	P24258N	2 - 3 Weeks	\$ 89.50	\$ 26,850.00
347	35	EA	COD Item: 67069000; STOP, ANGLE METER 3/4" I.P.; JONES #J-1527/FORDKVI13332W		Mueller	H14265N	2 - 3 Weeks	\$ 24.45	\$ 855.75
348	30	EA	COD Item: 67069002; STOP, ANGLE METER 3/4" P.J.; JONES #J-4201W / K43-332W		Mueller	H14258N	2 - 3 Weeks	\$ 31.30	\$ 939.00
349	350	EA	COD Item: 67069100; STOP, CORP. 1"PJ W/LOCKNUT; JONES #3401 / FORD F1000 ONLY		Mueller	P15008N	2 - 3 Weeks	\$ 38.90	\$ 13,615.00
350	50	EA	COD Item: 67069250; STOP, CORP. 2" (CC x FIP); JONES #1932 ONLY/FORD1600-7		Mueller	H10045N	2 - 3 Weeks	\$ 171.55	\$ 8,577.50
351	15	EA	COD Item: 67069050; STOP, CORP. 3/4" CC-PJ; JONES #J-3401 / F1000-3		Mueller	P15008N	2 - 3 Weeks	\$ 25.70	\$ 385.50
352	20	EA	COD Item: 67069550; STOP, CURB 1" H; JONES #1900(20) / FB11444W		Mueller	B20200N	2 - 3 Weeks	\$ 65.00	\$ 1,300.00
353	145	EA	COD Item: 67069400; STOP, CURB 3/4" H; JONES #1900W / #1921W/FORDHB41-444W-NL	MULLER MP25170G	Mueller	P25170N	2 - 3 Weeks	\$ 71.85	\$ 10,418.25
354	25	EA	COD Item: 67069300; STOP, CURB. 3/4" P-H; JNS 1921-20/FORD B41-333W ONLY		Mueller	B20200N	2 - 3 Weeks	\$ 41.05	\$ 1,026.25
355	100	EA	COD Item: 67082530; VALVE FL-MJ 12" NON THREADED		Mueller	P25170N	2 - 3 Weeks	\$ 47.35	\$ 4,735.00
356	5	EA	COD Item: 67082500; VALVE FL-MJ 6" ; US FILTER A2360-19 / MUELLER		Mueller	A2362	2 - 3 Weeks	\$ 1,412.45	\$ 7,062.25
357	60	EA	COD Item: 67070100; VALVE GATE MI 8"		Mueller	A2362	2 - 3 Weeks	\$ 449.50	\$ 26,970.00
358	20	EA	COD Item: 67082100; VALVE GATE MI 12" W/O ACCESS ; MUELLER/WATEROUS		Mueller	A2362	2 - 3 Weeks	\$ 702.40	\$ 14,048.00
359	15	EA	COD Item: 67070100; VALVE GATE 2"-BRASS NIBCO; NIBCO#T-113-2" ONLY		Nibco	3420GT113LF	2 - 3 Weeks	\$ 117.45	\$ 1,761.75
360	5	EA	COD Item: 67082000; VALVE GATE FL 3" W/WHEEL ; MUELLER/WATEROUS W/O ACCESS.		Mueller	A2362	2 - 3 Weeks	\$ 312.45	\$ 1,562.25
361	20	EA	COD Item: 67082160; VALVE GATE MI 12" W/O ACCESS ; MUELLER/WATEROUS		Mueller	A2362	2 - 3 Weeks	\$ 1,412.45	\$ 28,249.00
362	10	EA	COD Item: 67082080; VALVE GATE MI 4" W/O ACCESS ; MUELLER/WATEROUS		Mueller	A2362	2 - 3 Weeks	\$ 352.40	\$ 3,524.00
363	45	EA	COD Item: 67082100; VALVE GATE MI 6" W/O ACCESS ; MUELLER/WATEROUS		Mueller	A2362	2 - 3 Weeks	\$ 449.50	\$ 20,227.50
364	35	EA	COD Item: 67082120; VALVE GATE MI 8" W/O ACCESS ; MUELLER/WATEROUS		Mueller	A2362	2 - 3 Weeks	\$ 715.90	\$ 25,056.50
365	10	EA	COD Item: 67070125; VALVE, BALL 1 1/2" FIP-FIP; FHB1666NL /MULLER/JOHNS ONLY		Mueller	B20200N	2 - 3 Weeks	\$ 139.90	\$ 1,399.00
366	60	EA	COD Item: 67070120; VALVE, BALL 2" FIP-FIP ; FORDHB11-777W W/PAD WING		Mueller	B20200N	2 - 3 Weeks	\$ 203.70	\$ 12,222.00

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost
367	5 EA		COD Item: 67069600; VALVE, BALL 3/4-3/4 FL-IP ; FORD #B21-333 W/PAD WING		Mueller	B25166N	2 - 3 Weeks	\$ 52.65	\$ 263.25
368	15 EA		COD Item: 67069750; VALVE, BALL METER 2" ; FORD#BF43-777W-K		Mueller	P24335N	2 - 3 Weeks	\$ 260.00	\$ 3,900.00
369	20 EA		COD Item: 67069007; VALVE, CHECK DOUBLE 2" ; WATTS 007 M1 QT ONLY		Watts	9010007M1QT	2 - 3 Weeks	\$ 162.30	\$ 3,246.00
370			Discount off List Price for Special Order Items in this category not mentioned above.	Discount off MSRP \$241,000				10% off	
386			SECTION O - WATER METER VAULT HATCHWAYS ; BILCO BRAND ONLY						
387	1 EA		COD Item: 89040200; HATCHWAY, ALUMINUM 36"X48; PEDESTRIAN RATED, BILCO ONLY		Bilco	J-7AL		\$ 1,270.40	\$ 1,270.40
388	5 EA		COD Item: 89040210; HATCHWAY, ALUMINUM 48"X48; PEDESTRIAN RATED, BILCO ONLY		Bilco	JD-2AL		\$ 1,433.70	\$ 7,168.50
389	1 EA		COD Item: 89040220; HATCHWAY, ALUMINUM 48"X72; PEDESTRIAN RATED, BILCO ONLY		Bilco	JD-3AL		\$ 1,857.15	\$ 1,857.15
390	1 EA		COD Item: 89040230; HATCHWAY, ALUMINUM 72"X72" ; PEDESTRIAN RATED, BILCO ONLY		Bilco	JD-4AL		\$ 1,913.30	\$ 1,913.30
391	1 EA		COD Item: 89040240; HATCHWAY, ALUMINUM 72"X96" ; PEDESTRIAN RT BILCO JD-AL ONLY		Bilco	JD-AL		\$ 5,581.65	\$ 5,581.65
392			Discount off List Price for Special Order Items in this category not mentioned above.	Discount off MSRP \$10,000				10% off	
393			SECTION P - WATER METERS, GASKETS, REPAIR PARTS ; Acceptable Manufacturers: Badger Meter Co. AND Neptune Meter Co.						
394	225 EA		COD Item: 89045205; METER, WATER 3/4" X 3/4" T-10; (6/BOX) NEPTUNE ED2D21R8G1	NUMBERS NEEDED ON METERS TO DENTON SPECIFICATIONS ; 7- 1/2" LAY LENGTH	Neptune	4307ED2D21R8G1SNL	6 Weeks	\$ 61.70	\$ 13,882.50
395	3200 EA		COD Item: 89045200		Neptune	ED2B21R8G1S197	6 Weeks	\$ 31.95	\$ 102,240.00
396	20 EA		COD Item: 89045220; METER, WATER 5/8" X 3/4" ; PRO READ T-10 ; NEPTUNE ONLY		Neptune	ED2B31RPHG21	6 Weeks	\$ 82.65	\$ 1,680.55
397	175 EA		COD Item: 89045250; METER, WATER 1"(DIRECT READ) ; (4/BOX) N# ED2F21R8G1S197		Neptune	4310ED2F21R8G1SN	6 Weeks	\$ 95.80	\$ 16,765.00
398	75 EA		COD Item: 89045300; METER, WATER 1 1/2" ; DIRECT READ T-10 (136980-1)		Neptune	4315ED2H11R8G1S197	6 Weeks	\$ 297.20	\$ 22,290.00
399	25 EA		COD Item: 89045320; METER, WATER 1 1/2" HP TURBINE; N#ET4HR7G5197 ONLY	DIRECT READ	Neptune	ET4HRPHG21S197	6 Weeks	\$ 539.20	\$ 13,480.00
400	115 EA		COD Item: 89045350; METER, WATER 2" DIRECT READ; #ED211R8G2S197; M170B81	NEPTUNE T-10 ED211R8G2S197 2" T-10 O/F DIRECT RED BRONZE NUMBERS NEEDED ON METERS TO DENTON SPECIFICATIONS ; 7- 1/2" LAY LENGTH	Neptune	ED211R8G2S197	6 Weeks	\$ 345.90	\$ 39,778.50
401	25 EA		COD Item: 89045360; METER, WATER 2" HP TURBINE ; DIRECT READ #ET4AR8G	Neptune model number is #ET2BR8G1S197	Neptune	ET4ARPHG21S197	6 Weeks	\$ 396.40	\$ 9,910.00
402	20 EA		COD Item: 89045600; METER, WATER FIRE HYDRANT 3" ; BADGER RC DL II TURBO F/NEPTUNE	Neptune model number is #ET2BR8G1S197	Neptune	4330DRGHYDWC	6 Weeks	\$ 794.35	\$ 15,887.00
403	5 EA		COD Item: 89045465; METER, WATER SINGL IET, S500-3"; S500D-MSR3; T2I8INTTPP; T2I8MH6D	METRON FARNIER ENCODED USG W/ 3" BRONZE STRAINER W/ TOUCHPAD - PITMOUNT Includes: ; 1 = S500 Top Load Measurer w/3" Flanges (S500D-MSR3) ; 1 = Innov8 register w/integral antenna and pit mount touch pad 12" lead (T2-I8-INT-TPP) ; 1 = Metron Housing Kit for all 6D Meters (T2-I8-MH6D)				No Bid	
404	10 EA		COD Item: 89045460; METER, WATER SINGLE IET, S175; S175EM-3G/MF-STR-3/MF-AMR-TPP	METRON FARNIER ENCODED USG W/ 3" BRONZE STRAINER (STR3) W/ TOUCHPAD - PITMOUNT Meter model - S175D-MSR				No Bid	
405	5 EA		COD Item: 89045080; UME SPECTRUM 175, 3" TOP; W/REGISTER/TOUCH PAD METRON-F	WESTERMANN # MCVROO.75X.12 BRAND: White Rhino				No Bid	
406	45 BC		COD Item: 89050150; WASHER METER 3/4"X1/8"(100/BG); BLK RUBBER, ROUND, WHITE RHINO	WESTERMANN 3 MCVR01.00X.12 BRAND: WHITE RHINO	White Rhino	4407RW	6 Weeks	\$ 0.12	\$ 5.40
407	20 BC		COD Item: 89050200; WASHER, METER 1"X1/8" (100/BG); BLK RUBBER, ROUND, WHITE RHINO	Discount off List Price for Special Order Items in this category not mentioned above.	White Rhino	4410RW	6 Weeks	\$ 0.16	\$ 3.20
408								10% off	

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.

Core&Main LP

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

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?

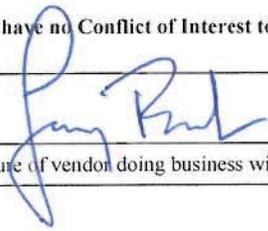
Yes No

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

11-19-19
Date

Certificate Of Completion

Envelope Id: 166DE4D2BDE4428F84CE412F0C476963	Status: Completed
Subject: Please DocuSign: City Council Contract 7187 - DC Water and Sewer Inventory-Core and Main	
Source Envelope:	
Document Pages: 37	Signatures: 5
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Laura Hermosillo
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	laura.hermosillo@cityofdenton.com
	IP Address: 129.120.6.150

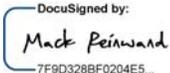
Record Tracking

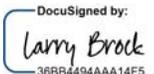
Status: Original 2/20/2020 5:05:13 PM	Holder: Laura Hermosillo laura.hermosillo@cityofdenton.com	Location: DocuSign
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Signer Events

Signer Events	Signature	Timestamp
Laura Hermosillo laura.hermosillo@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: 129.120.6.150	Sent: 2/20/2020 5:08:03 PM Viewed: 2/20/2020 5:08:14 PM Signed: 2/20/2020 5:08:15 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: 2/20/2020 5:08:17 PM Viewed: 2/21/2020 8:12:49 AM Signed: 2/21/2020 8:14:36 AM
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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: 2/21/2020 8:14:38 AM Viewed: 2/21/2020 1:12:48 PM Signed: 2/21/2020 1:13:21 PM
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Larry Brock Larry.brock@coreandmain.com District Manager Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 165.225.34.129	Sent: 2/21/2020 1:13:23 PM Resent: 2/25/2020 2:35:39 PM Resent: 2/28/2020 9:25:47 AM Resent: 3/2/2020 12:23:29 PM Viewed: 2/22/2020 3:39:42 PM Signed: 3/2/2020 5:39:10 PM
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Electronic Record and Signature Disclosure:
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ID: b3e3bd57-d3f8-4878-b126-996be93aaf12

Signer Events	Signature	Timestamp
<p>Cassandra Ogden Cassandra.Ogden@cityofdenton.com Director of Procurement and Compliance City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by:  E7FF20C194EA4F9...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 47.184.73.176 Signed using mobile</p>	<p>Sent: 3/2/2020 5:39:14 PM Viewed: 3/2/2020 5:39:41 PM Signed: 3/2/2020 5:40:22 PM</p>
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 129.120.6.150</p>	<p>Sent: 3/2/2020 5:40:25 PM Viewed: 3/18/2020 10:22:28 AM Signed: 3/18/2020 10:22:40 AM</p>
<p>Todd Hileman Todd.Hileman@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 7/25/2017 11:02:14 AM ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21</p>	<p>DocuSigned by:  B776C711BA0D454...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150</p>	<p>Sent: 3/18/2020 10:22:47 AM Viewed: 3/18/2020 11:12:19 AM Signed: 3/18/2020 11:12:25 AM</p>
<p>Rosa Rios rosa.rios@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 3/19/2020 1:29:01 PM ID: b63ffd05-dc7f-4ec9-ac24-f173b424e0b4</p>	<p>DocuSigned by:  1C5CA8C5E175493...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150</p>	<p>Sent: 3/18/2020 11:12:30 AM Viewed: 3/19/2020 1:29:01 PM Signed: 3/19/2020 1:29:28 PM</p>

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<input type="checkbox"/> Editor Deliver Events	Status	Timestamp
<input type="checkbox"/> Agent Deliver Events	Status	Timestamp
<input type="checkbox"/> Intermediary Deliver Events	Status	Timestamp
<input type="checkbox"/> Certified Deliver Events	Status	Timestamp
<input type="checkbox"/> Car on Cop Events	Status	Timestamp
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 2/20/2020 5:08:17 PM</p>

Carion Cop Events	Status	Timestamp
<p>John Thompson john.thompson@coreandmain.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 2/21/2020 1:13:23 PM Viewed: 2/21/2020 1:27:24 PM</p>
<p>Sherri Thurman sherri.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 3/2/2020 5:40:25 PM</p>
<p>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</p>	COPIED	<p>Sent: 3/18/2020 10:22:45 AM</p>
<p>Zolina Parker zolina.parker@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 3/18/2020 10:22:45 AM</p>
<p>Cassandra Ogden Cassandra.Ogden@cityofdenton.com Director of Procurement and Compliance City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 3/19/2020 1:29:33 PM</p>
<p>Dustin Rolfe Dustin.Rolfe@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 3/19/2020 1:29:34 PM</p>

Witness Events	Signature	Timestamp
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Notar Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	3/19/2020 1:29:34 PM
Completed	Security Checked	3/19/2020 1:29:34 PM

Payment Events	Status	Timestamps
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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 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:	<ul style="list-style-type: none"> •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 CONTRACT BETWEEN THE CITY OF DENTON AND CORE AND MAIN LP, AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON MARCH 17, 2020, IN THE NOT-TO-EXCEED AMOUNT OF \$5,800,000.00, SAID FIRST AMENDMENT TO CONTINUE TO PROVIDE WATER AND WASTEWATER INVENTORY FOR THE WAREHOUSE DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 7187 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$1,450,000.00, FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$7,250,000.00).

WHEREAS, on March 17, 2020, City Council awarded a contract to Core and Main LP in the amount of \$5,800,000.00, for the supply of water and sewer inventory parts; 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 Core and Main LP, which is on file in the office of the Purchasing Agent, in the amount of One Million Four Hundred Fifty Thousand and 0/100 (\$1,450,000.00) 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 \$7,250,000.00.

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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

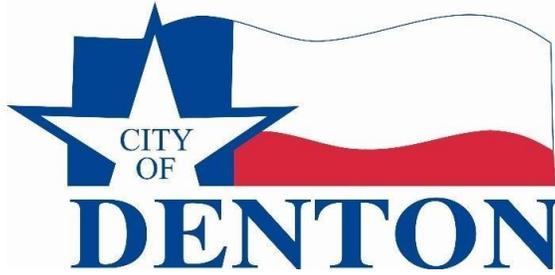
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

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: 2023.04.07 10:39:10 -05'00'



DocuSign City Council Transmittal Coversheet

IFB	7187
File Name	DC Water & Sewer Inventory- Core and Main Amendment 1
Purchasing Contact	Ginny Brummett
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND CORE AND MAIN LP
(7187)

THIS FIRST AMENDMENT TO CONTRACT 7187 (this “Amendment”) by and between the City of Denton, Texas (“City”) and CORE AND MAIN LP (“Contractor”) to that certain contract executed on March 17, 2020, in the original not-to-exceed amount of \$5,800,000 (the “Agreement”); for services related to the distribution center water and sewer inventory.

WHEREAS, the City deems it necessary to further expand the services provided by Contractor to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$1,450,000 with this First Amendment for an aggregate not-to-exceed amount of \$7,250,000; and

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:

1. This Amendment modifies the Agreement amount to provide an additional \$1,450,000 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 \$7,250,000.

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 _____.

“CONTRACTOR”
Core and Main, LP

DocuSigned by:
By: Larry Brock
AUTHORIZED SIGNATURE, TITLE

“CITY”
CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

ATTEST:
ROSA RIOS, CITY SECRETARY

By: _____

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

DocuSigned by:
Laura Behrens Laura Behrens
SIGNATURE PRINTED NAME

Assistant Procurement Director
TITLE

Procurement
DEPARTMENT

Certificate Of Completion

Envelope Id: 53C7E0E43CDF40E4998B572BCD2E6AD9	Status: Sent
Subject: Please DocuSign: City Council Contract: 7187 DC Water & Sewer Inventory- Core and Main Amendment 1	
Source Envelope:	
Document Pages: 3	Signatures: 3
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Ginny Brummett
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	Ginny.Brummett@cityofdenton.com
	IP Address: 198.49.140.10

Record Tracking

Status: Original	Holder: Ginny Brummett	Location: DocuSign
3/28/2023 8:13:14 AM	Ginny.Brummett@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Ginny Brummett ginny.brummett@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 3/28/2023 8:29:54 AM Viewed: 3/28/2023 8:30:05 AM Signed: 3/28/2023 8:30:21 AM

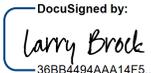
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/28/2023 8:30:23 AM Viewed: 3/28/2023 9:22:20 AM Signed: 3/28/2023 9:22:47 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Mack Reinwand City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/28/2023 9:22:49 AM Viewed: 3/31/2023 2:26:45 PM Signed: 3/31/2023 2:27:17 PM
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Larry Brock Larry.Brock@coreandmain.com District Manager Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 165.225.217.42	Sent: 3/31/2023 2:27:19 PM Resent: 4/5/2023 9:42:43 AM Viewed: 4/5/2023 11:16:48 AM Signed: 4/5/2023 2:21:11 PM
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ID: 9560c7f7-39a1-4bf4-9aea-552c85b7dee2

Signer Events	Signature	Timestamp
<p>Laura Behrens Laura.Behrens@cityofdenton.com Assistant Procurement Director City of Denton Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:  E4EBB9C2B1F24AB...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 4/5/2023 2:21:13 PM Viewed: 4/5/2023 3:23:34 PM Signed: 4/5/2023 3:23:49 PM</p>

Electronic Record and Signature Disclosure:
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<p>Cheyenne Defee cheyenney.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	Sent: 4/5/2023 3:23:53 PM
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<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)</p>
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

<p>Rosa Rios rosa.rios@cityofdenton.com Security Level: Email, Account Authentication (None)</p>
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Electronic Record and Signature Disclosure:
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ID: 962b8cd3-0170-4155-b8b6-4e322caf08d0

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

<p>Cheyenne Defee cheyenney.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; color: blue;">COPIED</div>	<p>Sent: 3/28/2023 8:30:23 AM</p>
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<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; color: blue;">COPIED</div>	<p>Sent: 4/5/2023 3:23:51 PM Viewed: 4/5/2023 3:26:40 PM</p>
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Carbon Copy Events	Status	Timestamp
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City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
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Keith Kading
Keith.Kading@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 4/5/2023 8:59:23 AM
ID: d821a67e-bf72-431f-8065-67340d3826ba

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	3/28/2023 8:29:54 AM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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

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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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- 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:	<ul style="list-style-type: none"> •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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- 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 76201
www.cityofdenton.com

Legislation Text

File #: ID 23-889, Version: 1

AGENDA CAPTION

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 Ferguson Enterprises, LLC, amending the contract approved by City Council on March 17, 2020, in the not-to-exceed amount of \$3,630,000.00, said first amendment to continue to provide Water and Wastewater Inventory for the Warehouse Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7187 - providing for an additional first amendment expenditure amount not-to-exceed \$907,500.00, for a total contract amount not-to-exceed \$4,537,500.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 contract between the City of Denton and Ferguson Enterprises, LLC, amending the contract approved by City Council on March 17, 2020, in the not-to-exceed amount of \$3,630,000.00, said first amendment to continue to provide Water and Wastewater Inventory for the Warehouse Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7187 – providing for an additional first amendment expenditure amount not-to-exceed \$907,500.00, for a total contract amount not-to-exceed \$4,537,500.00).

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 used by the Water and Wastewater Departments in their daily operations, and for repair and maintenance of their distribution and collection systems. Water and Sewer Inventory items are purchased using the Warehouse Capital Funding Account, stocked in the Warehouse, and charged back to the using department on an as-needed basis.

Due to increased new lay construction projects, maintenance of existing infrastructure, and price increases across the board on water and wastewater materials, the initial spend of the contract was utilized faster than originally anticipated. The Warehouse is requesting an NTE increase of 25% of the total contract amount to continue to provide materials to the internal departments through the duration of the contract which expires in March 2024.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On March 17, 2020, City Council approved a contract with Ferguson Enterprises, LLC, in the not-to-exceed amount of \$3,630,000 (Ordinance 20-612).

RECOMMENDATION

Award Amendment No. 1 with Ferguson Enterprises, LLC, to continue to provide Water and Wastewater Inventory for the Warehouse Department, in a not-to-exceed amount of \$907,500, for a total amended contract amount of \$4,537,500.

PRINCIPAL PLACE OF BUSINESS

Ferguson Enterprises, LLC
Eules, TX

ESTIMATED SCHEDULE OF PROJECT

This contract expires on March 17, 2024.

FISCAL INFORMATION

These items will be funded from the Warehouse Working Capital account and charged back to the using department. Requisitions will be entered on an as-needed basis. The total amended amount of this contract is \$4,537,500. 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: LLC Members
- Exhibit 4: Ordinance and Amendment 1

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Keith Kading, 940-349-7178.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. 20-612

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FERGUSON ENTERPRISES, LLC, FOR THE SUPPLY OF WATER AND SEWER INVENTORY PARTS TO BE STOCKED IN THE CITY OF DENTON DISTRIBUTION CENTER; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 7187 – AWARDED TO THE LOWEST RESPONSIVE BIDDER FOR EACH SECTION: FERGUSON ENTERPRISES, LLC, IN A TOTAL FOUR (4) YEAR, NOT-TO-EXCEED AMOUNT OF \$3,630,000).

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 therefor; 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 numbered items in the following numbered bids for materials, equipment, supplies, or services, shown in the "Bid Proposals" on file in the office of the City Purchasing Agent, are hereby accepted and approved as being the lowest responsible bids for such items:

<u>BID</u> <u>NUMBER</u>	<u>SECTION</u> <u>NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
7187	D, G, H, K, L, N, Q & R	Ferguson Enterprises, LLC	\$3,630,000

SECTION 2. By the acceptance and approval of the above numbered items of the submitted 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 his designated representative is hereby authorized to execute a written contract 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 his 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 John Ryan and seconded by Jesse Davis, the ordinance was passed and approved by the following vote [6 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Chris Watts:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gerard Hudspeth, District 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Keely G. Briggs, District 2:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jesse Davis, District 3:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Ryan, District 4:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deb Armintor, At Large Place 5:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paul Meltzer, At Large Place 6:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PASSED AND APPROVED this the 17th day of March, 2020.


CHRIS WATTS, MAYOR

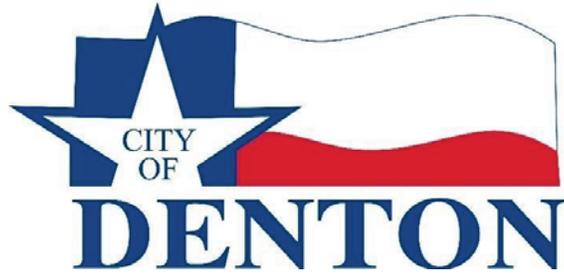
ATTEST:
ROSA RIOS, CITY SECRETARY

BY: 



APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: 



DocuSign City Council Transmittal Coversheet

IFB	7187
File Name	Distribution Center Water and Sewer Inventory
Purchasing Contact	Laura Hermosillo
City Council Target Date	March 17, 2020
Piggy Back Option	Yes
Contract Expiration	March 17, 2024
Ordinance	20-612

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND FERGUSON ENTERPRISES, LLC
(Contract #7187)**

THIS CONTRACT is made and entered into this date 03/17/2020, by and between FERGUSON ENTERPRISES, LLC a Virginia limited liability company whose address is 12500 Jefferson Avenue, Newport News, VA 23602, hereinafter referred to as "Supplier," 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 in accordance with the City's IFB #7187 - Distribution Center Water and Sewer Inventory, 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 7187 (**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) Supplier'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

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

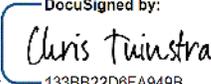
Section 2252 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Supplier certifies***

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: 
 133BB22D8FA949B...
 AUTHORIZED SIGNATURE

Printed Name: Chris Tuinstra

Title: General Manager

972-434-2600

PHONE NUMBER

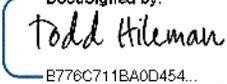
Chris.Tuinstra@ferguson.com

EMAIL ADDRESS

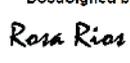
2020-578314

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

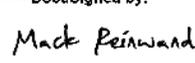
CITY OF DENTON, TEXAS

BY: 
 E776C711BA0D454...
 TODD HILEMAN
 CITY MANAGER

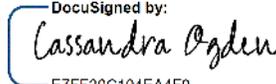
ATTEST:
ROSA RIOS, CITY SECRETARY

BY: 
 1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: 
 7F9D328BF0204E5...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

 Cassandra Ogden
 E7FF20C194EA4F9...
 SIGNATURE PRINTED NAME

Director of Procurement and Compliance

TITLE

Procurement & Compliance

DEPARTMENT

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 supplier 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 supplier's expense. Products that have been installed will be replaced at the supplier's expense.

3. Authorized Distributor

The supplier 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 four (4) years, effective from date of award or notice to proceed 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.

5. Price Escalation and De-escalation

On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment quarterly based on these special terms. The escalation/de-escalation will be based on the U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) for Data processing, hosting and related services (PCU5182105182105). The stated eligible bid price will be increased or decreased based upon the annual percentage change in the PPI so long as the change is greater than the minimum threshold value of +/- 1%. The maximum escalation will not exceed +/- 8% for any individual year. **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 office at least 20 days prior to the beginning of the next quarter. 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 (20) 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 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.

6. Total Contract Amount

The total contract for Section D, G, H, K, L, N, Q & R of IFB 7187, which Section D, G, H, K, L, N, Q & R only is awarded by this Contract for the supply of PVC PIPE; FIRE HYDRANTS, EXTENSIONS AND REPAIR KITS; BELL JOINT LEAK CLAMPS; BRASS TAPPING SADDLES; STAINLESS STEEL TAPPING SLEEVES; METER RESETTERS; VALVE BOXES AND VALVE BOX EXTENSIONS; MISCELLANEOUS INVENTORY, shall not exceed \$3,630,000. Pricing shall be per Exhibit E attached.

7. Delivery Lead Time

Product or services shall be delivered to the City per the days/weeks noted in Exhibit E after receipt of the order.

Exhibit B

(City of Denton's IFB 7187 on file at the office of the Purchasing Agent)

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.

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

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

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

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

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

10. WORKFORCE

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

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

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

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

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

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

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

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

12. INVOICES:

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

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

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

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

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

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

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

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

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

14. TRAVEL EXPENSES: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by Contractor 7187

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

Contract 7187

writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

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

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

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

19. WARRANTY-PRICE:

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

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

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

20. WARRANTY – TITLE: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

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

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above Contract 7187

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

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

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

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

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

27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

30. DELAYS:

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

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

31. INDEMNITY:

A. Definitions:

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

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS,

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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.

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 Contract 7187

to the attention of the Purchasing Manager.

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

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

37. CONFIDENTIALITY: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

38. OWNERSHIP AND USE OF DELIVERABLES: The City shall own all rights, titles, and

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interests throughout the world in and to the deliverables.

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

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

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

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

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

41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition

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to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

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

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation 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 Contract.

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

49. **DISPUTE RESOLUTION:**

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

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

for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator’s fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

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

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

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

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

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

54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

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

55. EQUAL OPPORTUNITY

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

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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

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

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

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

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

D. The Contractor shall deliver only domestic end products except to the extent that it specified

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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, 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

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such damage within one (1) calendar day.

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

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

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

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

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

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

Exhibit D

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.

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mmf Part #	Lead Time (wks)	Unit Price	Extended Cost
169			SECTION D: PVC PIPE ALL PIPE MUST HAVE: 1) DATE OF MANUFACTURER CLEARLY STAMPED ON PRODUCT, AND A CODE FOR A DATE IS NOT ACCEPTABLE 2) THE DATE MUST NOT BE MORE THAN ONE YEAR OLD 3) NO DISCOLORATION OR SUN DAMAGE ACCEPTABLE BRANDS:JM EAGLE, PIPE LIFE, JET LIFE, NORTHERN PIPE & DIAMOND ONLY						
170	400	JT	COD Item: 67025320; PIPE, PVC, WATER, 12"X20' DR-14; PVC D14 PC C900 305P5E		DIAMOND	DR14BP12	1 - 2 Weeks	\$ 368.20	\$ 147,280.00
171	350	FT	ORDER		SPEARS	SP-P40BEP10	1 - 2 Weeks	\$ 44.45	\$ 15,557.50
172	25	JT	COD Item: 67025180; PIPE, PVC, SEWER, 10"X14'; SDR26	pricing per foot	DIAMOND	SDR26HWSPP1014	1 - 2 Weeks	\$ 93.66	\$ 2,341.50
173	75	JT	COD Item: 67025100; PIPE, PVC, SEWER, 10"X14'; PSM5DR35 ASTMD3034-1		DIAMOND	SDR35P1014	1 - 2 Weeks	\$ 70.28	\$ 5,271.00
174	5	JT	COD Item: 67025190; PIPE, PVC, SEWER, 21"X14'; SDR35		DIAMOND	SDR35P2114	1 - 2 Weeks	\$ 331.24	\$ 1,656.20
175	5	JT	COD Item: 67025140; PIPE, PVC, SEWER, 4"X14'; SDR 26		DIAMOND	SDR26HWSPP14	1 - 2 Weeks	\$ 15.40	\$ 77.00
176	500	JT	COD Item: 67025050; PIPE, PVC, SEWER, 4"X14'; PSM5DR35 ASTMD3034-HO 72 WH4		DIAMOND	SDR35PP14	1 - 2 Weeks	\$ 11.62	\$ 5,810.00
177	10	JT	COD Item: 67025143; PIPE, PVC, SEWER, 6"X14'; SDR26		DIAMOND	SDR35PU14	1 - 2 Weeks	\$ 33.04	\$ 330.40
178	150	JT	COD Item: 67025060; PIPE, PVC, SEWER, 6"X14'; PSM5DR35		DIAMOND	SDR35PU14	1 - 2 Weeks	\$ 24.92	\$ 3,738.00
179	115	JT	COD Item: 67025145; PIPE, PVC, SEWER, 8"X14'; SDR26		DIAMOND	SDR26HWSPP14	1 - 2 Weeks	\$ 59.64	\$ 6,858.60
180	350	JT	COD Item: 67025080; PIPE, PVC, SEWER, 8"X14'; PSM5DR35 ASTMD3034-OO 2L WH8		DIAMOND	SDR35PX14	1 - 2 Weeks	\$ 44.80	\$ 15,680.00
181	10	JT	COD Item: 67025200; PIPE, PVC, WATER, 4"X20' DR-14; PVC D14 PC C900 305P5E		DIAMOND	DR14BP	1 - 2 Weeks	\$ 51.20	\$ 512.00
182	115	JT	COD Item: 67025250; PIPE, PVC, WATER, 6"X20' DR-14; PVC D14 PC C900 305P5E		DIAMOND	DR14BP	1 - 2 Weeks	\$ 99.60	\$ 11,454.00
183	400	JT	COD Item: 67025300; PIPE, PVC, WATER, 8"X20' DR-14; PVC D14 PC C900 305P5E		DIAMOND	DR14BPX	1 - 2 Weeks	\$ 171.40	\$ 68,560.00
484	30	FF	COD Item: 67025355; PIPE, SEWER 8"X40' DR14-IPS; GRAY-GREEN STRIPE-PEA					No Bid	
485	40	FF	COD Item: 67025355; PIPE, SEWER 8"X40' DR14-IPS; GRAY-HDPE GREEN STRIPE-PEA					No Bid	
486	5	FF	COD Item: 67025305; PIPE, WATER 12"X40' DR11-IPS; GRAY-HDPE					No Bid	
187			Discount off List Price for Special Order Items in this category in	Discount off MSRP \$295000				10% off	
221			SECTION G: FIRE HYDRANTS, EXTENSIONS AND REPAIR KITS						
			COD Item: 34062050; HYDRANT, COLLISION REPAIR KIT; FOR U.S. PIPE M-94, OEM ONLY	Kit must include the following components: Operating Nut Locking Pin; Bonnet Locking Screw; Bonnet Seal; Valve Rod Coupling (Frangible); Coupling Retaining Rings; Rod Coupling Pins; Standpipe Coupling Seal; Standpipe Coupling Halves (Frangible); Standpipe Coupling Bolt Nut; Dampener; (OEM ONLY) MANUFACTURED BY MUELLER					
222	5	EA	COD Item: 34062010; HYDRANT MAIN VALVE KIT - OLD; MUELLER #280367 - OEM ONLY	FOR OLD MUELLER A24015 IMPROVED HYDRANT KIT INCLUDES THE FOLLOWING COMPONENTS: A-43 SEAT RING WITH DRAIN HOLES; A-39 TOP SEAT O-RING; A-44 BOTTOM SEAT O-RING; A-45 MAIN VALVE; A-47 CAP NUT SEAL; A-46 LOWER VALVE PLATE; A-36 UPPER VALVE PLATE; A-34 DRAIN VALVE FACING PVC; A-35 DRAIN VALVE FACING SCREWS (4); (OEM ONLY)	MUELLER	SP-UV658665	1-2 Weeks	\$ 175.61	\$ 878.05
223	5	EA	COD Item: 34062020; HYDRANT MAIN VALVE KIT > 1997; MUELLER 280359, OEM ONLY	FOR MUELLER A423 CENTURION HYDRANT KIT INCLUDES THE FOLLOWING COMPONENTS: A-43 SEAT RING WITH DRAIN HOLES; A-39 TOP SEAT O-RING; A-44 BOTTOM SEAT O-RING; A-45 MAIN VALVE; A-47 CAP NUT SEAL; A-46 LOWER VALVE PLATE; A-36 UPPER VALVE PLATE; A-34 DRAIN VALVE FACING PVC; A-35 DRAIN VALVE FACING SCREWS (4); (OEM ONLY)	MUELLER	M280367	1-2 Weeks	\$ 636.48	\$ 3,182.40
224	10	EA			MUELLER	M280359	1-2 Weeks	\$ 435.78	\$ 4,357.80

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost
225	5 EA		COD Item: 34062040; HYDRANT, MAIN VALVE KIT, WATEROUS; WATEROUS# WVB-67-250; OEM ONLY	Kit includes following components: O-Ring (Lower Valve Seat); 5-7/8 x 5-7/8; Drain Plugger; Gutter Pin; 3/4 x 1-1/4 inches; Crossarm; Valve Seat; Upper Valve Washer; Main Valve; Rubber; Lower Valve Washer; Flange Lock Ring; O-Ring (Upper Valve Seat); 5-7/8 x 6-1/8; Groove Pin; 3/32 x 7/16 inches; (OEM ONLY)	AFC	SP-W545		Not an approved Brand	
226	5 EA		COD Item: 34062045; HYDRANT, MAIN VALVE KIT, US P; FOR US PIPE M-94, OEM ONLY	Kit includes following components: Top plate Pin-- Shear Proof; Valve Top Plate; Drain Valve Facing; Seat Ring; Seat Ring O-Rings; Main Valve; Valve Bottom Plate; (OEM ONLY) MANUFACTURED BY MUELLER	MUELLER	U240630	1-2 Weeks	\$ 404.42	\$ 2,022.10
227	5 EA		COD Item: 67040576; EXTENSION, HYDRANT 24" - NEW; MUELLER (OEM ONLY) A320-020		MUELLER	MA320020	1-2 Weeks	\$ 380.88	\$ 1,904.40
228	5 EA		COD Item: 34060340; HYDRANT 2" 3'BURY 2.5 NOZZLE; MUELLER MA411LAOLM ONLY	WITH HYDRANT DEFENDER NOZZLES SP-MHSZ03000 2" THREADED INLET 1-1/4" PENTAGON OPERATING NUT COLOR: RED	MUELLER	MA411LAOLM	1-2 Weeks	\$ 1,698.70	\$ 8,493.50
229	10 EA		COD Item: 34063080; HYDRANT EXTENSION 12" OEM ONLY; MUELLER A320-010, HRP37/A423	MUELLER HRP375 (A423 5.25") This 12" extension must include the following: Barrel Stem (OEM ONLY)	MUELLER	MA320010	1-2 Weeks	\$ 308.81	\$ 3,088.10
230	5 EA		COD Item: 34063060; HYDRANT EXTENSION 6" NEW STYLE; MUELLER #A-320-006, OEM ONLY	(OEM ONLY)	MUELLER	MA320006	1-2 Weeks	\$ 264.48	\$ 1,322.40
231	5 EA		COD Item: 34062075; HYDRANT HOSE NOZZLE GASKET; MUELLER 290272		MUELLER	M290272	1-2 Weeks	\$ 4.03	\$ 20.15
232	5 EA		COD Item: 34062080; HYDRANT PUMPER NOZZLE GASKET; MUELLER 192345		MUELLER	MA15	1-2 Weeks	\$ 12.21	\$ 61.05
233	15 EA		COD Item: 34062000; HYDRANT REPAIR KIT NEW >1975; MUL#A301-01HYD REP P#HRPI-301	1975 & ABOVE; (OEM ONLY)	MUELLER	MA301	1-2 Weeks	\$ 170.21	\$ 2,553.15
234	40 EA		COD Item: 34062340; HYDRANT REPAIR KIT-BREAK-FLNG-WATEROUS #4528-OEM ONLY	(OEM ONLY)	AFC	WKS28		Not an approved Brand	
235	5 EA		COD Item: 34060100; HYDRANT, FIRE 3.5' BURY; MUELLER MA423LAOLNDEN	MUELLER MA423LAOLNDEN 5 1/4" VO A423, HYD 3'6 OL L/A DENTON -OR- WATEROUS# 8805990	MUELLER	MA423LAOLN	1-2 Weeks	\$ 1,620.00	\$ 8,100.00
236	5 EA		COD Item: 34060150; HYDRANT, FIRE 4' BURY; WATEROUS 8804719 /MUELLER A423		MUELLER	MA423LAOLPDEN	1-2 Weeks	\$ 1,658.00	\$ 8,290.00
237	40 EA		COD Item: 34060200; HYDRANT, FIRE 5' BURY; WATEROUS#8802378/MUELLER OK		MUELLER	MA423LAOLSDEN	1-2 Weeks	\$ 1,735.00	\$ 69,400.00
238	5 EA		COD Item: 34062005; HYDRANT, REPAIR KIT - PRE 1974; MUELLER-HRPI-301-00, OEM ONLY	PRE 1974 (OEM ONLY)	MUELLER	MA301	1-2 Weeks	\$ 126.35	\$ 631.75
239	30 EA		COD Item: 44591250; WRENCH, FIRE HYDRANT; JONES J-583 / REED HWB-02283		REED	R02283	1-2 Weeks	\$ 18.00	\$ 540.00
240			Discount off List Price for Special Order Items in this category in	Discount off MSRP \$118,000				15% off	
241			SECTION H: BELL JOINT LEAK CLAMPS, FORD BRAND ONLY						
242	5 EA		COD Item: 67037830; CLAMP, 6" BELL JOINT LEAK; RANGE 6.90-7.10 FORD FBC-710		Ford	FFBC710	1-2 Weeks	\$ 71.61	\$ 358.05
243	5 EA		COD Item: 67037835; CLAMP, 8" BELL JOINT LEAK; FORD FBC-930		Ford	FFBC930	1-2 Weeks	\$ 92.86	\$ 464.30
244	5 EA		COD Item: 67037840; CLAMP, 10" BELL JOINT LEAK; FORD FBC-1140		Ford	FFBC1140	1-2 Weeks	\$ 116.42	\$ 582.10
245	5 EA		COD Item: 67037845; CLAMP, 12" BELL JOINT LEAK; FORD FBC-1350		Ford	FFBC1350	1-2 Weeks	\$ 126.28	\$ 631.40
246			Discount off List Price for Special Order Items in this category in	Discount off MSRP \$1,000				50% off	
304			SECTION K: BRASS TAPPING SADDLES All water service saddles shall conform to ANSI/AWWA C800 standards. Unless otherwise noted in the line detail all water service saddles shall be sized for ductile iron pipe and have an AWWA tapered (CC) outlet.						
305	1 EA		COD Item: 67052980; SADDLE, TAP, 10" X2" BRASS; FORD # 202B-1212-CC7		FORD	F202B1212CC7	1 - 2 Weeks	\$ 151.57	\$ 151.57

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost	
306	1 EA		COD Item: 67053005; SADDLE, TAP, BRASS, 18"X2; MULLER/FORD IP362, 21.75-22.38		FORD	F202B2050IP7	1 - 2 Weeks	\$ 512.28	\$ 512.28	
307	1 EA		COD Item: 67053000; SADDLE, TAP, BRASS, 24"X1"; FORD #202B-2650-CC4		FORD	F202B2650CC4	1 - 2 Weeks	\$ 578.67	\$ 578.67	
308	1 EA		COD Item: 67052997; SADDLE, TAP, 16"X1" CONC CYL; SMITH BLAIR#36200198809000	WITH 16"X 24" DIAPER	SMITH BLAIR	S36200198809000	1 - 2 Weeks	\$ 178.97	\$ 178.97	
309	1 EA		COD Item: 67052998; SADDLE, TAP, 16"X2" CONC CYL; SBR#362001198815000	WITH 16"X 24" DIAPER	SMITH BLAIR	S36200198815000	1 - 2 Weeks	\$ 178.97	\$ 178.97	
310	1 EA		COD Item: 67052888; SADDLE, TAP 20"X1" CONCRETE CYL; SMITH BLAIR 362-24309-000	WITH 16"X 24" DIAPER	SMITH BLAIR	S36200243809000	1 - 2 Weeks	\$ 204.27	\$ 204.27	
311	1 EA		COD Item: 67052889; SADDLE, TAP 20"X2" CONCRETE CYL; SMITH BLAIR 362-243815-000	WITH 16"X 24" DIAPER	SMITH BLAIR	36200243815000	1 - 2 Weeks	\$ 204.27	\$ 204.27	
312	125 EA	4	COD Item: 67044720; SADDLE, WYE FLEXIBLE 4"; FERNCO TSW-		FERNCO	FTSW4	1 - 2 Weeks	\$ 37.84	\$ 4,730.00	
313	25 EA	6	COD Item: 67044725; SADDLE, WYE FLEXIBLE 6"; FERNCO TSW-	DFW#2812W065FDF54-12X6	FERNCO	FTSW6	1 - 2 Weeks	\$ 49.30	\$ 1,232.50	
314			Discount off List Price for Special Order Items in this category of	Discount off MSRP \$5,000				30% off		
315			SECTION I: STAINLESS STEEL TAPPING SLEEVES Ford, Smith Blair, and Power Seal Brands Only							
316	1 EA		COD Item: 67039440; SLEEVE, TAPPING 4"X4" SS MJ; 4.70-5.00		FORD	SP-FFTSS5004MJ	1 - 2 Weeks	\$ 424.24	\$ 424.24	
317	1 EA		COD Item: 67039455; SLEEVE, TAPPING 6" X4" FLING; 3490A56X4 TAP SLEEVE 6.90-7.30		FORD	FFTSS7304	1 - 2 Weeks	\$ 407.66	\$ 407.66	
318	5 EA		COD Item: 67039450; SLEEVE, TAPPING 6" X4" SS MJ; FORD#FTSS-730-4/POWERSEAL		FORD	SP-FFTSS7304MJ	1 - 2 Weeks	\$ 451.43	\$ 2,257.15	
319	15 EA		COD Item: 67039660; SLEEVE, TAPPING 6"X 6" SS MJ; POWERSEAL# 3490 MJ SS 6GX6	Ford #FTSS 730-6-MJ	FORD	SP-FFTSS7306MJ	1 - 2 Weeks	\$ 495.33	\$ 7,429.95	
320	1 EA		SEAL #348006C060A5		FORD	FFTSS7306	1 - 2 Weeks	\$ 441.82	\$ 441.82	
321	5 EA		COD Item: 67039550; SLEEVE, TAPPING 8" X4" SS MJ; FORD#FTSS-930-4/POWERSEAL		FORD	SP-FFTSS9054MJ	1 - 2 Weeks	\$ 473.44	\$ 2,367.20	
322	10 EA		COD Item: 67039600; SLEEVE, TAPPING 8"X6 " SS MJ; PS 349008C060J/#FTSS-905-6-MJ		FORD	SP-FFTSS9056MJ	1 - 2 Weeks	\$ 519.16	\$ 5,191.60	
323	1 EA		COD Item: 67039655; SLEEVE, TAPPING 8"X 8" SS FL; SPECIAL O POWER SEAL, OD905-945		FORD	FFTSS9058	1 - 2 Weeks	\$ 652.21	\$ 652.21	
324	10 EA		COD Item: 67039750; SLEEVE, TAPPING 8"X 8" SS MJ; PS#34908F OD905-945,FTSS9308MJ	Ford #FTSS- 930 X8-MJ	FORD	SP-FFTSS9058MJ	1 - 2 Weeks	\$ 728.17	\$ 7,281.70	
325	1 EA		COD Item: 67039800; SLEEVE, TAPPING 10"X6" SS MJ; PS3490MM11.10-11.50/FTSS1140X6		FORD	SP-FFTSS11406MJ	1 - 2 Weeks	\$ 575.64	\$ 575.64	
326	1 EA		COD Item: 67039800; SLEEVE/TAPPING 10"X 8" SS MJ; POWERSEAL 3490		FORD	SP-FFTSS11408AMJ	1 - 2 Weeks	\$ 691.98	\$ 691.98	
327	1 EA		COD Item: 67039810; SLEEVE/TAPPING 10"X 10" SS MJ; POWERSEAL		FORD	SP-FFTSS114010MJ	1 - 2 Weeks	\$ 1,161.59	\$ 1,161.59	
328	1 EA		COD Item: 67039850; SLEEVE, TAPPING12" X4" SS MJ; FORD FTSS-1350-4/POWERSEAL		FORD	SP-FFTSS13504MJ	1 - 2 Weeks	\$ 532.49	\$ 532.49	
329	10 EA		COD Item: 67039900; SLEEVE, TAPPING 12"X6" SS MJ; PS3490MJ1320-1360/FTSS-1350-6	THE FOLLOWING ARE THE ACCEPTED BRAND ONLY: POWER SEAL# 3490 MJ9(1320-1360) FORD# FTSS-1350-6 MJ	FORD	SP-FFTSS13506MJ	1 - 2 Weeks	\$ 572.52	\$ 5,725.20	
330	10 EA		COD Item: 67039950; SLEEVE, TAPPING 12"X8" SS MJ; FTSS13508MJ/SB665-132008MJ.000	13-20 to 13-50 OD PS#3490MJ	FORD	SP-FFTSS13508MJ	1 - 2 Weeks	\$ 785.03	\$ 7,850.30	
331	1 EA		SEAL#12 300 (1320-1360)		FORD	FFTSS135012	1 - 2 Weeks	\$ 1,190.79	\$ 1,190.79	
332	5 EA		COD Item: 67039980; SLEEVE TAPPING 12"X12" SS FL; POWER SEAL#12 300 (1320-1360)		FORD	SP-FFTSS135012MJ	1 - 2 Weeks	\$ 1,255.32	\$ 6,276.60	
333	1 EA		COD Item: 67039983; SLEEVE, TAPPING 12"X12" SS MJ; ASBESTOS-CEMENT, PS#3490MJ		FORD	SP-FFTSS138012MJ	1 - 2 Weeks	\$ 1,255.32	\$ 1,255.32	

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost	
334	1 EA		COD Item: 67039985; SLEEVE, TAPPING 16"X8" SS MJ		FORD	SP-FFTS517808MJ	1 - 2 Weeks	\$ 964.64	\$ 964.64	
335	1 EA		COD Item: 67039988; TAPPING SLEEVE, 16"X8" SS FL; POWER SEAL		FORD	FFTS517808	1 - 2 Weeks	\$ 892.43	\$ 892.43	
336	1 EA		COD Item: 67039986; SLEEVE, TAPPING 16"X12" SS FL; POWER SEAL		FORD	FFTS5178012	1 - 2 Weeks	\$ 1,226.10	\$ 1,226.10	
337	1 EA		COD Item: 67039987; SLEEVE, TAPPING 16"X12" SS MJ; POWER SEAL O.D. 17.40		FORD	SP-FFTS5178012MJ	1 - 2 Weeks	\$ 1,302.49	\$ 1,302.49	
338	1 EA		COD Item: 67039990; SLEEVE, TAPPING 16"X16" SS MJ; POWER SEAL#3490M1		FORD	SP-FFTS5178016MJ	1 - 2 Weeks	3467.19	3467.19	
339	1 EA		COD Item: 67039995; SLEEVE, TAPPING 20"X16" SS FL; POWER SEAL		FORD	FFTS5260016	1 - 2 Weeks	4160.46	4160.46	
340			Discount off List Price for Special Order Items in this category of 20% off	Discount off MSRP \$42,000				20% off		
371			SECTION N: METER RESETTERS Acceptable water service resetter manufacturers are: Mueller, Ford, MacDonald, Jones.							
372	10 RL		COD Item: 67023025; PIPE, COPPER TUBING, 3/4"X60"; TYPE K		MUELLER	KSOFTF60	1 - 2 Weeks	\$ 174.60	\$ 1,746.00	
373	5 EA		COD Item: 67023000; PIPE, COPPER TUBING 3/4"X100"; US FILTER# 08078060K		MUELLER	KSOFTF100	1 - 2 Weeks	\$ 291.00	\$ 1,455.00	
374	45 RL		COD Item: 67023050; PIPE, COPPER TUBING, 1"X60"; 0810SO60K / 1KS60 TYPE K SOFT		MUELLER	KSOFTG60	1 - 2 Weeks	\$ 227.40	\$ 10,233.00	
375	80 RL		COD Item: 67023100; PIPE, COPPER TUBING, 1"X100"; NO WOLVERINE -HS100 TYPE K		MUELLER	KSOFTG100	1 - 2 Weeks	\$ 379.00	\$ 30,320.00	
376	500 EA		COD Item: 67037201; RESETTER COPPER 3/4"; MCDONALD18-207WX/FORD V42-7W	MUELLER # 234H14118	FORD	FV427WNL	1 - 2 Weeks	\$ 73.50	\$ 36,750.00	
377	5 EA		COD Item: 67037200; RESETTER COPPER 5/8"X 3/4; MUELLER #234H-1404 ONLY	METER YOLK	MUELLER	MH1404NEFW	1 - 2 Weeks	\$ 72.48	\$ 362.40	
378	10 EA		COD Item: 67037208; RESETTER,COPPER, 1"X10"; FORD V44-10W / MUELLER		FORD	FV4410WNL	1 - 2 Weeks	\$ 140.34	\$ 1,403.40	
379	10 EA		COD Item: 67037206; RESETTER,COPPER, 1-1/2" X 13; FORD V46-13 ONLY	Flanged Key valve on inlet, flanged Ell on outlet	FORD	FV4613NL	1 - 2 Weeks	\$ 803.72	\$ 8,037.20	
380	1 EA		COD Item: 67037202; RESETTER, COPPER, 1 1/2 X 18"; MACDONALD18-618WN/ FORD V46-18		FORD	FV4618WNL	1 - 2 Weeks	\$ 823.48	\$ 823.48	
381	10 EA		COD Item: 67037205; RESETTER,COPPER, 2" X 12; FORD V47-12 ONLY	Flanged Key valve on inlet, flanged Ell on outlet	FORD	FV4712WNL	1 - 2 Weeks	\$ 907.12	\$ 9,071.20	
382	2 EA		COD Item: 67037204; RESETTER,COPPER, 2 X 18"; MACD#18-718WN/ FORD# 1-V47-18		FORD	FV4718WNL	1 - 2 Weeks	\$ 907.12	\$ 1,814.24	
383	5 EA		COD Item: 89045610; RESETTER, COPPER 15"; ACT#18-215WX/FORD V42-15W		FORD	FV4215WNL	1 - 2 Weeks	\$ 80.27	\$ 401.35	
384	15 EA		COD Item: 89045615; RESETTER, COPPER 12"; ACT#18-212WX/FORD V42-12W		FORD	FV4212WNL	1 - 2 Weeks	\$ 77.03	\$ 1,155.45	
385			Discount off List Price for Special Order Items in this category of 20% off	Discount off MSRP \$110,000				20% off		
409			SECTION Q: VALVE BOXES AND VALVE BOX EXTENSION Valve boxes and valve box extensions shall be screw type with a minimum shaft diameter of 5/8".							
410	5 EA		COD Item: 89040010; BOX VALVE EXTENSION 24"; TYLER# 6850-6D (NO SIGMA)		TYLER	DVBEXT60	1 - 2 Weeks	\$ 57.39	\$ 286.95	
411	215 EA		COD Item: 89040020; BOX VALVE LID; TYLER# 6850-10T 461-S-5 1/4	NO SIGMA	TYLER	DVBLIDW	1 - 2 Weeks	\$ 13.14	\$ 2,825.10	
412	100 EA		COD Item: 89040036; BOX VALVE RISER 1 1/2"; ITEM# 3000298611W/SET SCREWS		BASS HAYS	E85008015	1 - 2 Weeks	\$ 94.87	\$ 9,487.00	
413	100 EA		COD Item: 89040035; BOX VALVE RISER 1" W/SET SCREW; ITEM# 30002986110		BASS HAYS	E85008010	1 - 2 Weeks	\$ 89.33	\$ 8,933.00	
414	70 EA		COD Item: 89040065; BOX, VALVE ROUND PLASTIC 6; DALLAS SPECIALTY DS1095WR		DALLAS SPECIALTY	DDS109	1 - 2 Weeks	\$ 2.78	\$ 194.60	
415	70 EA		COD Item: 89040045; BOX, VALVE ROUND PLASTIC 10; DALLAS SPECIALTY DS1100S		DFW	DDFW11001025SEWER	1 - 2 Weeks	\$ 7.48	\$ 523.60	

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnfr Part #	Lead Time (wks)	Unit Price	Extended Cost
416	225	EA	COD Item: 89040030; BOX, VALVE TOP SECTION 10"; TYLER 10-T (22 LBS) - NO SIGMA		TYLER	DVBST510	1 - 2 Weeks	\$ 33.88	\$ 7,623.00
417			Discount off List Price for Special Order Items in this category is 10% off	Discount off MSRP \$31,000				10% off	
418			SECTION R: MISCELLANEOUS INVENTORY						
419	5	EA	COD Item: 67038905; ADAPTER, RESTRND FL CPLG 8"; RESTRAINED FLANGE ADAPTER		FORD	FFFC917	1 - 2 Weeks	\$ 155.52	\$ 777.60
420	115	DR	COD Item: 88540000; CHLORINE, GRANULAR, 100 LBS		EGW	HTH100	1 - 2 Weeks	\$ 186.41	\$ 21,437.15
421	550	EA	COD Item: 67044730; CLAMP, SNAP, 51"; STANLEY ROBERTS #SC-248/5C-258		STAN ROBERTS	SSC258	1 - 2 Weeks	\$ 4.00	\$ 2,200.00
422	40	DR	GOD Item: 67038725; DEGREASER, JET POWER, H-A/PLT; DUKES-ROOT-CONTROL-55-GALLON					No Bid	
423	45	EA	GOD Item: 49530200; DEODORANT LIQUID-LONG-GONV-TEXAS-NFL#-55086Q-7-AC6440-12					No Bid	
424	15	RL	COD Item: 67025400; ENCASEMENT POLY 29 X 200'; 29DW1WP / D29200PWF812		TRIPAC	APW2988	1 - 2 Weeks	\$ 90.64	\$ 1,359.60
425	5	EA	COD Item: 67025440; ENCASEMENT, POLY 52" X 200' HDPE; 4 MIL, HDPE		TRIPAC	A75010EA	1 - 2 Weeks	\$ 467.39	\$ 2,336.95
426	5	EA	COD Item: 67025480; ENCASEMENT, POLY 52" X 200' LDPE; 8 MIL, LDPE		TRIPAC	APW5288	1 - 2 Weeks	\$ 162.51	\$ 812.55
427	130	EA	COD Item: 21062200; GASKET, RAM NEK FLEXIBLE 42"; 1.5" X 42", RM 101 (20/CA)		HENRY CO	RAMNECK	1 - 2 Weeks	\$ 67.96	\$ 8,834.80
428	5	EA	COD Item: 46077100; HOSE, SEWER FLUSH 3/4" X 600'; BARCO PIRANHA HP-12 (BLUE)	*** MUST BE PIRANHA SEWER HOSE ONLY *** BLUE HOSE RATED @ 3,000 PSI	PIRAHANA	K11800752600	1 - 2 Weeks	\$ 1,793.42	\$ 8,967.1
429	85	EA	COD Item: 89030080; INFLOW DEFENDER, HDPE 24; POLYETHYLENE PRIME HDPE 250	MEASUREMENTS: 23.5" X 22" PRIME HDPE 250 DISH THICKNESS >= 1/8" FABRICATED WITH MOLDED RIBBING MEMBERS IN BOWL AREA	CONTRACTOR SPEC	IRG0009	1 - 2 Weeks	\$ 27.17	\$ 2,309.45
430	20	EA	COD Item: 89030085; INFLOW DFNDR MAX, 30" POLYCARB; INFLOW DEFENDER	MEASUREMENTS: 31.5" X 30" DISH THICKNESS >= 1/8" FABRICATED WITH MOLDED RIBBING MEMBERS IN BOWL AREA	CONTRACTOR SPEC	IRG0074	1 - 2 Weeks	\$ 59.78	\$ 1,195.60
431	40	EA	COD Item: 67036020; INSERT STIFFENER 1 1/2"; JONES J2808, 2.562", 528706J		EGW	E12968	1 - 2 Weeks	\$ 1.39	\$ 55.60
432	300	EA	COD Item: 67036040; INSERT STIFFENER 2"; JONES J2808, 2.562", 528707J		EGW	E12969	1 - 2 Weeks	\$ 1.58	\$ 474.00
433	200	BK	COD Item: 67006000; LUBE, PIPE/EASE-ON"; 8 LB, BK ONLY	EASY ON 8 LB BK ONLY	JTM	JTMF20303	1 - 2 Weeks	\$ 9.08	\$ 1,816.00
434	50	EA	COD Item: 35060180; MARKER UTILITY (SEWER MANHOLE); CARBONITE 6884-CSM	CTFM062007-CSM	REPNET	BFR72GCMF	1 - 2 Weeks	\$ 27.11	\$ 1,355.50
435	10	EA	COD Item: 35060170; MARKER UTILITY (WATER VALVE); ITEM#CTFM062008-CWV116	ADD PHONE NUMBER TO PRINTING "BEFORE DIGGING CALL 940-349-7644 FOR LINE LOCATES"	REPNET	BFR72BCWV100	1 - 2 Weeks	\$ 27.11	\$ 271.10
436	70	BN	COD Item: 35060000; MARKER, FLAG BLUE (100/BN); P451-SCREENED WJ/ WHITE "W"	4" X 5" X 21"	BLACKBURN MFG	P4521BW3036	1 - 2 Weeks	\$ 6.84	\$ 478.80
437	40	BN	COD Item: 35060100; MARKER, FLAG GREEN 4" X 5" X 21; P451-GREEN, 100/BN		BLACKBURN MFG	P4521G	1 - 2 Weeks	\$ 5.88	\$ 235.20
438	250	DR	GOD Item: 24035000; GFGRETE/RS-PATCH-CEMENT-50LB; IGM-SYSTEMS/RAPID-SETTING-PATCH	ACCEPTED MATERIALS: RECTORSEAL #5/RECTORSEAL-23391, ONLY	RECTORSEAL	REC25300	1 - 2 Weeks	\$ 25.07	\$ 501.40
439	20	QT	COD Item: 67006010; PIPE COMPOUND SEAL, RECTORSEAL#5 SLOWDRY, SOFTSET		RECTORSEAL	REC25300	1 - 2 Weeks	\$ 25.07	\$ 501.40
440	40	EA	COD Item: 72006000; PUMP UTILITY W/6' HOSE; BECKSON MODEL #136PF6		BECKSON	B136PF6	1 - 2 Weeks	\$ 30.22	\$ 1,208.80
441	10	EA	COD Item: 67037850; PUMP, SUMP & EFFLUENT 1 HP; ZOELLER 140-0002 N140		ZOELLER	Z1400002	1 - 2 Weeks	\$ 389.80	\$ 3,898.00
442	90	EA	COD Item: 67038700; ROOT KILLER - ROOTX; ROOTX ONLY, 2 LB IAR		ROOT X	RROOTX2	1 - 2 Weeks	\$ 43.28	\$ 1,298.40
443	90	EA	COD Item: 67006020; SEALER MANHOLE; MITSUBISHI ADEKA P201 (24/CA)		ADEKA	AP201	1 - 2 Weeks	\$ 18.69	\$ 934.50

7187 - Exhibit E - Price Line Detail

Line Number	Quantity	UoM	Description	Note to Bidder	Proposed Manufacturer	Proposed Mnf Part #	Lead Time (wks)	Unit Price	Extended Cost
444	10 EA		COD Item: 67006050; SEALER, "FOAM" RISER 28OZ/24CA; M-1 ADHESIVE, CRETEX#98050		CRETEX	C098050	1 - 2 Weeks	\$ 14.50	\$ 145.00
445	40 EA		COD Item: 67039130; SLEEVE, QUICK LOCK 10"; S STRAIGHT QL HG 6472		RAUSCH	RUS010S	1 - 2 Weeks	\$ 605.55	\$ 6,055.50
446	5 EA		COD Item: 67039140; SLEEVE, QUICK LOCK 12"; S STRAIGHT QL HG 6473		RAUSCH	RUS012S	1 - 2 Weeks	\$ 660.33	\$ 3,301.65
447	20 EA		COD Item: 67039110; SLEEVE, QUICK LOCK 6; S STRAIGHT QL HG 6470		RAUSCH	RUS006S	1 - 2 Weeks	\$ 496.96	\$ 9,939.20
448	20 EA		COD Item: 67039120; SLEEVE, QUICK LOCK 8; S STRAIGHT QL HG 6471		RAUSCH	RUS008S	1 - 2 Weeks	\$ 522.95	\$ 10,459.00
449	40 EA		COD Item: 44558500; TIGER TAIL 3', W/ ROPE CLAMP; AND CUFFS		POLLARD	A1230300003	1 - 2 Weeks	\$ 54.29	\$ 542.90
450	10 BK		COD Item: 88540010; VITA-D-CHLOR TABLETS 140/BK; INTEGRA CHEMICAL CO		POLLARD	PVITADCHLOR140	1 - 2 Weeks	\$ 641.30	\$ 6,413.00
451			Discount off List Price for Special Order Items in this category not mentioned above.	Discount off MSRP \$125,000				10% off	

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.

FERGUSON WATERWORKS

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 
Signature of vendor doing business with the governmental entity

11.19.19

Date

Certificate Of Completion

Envelope Id: 83EC0301B52C4B0FA0A7B4D373FD34DE	Status: Completed
Subject: Please DocuSign: City Council Contract 7187 - DC Water and Sewer Inventory - Ferguson	
Source Envelope:	
Document Pages: 33	Signatures: 5
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Laura Hermosillo
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	laura.hermosillo@cityofdenton.com
	IP Address: 129.120.6.150

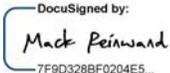
Record Tracking

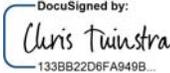
Status: Original 2/20/2020 5:12:49 PM	Holder: Laura Hermosillo laura.hermosillo@cityofdenton.com	Location: DocuSign
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Signer Events

Signer Events	Signature	Timestamp
Laura Hermosillo laura.hermosillo@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: 129.120.6.150	Sent: 2/20/2020 5:15:02 PM Viewed: 2/20/2020 5:15:34 PM Signed: 2/20/2020 5:15:39 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: 2/20/2020 5:15:41 PM Viewed: 2/21/2020 8:10:46 AM Signed: 2/21/2020 8:12:37 AM
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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: 2/21/2020 8:12:39 AM Viewed: 2/21/2020 12:32:24 PM Signed: 2/21/2020 12:33:32 PM
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Chris Tuinstra Chris.Tuinstra@ferguson.com General Manager Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 108.171.132.165	Sent: 2/21/2020 12:33:35 PM Resent: 2/25/2020 2:35:47 PM Viewed: 2/26/2020 1:57:59 PM Signed: 2/26/2020 2:17:13 PM
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Electronic Record and Signature Disclosure:
Accepted: 2/26/2020 1:57:59 PM
ID: 77cf4679-eb00-4380-aa03-e5953b9f0174

Signer Events	Signature	Timestamp
<p>Cassandra Ogden Cassandra.Ogden@cityofdenton.com Director of Procurement and Compliance City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by:  E7FF20C194EA4F9...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150</p>	<p>Sent: 2/26/2020 2:17:16 PM Viewed: 2/26/2020 2:17:44 PM Signed: 2/26/2020 2:18:12 PM</p>
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 129.120.6.150</p>	<p>Sent: 2/26/2020 2:18:15 PM Viewed: 3/18/2020 10:23:02 AM Signed: 3/18/2020 10:23:14 AM</p>
<p>Todd Hileman Todd.Hileman@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 7/25/2017 11:02:14 AM ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21</p>	<p>DocuSigned by:  B776C711BA0D454...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150</p>	<p>Sent: 3/18/2020 10:23:20 AM Viewed: 3/18/2020 11:11:30 AM Signed: 3/18/2020 11:11:36 AM</p>
<p>Rosa Rios rosa.rios@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 3/19/2020 1:29:52 PM ID: 8890b070-aeeb-4f61-b353-76b08923334b</p>	<p>DocuSigned by:  1C5CA8C5E175493...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150</p>	<p>Sent: 3/18/2020 11:11:42 AM Viewed: 3/19/2020 1:29:52 PM Signed: 3/19/2020 1:30:22 PM</p>

<input checked="" type="checkbox"/> Person Signer Events	Signature	Timestamp
Editor Deliver <input type="checkbox"/> Events	Status	Timestamp
Agent Deliver <input type="checkbox"/> Events	Status	Timestamp
Intermediar <input type="checkbox"/> Deliver <input type="checkbox"/> Events	Status	Timestamp
Certified Deliver <input type="checkbox"/> Events	Status	Timestamp
Car <input type="checkbox"/> on Cop <input type="checkbox"/> Events	Status	Timestamp
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 2/20/2020 5:15:41 PM</p>

Carion Cop Events	Status	Timestamp
<p>Troy Mccamish Troy.Mccamish@Ferguson.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 2/21/2020 12:33:35 PM Viewed: 2/21/2020 12:36:03 PM</p>
<p>Sherri Thurman sherri.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 2/26/2020 2:18:14 PM</p>
<p>Jane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 3/18/2020 10:23:19 AM Viewed: 3/18/2020 11:41:46 AM</p>
<p>Zolina Parker zolina.parker@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 3/18/2020 10:23:19 AM</p>
<p>Cassandra Ogden Cassandra.Ogden@cityofdenton.com Director of Procurement and Compliance City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 3/19/2020 1:30:29 PM</p>
<p>Dustin Rolfe Dustin.Rolfe@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 3/19/2020 1:30:30 PM</p>

Witness Events	Signature	Timestamp
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Notar Events	Signature	Timestamp
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Signing Complete	Security Checked	3/19/2020 1:30:30 PM
Completed	Security Checked	3/19/2020 1:30:30 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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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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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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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- 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:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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

Acknowledging your access and consent to receive materials electronically

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

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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 5732406
Original Date of Filing: January 31, 1983
Formation Date: N/A
Tax ID: 15412117713
Name: Ferguson Enterprises, LLC
Address: 12500 JEFFERSON AVENUE
 Newport News, VA 23602 USA
Fictitious Name: N/A
Jurisdiction: VA, USA
Foreign Formation Date: March 31, 2019

Entity Type: Foreign Limited Liability Company (LLC)
Entity Status: In existence
FEIN:

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT
Last Update	Name	Title	
May 14, 2019	KEVIN M MURPHY	PRESIDENT	
May 14, 2019	KEVIN M MURPHY	DIRECTOR	
May 14, 2019	WILLIAM S BRUNDAGE	CHIEF FINANCIAL OFFICER	
May 14, 2019	WILLIAM S BRUNDAGE	DIRECTOR	
May 14, 2019	MARY ANN G LEMERE	GENERAL COUNSEL	
May 14, 2019	MARY ANN G LEMERE	DIRECTOR	
May 14, 2019	JOHN R BLANKINSHIP	ASSISTANT SECRETARY	
May 14, 2019	ALEX B HUTCHERSON	CHIEF OPERATING OFFICER	
May 14, 2019	ALEX B HUTCHERSON	DIRECTOR	
May 14, 2019	TOTAL CONSIDERATION	OTHER	

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ORDINANCE NO. _____

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 FERGUSON ENTERPRISES, LLC, AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON MARCH 17, 2020, IN THE NOT-TO-EXCEED AMOUNT OF \$3,630,000.00, SAID FIRST AMENDMENT TO CONTINUE TO PROVIDE WATER AND WASTEWATER INVENTORY FOR THE WAREHOUSE DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 7187 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$907,500.00, FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$4,537,500.00).

WHEREAS, on March 17, 2020, City Council awarded a contract to Ferguson Enterprises, LLC in the amount of \$3,630,000.00, for the supply of water and sewer inventory parts; 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 Ferguson Enterprises, LLC, which is on file in the office of the Purchasing Agent, in the amount of Nine Hundred Seven Thousand Five Hundred and 0/100 (\$907,500.00) 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 \$4,537,500.00.

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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

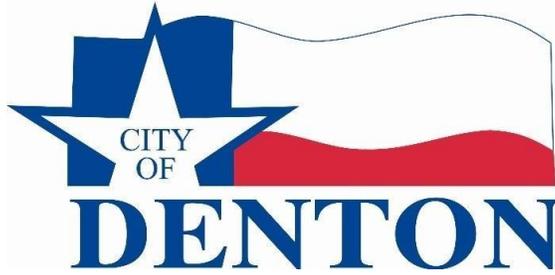
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

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@cityofdent
on.com, c=US
Date: 2023.04.07 10:40:19 -05'00'



DocuSign City Council Transmittal Coversheet

IFB	7187
File Name	DC Water & Sewer Inventory- Ferguson Amendment 1
Purchasing Contact	Ginny Brummett
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND FERGUSON ENTERPRISES, LLC
(7187)

THIS FIRST AMENDMENT TO CONTRACT 7187 (this “Amendment”) by and between the City of Denton, Texas (“City”) and FERGUSON ENTERPRISES, LLC (“Contractor”) to that certain contract executed on March 17, 2020, in the original not-to-exceed amount of \$3,630,000 (the “Agreement”); for services related to the DC water and sewer inventory.

WHEREAS, the City deems it necessary to further expand the services provided by Contractor to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$907,500 with this First Amendment for an aggregate not-to-exceed amount of \$4,537,500; and

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:

1. This Amendment modifies the Agreement amount to provide an additional \$907,500 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 \$4,537,500.

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 _____.

“CONTRACTOR”
Ferguson Enterprises, LLC

DocuSigned by:
By: Ryan Moore
AUTHORIZED SIGNATURE, TITLE

“CITY”
CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

ATTEST:
ROSA RIOS, CITY SECRETARY

By: _____

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

DocuSigned by:
Laura Behrens Laura Behrens
SIGNATURE PRINTED NAME

Assistant Procurement Director
TITLE

Procurement
DEPARTMENT

Certificate Of Completion

Envelope Id: 4BF2257F18EB4DD4A8FC67BD0367163A	Status: Sent
Subject: Please DocuSign: City Council Contract-7187 DC Water & Sewer Inventory- Ferguson Amendment 1	
Source Envelope:	
Document Pages: 3	Signatures: 3
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Ginny Brummett
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	Ginny.Brummett@cityofdenton.com
	IP Address: 198.49.140.10

Record Tracking

Status: Original	Holder: Ginny Brummett	Location: DocuSign
4/3/2023 8:32:27 AM	Ginny.Brummett@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Ginny Brummett ginny.brummett@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 4/3/2023 8:48:05 AM Viewed: 4/3/2023 8:48:14 AM Signed: 4/3/2023 8:48:25 AM

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Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/3/2023 8:48:29 AM Viewed: 4/3/2023 8:57:13 AM Signed: 4/3/2023 8:57:40 AM
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Marcella Lunn marcella.lunn@cityofdenton.com Mack Reinwand City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/3/2023 8:57:43 AM Viewed: 4/3/2023 10:16:57 AM Signed: 4/3/2023 10:18:44 AM
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Electronic Record and Signature Disclosure:
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Ryan Moore ryan.moore@ferguson.com General Manager Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 70.119.154.16	Sent: 4/3/2023 10:18:47 AM Viewed: 4/3/2023 10:58:08 AM Signed: 4/3/2023 10:58:32 AM
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Electronic Record and Signature Disclosure:
Accepted: 4/3/2023 10:58:08 AM
ID: ec0557d2-b4bb-497f-95d0-18c092429f12

Signer Events	Signature	Timestamp
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Laura Behrens
 Laura.Behrens@cityofdenton.com
 Assistant Procurement Director
 City of Denton
 Security Level: Email, Account Authentication (None)

DocuSigned by:

 E4EBB9C2B1F24AB...
 Signature Adoption: Pre-selected Style
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 Signed: 4/3/2023 11:42:30 AM

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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

Sent: 4/3/2023 11:42:33 AM

Electronic Record and Signature Disclosure:
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Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Rosa Rios
 rosa.rios@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Accepted: 4/6/2023 9:38:14 AM
 ID: 5101cc7f-22ec-4658-b927-8f4d467d418b

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

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Gretna Jones
 gretna.jones@cityofdenton.com
 Legal Secretary
 City of Denton
 Security Level: Email, Account Authentication (None)

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Sent: 4/3/2023 11:42:32 AM
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Carbon Copy Events	Status	Timestamp
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City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)

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Keith Kading
Keith.Kading@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 4/5/2023 8:59:23 AM
ID: d821a67e-bf72-431f-8065-67340d3826ba

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	4/3/2023 8:48:05 AM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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- 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:	<ul style="list-style-type: none"> •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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City of Denton

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

Legislation Text

File #: ID 23-890, **Version:** 1

AGENDA CAPTION

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 Professional Services Agreement between the City of Denton and Weaver and Tidwell, L.L.P., amending the contract approved by the City Council on July 28, 2020, in the not-to-exceed amount of \$354,500.00; said first amendment to provide external audit services for the City of Denton's fiscal year 2022-23, including an audit of the financial statements and single audit for the year ending September 30, 2023, and an agreed-upon procedures report for the Texas Commission on Environmental Quality as managed by the City Auditor's Office; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7284 - providing for an additional first amendment expenditure amount not-to-exceed \$123,500.00, with the total contract amount not-to-exceed \$478,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 Professional Services Agreement between the City of Denton and Weaver and Tidwell, L.L.P., amending the contract approved by the City Council on July 28, 2020, in the not-to-exceed amount of \$354,500.00; said first amendment to provide external audit services for the City of Denton’s fiscal year 2022-23, including an audit of the financial statements and single audit for the year ending September 30, 2023, and an agreed-upon procedures report for the Texas Commission on Environmental Quality as managed by the City Auditor’s Office; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7284 – providing for an additional first amendment expenditure amount not-to-exceed \$123,500.00, with the total contract amount not-to-exceed \$478,000.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

At the end of each fiscal year, the City of Denton undergoes a financial audit performed by an independent auditing firm. The objective of this financial audit is to form and express an opinion about whether the financial statements (i.e. the Annual Comprehensive Financial Report) prepared by City staff are presented fairly in all material respects.¹ The external auditor also performs the “Single Audit,” which is required if state or local governments expend more than \$750,000 in federal dollars annually. As part of this engagement, the external auditor provides an opinion on the fair presentation of the Supplementary Schedule of Expenditures of Federal and State Awards per the applicable regulations. Finally, the external auditor performs an agreed-upon procedures engagement as required by Texas Administrative Code, Chapter 37, and agreed upon by the City of Denton and the Texas Commission on Environmental Quality. This engagement evaluates City management’s assertions about compliance with the financial test option concerning the sanitary landfill and landfill gas recover facility.

In order to further ensure the external audit firms' independence from management, the City has elected to have the City Auditor administer the annual external audit contract including, leading solicitation efforts, coordinating with staff on vendor evaluation, and reviewing and paying invoices. In 2020, an evaluation

¹ Materiality is a term used in auditing and accounting that relates to the importance or significance of an amount, transaction, or discrepancy. A material matter is ultimately a matter of professional judgement and depends upon factors such as the volume of an organization’s revenues and expenses.

team made up of Finance Department and City Auditor’s Office staff selected Weaver & Tidwell L.L.P. based on a Request for Qualifications and executed a three year contract with a one year option. The contract was executed with a do not exceed amount to only cover the first three years of service. A history of the contract pricing by audited fiscal year is shown in Table 1.

Table 1: Historical Contract Price

Audited Year	Contract Price
FY2020	\$116,500
FY2021	\$117,500
FY2022	\$120,500
<i>FY2023 (Proposed)</i>	<i>\$123,500</i>

The contract amendment will extend the contract for the fourth year and increase the do not exceed amount to allow the vendor to receive payment based on a price quoted in March 2023.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On July 28, 2020, City Council approved a contract with Weaver & Tidwell L.L.P., in the not-to-exceed amount of \$354,500 (Ordinance 20-1304).

RECOMMENDATION

Award Amendment No. 1 with Weaver & Tidwell, L.L.P., to continue to provide external audit services for the City of Denton’s fiscal year 2022-23, including an audit of the financial statements and single audit for the year ending September 30, 2023, and an agreed-upon procedures report for the Texas Commission on Environmental Quality as managed by the City Auditor’s Office, in a not-to-exceed amount of \$123,500, for a total amended contract amount of \$478,000.

PRINCIPAL PLACE OF BUSINESS

Weaver and Tidwell, L.L.P.
Dallas, TX

ESTIMATED SCHEDULE OF PROJECT

This contract expires on July 28, 2024. Fieldwork to audit the Fiscal Year 2022-23 Annual Comprehensive Financial Report will begin in the fall of 2023 and should be complete by March 2024.

FISCAL INFORMATION

These services will be funded from the General Fund account 105001.7852. A new Purchase Order will be entered to encumber the first amendment amount of \$123,500. The total amended amount of this contract is \$478,000.

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: Madison Rorschach, 940-349-7228.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. 20-1304

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH WEAVER AND TIDWELL, LLP, FOR EXTERNAL AUDIT SERVICES FOR THE CITY OF DENTON AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7284 – PROFESSIONAL SERVICES AGREEMENT FOR EXTERNAL AUDIT SERVICES FOR THE CITY OF DENTON AWARDED TO WEAVER AND TIDWELL, LLP, FOR THREE (3) YEARS WITH THE OPTION FOR ONE (1) ADDITIONAL ONE (1) YEAR EXTENSION, IN THE TOTAL FOUR (4) YEAR NOT-TO-EXCEED AMOUNT OF \$354,500).

WHEREAS, Weaver and Tidwell, LLP, the professional services 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 professional services 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 Weaver and Tidwell, LLP, for External Audit services for the City of Denton, 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, Texas expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under RFQ 7284 for External Audit services for the City of Denton, to the City Manager of the City of Denton, Texas, 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 Deb Argintor, the ordinance was passed and approved by the following vote [7 - 0]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Chris Watts, Mayor:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gerard Hudspeth, District 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Keely G. Briggs, District 2:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jesse Davis, District 3:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Ryan, District 4:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deb Armintor, At Large Place 5:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paul Meltzer, At Large Place 6:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PASSED AND APPROVED this the 28th day of July, 2020.



 CHRIS WATTS, MAYOR

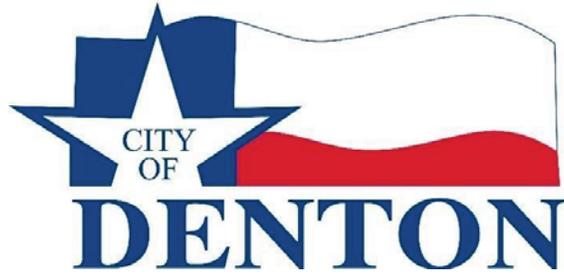
ATTEST:
 ROSA RIOS, CITY SECRETARY

BY:  _____



APPROVED AS TO LEGAL FORM:
 AARON LEAL, CITY ATTORNEY

BY:  _____



DocuSign City Council Transmittal Coversheet

PSA	7284
File Name	External Audit
Purchasing Contact	Erica Garcia
City Council Target Date	July 28, 2020
Piggy Back Option	No
Contract Expiration	July 28, 2024
Ordinance	20-7284

**PROFESSIONAL SERVICES AGREEMENT
FOR CONSULTING SERVICES
FILE 7284**

STATE OF TEXAS §

COUNTY OF DENTON §

THIS AGREEMENT (the “Agreement”) is made and entered into on 7/29/2020, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called “OWNER” and Weaver and Tidwell, L.L.P, with its corporate office at 2300 North Field Street, Suite 1000, Dallas, TX 75201, hereinafter called “CONSULTANT,” acting herein, by and through their duly authorized representatives.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

ARTICLE I
CONSULTANT AS INDEPENDENT CONTRACTOR

The OWNER has selected CONSULTANT on the basis of demonstrated competence and qualifications to perform the services herein described for a fair and reasonable price pursuant to Chapter 2254 of the Texas Government Code. The OWNER hereby contracts with the CONSULTANT as an independent contractor and not as an employee, and as such, the OWNER will not assert control over the day-to-day operations of the CONSULTANT. The CONSULTANT is customarily engaged to provide services as described herein independently and on a nonexclusive basis in the course of its business. This Agreement does not in any way constitute a joint venture between OWNER and CONSULTANT. The CONSULTANT hereby agrees to perform the services described herein based on the skills required for the scope of work in connection with the Project as stated in the sections to follow, with diligence and in accordance with the highest professional standards customarily obtained for such services in the State of Texas. The professional services set out herein are in connection with the following described project:

The Project shall include, without limitation, External Audit services, as described in Exhibit A, which is on file at the purchasing office and incorporated herein (the “Project”).

ARTICLE II
SCOPE OF BASIC SERVICES

The CONSULTANT shall perform the following services in a professional manner:

- A. The CONSULTANT shall perform all those services as necessary and as described in the OWNER’s RFQ 7284 – External Audit, which is on file at the purchasing office and made a part hereof as Exhibit A as if written word for word herein.

- B. To perform all those services set forth in CONSULTANT's proposal, which proposal is attached hereto and made a part hereof as **Exhibit B** as if written word for word herein.
- C. CONSULTANT shall perform all those services set forth in individual task orders, as described in **Exhibit B**, which shall be attached to this Agreement and made a part hereof.
- D. If there is any conflict between the terms of this Agreement and the exhibits attached to this Agreement, the terms and conditions of this Agreement will control over the terms and conditions of the attached exhibits or task orders.

ARTICLE III **ADDITIONAL SERVICES**

Additional services to be performed by the CONSULTANT, if authorized by the OWNER, which are not included in the above-described Basic Services, may be negotiated as needed, per rates included in **Exhibit C**.

- A. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- B. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- C. Assisting OWNER in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- D. Assisting OWNER in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by CONSULTANT on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- E. Visits to the site in excess of the number of trips included in **Exhibit B**.
- F. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

ARTICLE IV
TIME OF COMPLETION

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 B**. The contract shall remain effective for a period of three (3) years with one (1) one year renewal option, exhaustion of authorized funds, or termination as provided in this Agreement, whichever occurs first.

ARTICLE V
COMPENSATION

A. COMPENSATION TERMS:

1. “Subcontract Expense” is defined as expenses incurred by the CONSULTANT in employment of others in outside firms for services related to this agreement.
2. “Direct Non-Labor Expense” is defined as that expense for any assignment incurred by the CONSULTANT for supplies, transportation and equipment, travel, communications, subsistence, and lodging away from home, and similar incidental expenses in connection with that assignment.

B. BILLING AND PAYMENT: For and in consideration of the professional services to be performed by the CONSULTANT herein, the OWNER agrees to pay, based on the cost estimate detail at an hourly rate shown in **Exhibit C** which is attached hereto and made a part of this Agreement as if written word for word herein, a total fee, including reimbursement for direct non-labor expenses not to exceed \$354,500.

Partial payments to the CONSULTANT will be made on the basis of detailed monthly statements rendered to and approved by the OWNER through its City Manager or his designee; however, under no circumstances shall any monthly statement for services exceed the value of the work performed at the time a statement is rendered.

Nothing contained in this Article shall require the OWNER to pay for any work which is unsatisfactory, as reasonably determined by the City Manager or his designee, or which is not submitted in compliance with the terms of this Agreement. The OWNER shall not be required to make any payments to the CONSULTANT when the CONSULTANT is in default under this Agreement.

It is specifically understood and agreed that the CONSULTANT shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by the OWNER for any charge, expense, or reimbursement above the maximum not to exceed fee as stated, without first having obtained written authorization from the OWNER. The CONSULTANT shall not proceed to perform the services listed in Article III “Additional Services,” without obtaining prior written authorization from the OWNER.

- C. **ADDITIONAL SERVICES:** For additional services authorized in writing by the OWNER in Article III, the CONSULTANT shall be paid based on the Schedule of Charges at an hourly rate shown in **Exhibit C**. Payments for additional services shall be due and payable upon submission by the CONSULTANT and approval by the City staff, and shall be in accordance with subsection B hereof. Statements shall not be submitted more frequently than monthly.
- D. **PAYMENT:** If the OWNER fails to make payments due the CONSULTANT for services and expenses within thirty (30) days after receipt of the CONSULTANT's undisputed statement thereof, the amounts due the CONSULTANT will be paid interest in accordance with the Texas Government Code 2251.025. Additionally, the CONSULTANT may, after giving seven (7) days' written notice to the OWNER, suspend services under this Agreement until the CONSULTANT has been paid in full all amounts due for services, expenses, and charges. Nothing herein shall require the OWNER to pay the late charge if the OWNER reasonably determines that the work is unsatisfactory, in accordance with this Article V, "Compensation," there is a bona fide dispute concerning the amount due, or the invoice was not mailed to the address or in the form as described in this Agreement. The OWNER will notify CONSULTANT of any disputes within twenty-one (21) days of receipt of the invoice.
- E. **Invoices** shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299. A pro-forma invoice shall be sent to the contract administrator. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice or items; whichever is later, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

ARTICLE VI OBSERVATION AND REVIEW OF THE WORK

The CONSULTANT will exercise reasonable care and due diligence in discovering and promptly reporting to the OWNER any defects or deficiencies in the work of the CONSULTANT or any subcontractors or subconsultants.

ARTICLE VII OWNERSHIP OF DOCUMENTS

All documents prepared or furnished by the CONSULTANT (and CONSULTANT's subcontractors or subconsultants) pursuant to this Agreement are instruments of service, and shall become the property of the OWNER upon the termination of this Agreement. The CONSULTANT is entitled to retain copies of all such documents. The documents prepared and furnished by the CONSULTANT are intended only to be applicable to this Project, and OWNER's use of these documents in other projects shall be at OWNER's sole risk and expense. In the event the OWNER uses any of the information or materials developed pursuant to this Agreement in another project or for other purposes than specified herein, CONSULTANT is released from any and all liability relating to their use in that project.

ARTICLE VIII
INDEMNITY AGREEMENT

THE CONSULTANT SHALL INDEMNIFY AND SAVE AND HOLD HARMLESS THE OWNER AND ITS OFFICERS, OFFICIALS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, DEMANDS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO COURT COSTS AND REASONABLE ATTORNEY FEES ASSERTED AGAINST OR INCURRED BY THE OWNER, AND INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BODILY AND PERSONAL INJURY, DEATH AND PROPERTY DAMAGE, RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE CONSULTANT OR ITS OFFICERS, SHAREHOLDERS, AGENTS, OR EMPLOYEES INCIDENTAL TO, RELATED TO, AND IN THE EXECUTION, OPERATION, OR PERFORMANCE OF THIS AGREEMENT.

Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

ARTICLE IX
INSURANCE

During the performance of the services under this Agreement, CONSULTANT shall maintain insurance in compliance with the requirements of **Exhibit D** which is attached hereto and made a part of this Agreement as if written word for word herein.

ARTICLE X
ALTERNATIVE DISPUTE RESOLUTION

The parties may agree to settle any disputes under this Agreement by submitting the dispute to mediation with each party bearing its own costs of mediation. No mediation arising out of or relating to this Agreement, involving one party's disagreement may include the other party to the disagreement without the other's approval. Mediation will not be a condition precedent to suit.

ARTICLE XI
TERMINATION OF AGREEMENT

- A. Notwithstanding any other provision of this Agreement, either party may terminate by giving thirty (30) days' advance written notice to the other party.
- B. This Agreement may be terminated in whole or in part in the event of either party substantially failing to fulfill its obligations under this Agreement. No such termination will be affected unless the other party is given (1) written notice (delivered by certified mail, return receipt requested) of intent to terminate and setting forth the reasons specifying the non-performance, and not less than fifteen (15) calendar days to cure the

failure; and (2) an opportunity for consultation with the terminating party prior to termination.

- C. If the Agreement is terminated prior to completion of the services to be provided hereunder, CONSULTANT shall immediately cease all services and shall render a final bill for services to the OWNER within thirty (30) days after the date of termination. The OWNER shall pay CONSULTANT for all services properly rendered and satisfactorily performed and for reimbursable expenses to termination incurred prior to the date of termination, in accordance with Article V "Compensation." Should the OWNER subsequently contract with a new consultant for the continuation of services on the Project, CONSULTANT shall cooperate in providing information. The CONSULTANT shall turn over all documents prepared or furnished by CONSULTANT pursuant to this Agreement to the OWNER on or before the date of termination, but may maintain copies of such documents for its use.

ARTICLE XII
RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Approval by the OWNER shall not constitute, nor be deemed a release of the responsibility and liability of the CONSULTANT, its employees, associates, agents, subcontractors, and subconsultants for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the OWNER for any defect in the design or other work prepared by the CONSULTANT, its employees, subcontractors, agents, and consultants.

ARTICLE XIII
NOTICES

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

To CONSULTANT:

Weaver and Tidwell, L.L.P
 John DeBurro, CPA
 2300 N. Field St, Suite 100
 Dallas, TX 75201

To OWNER:

City of Denton
 Purchasing Manager –File 7284
 901B Texas Street
 Denton, Texas 76201

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

ARTICLE XIV
ENTIRE AGREEMENT

This Agreement and related exhibits constitute the complete and final expression of this Agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

ARTICLE XV
SEVERABILITY

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

ARTICLE XVI
COMPLIANCE WITH LAWS

The CONSULTANT shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as those laws may now read or hereinafter be amended.

ARTICLE XVII
DISCRIMINATION PROHIBITED

In performing the services required hereunder, the CONSULTANT shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, national origin or ancestry, age, or physical handicap.

ARTICLE XVIII
PERSONNEL

- A. The CONSULTANT represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, or have any contractual relations with the OWNER. CONSULTANT shall inform the OWNER of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.
- B. All services required hereunder will be performed by the CONSULTANT or under its supervision. All personnel engaged in work shall be qualified, and shall be authorized and permitted under state and local laws to perform such services.

ARTICLE XIX
ASSIGNABILITY

The CONSULTANT acknowledges that this Agreement is based on the demonstrated competence and specific qualifications of the CONSULTANT and is therefore personal as to the CONSULTANT. Therefore, the CONSULTANT shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the OWNER.

ARTICLE XX
MODIFICATION

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

ARTICLE XXI
MISCELLANEOUS

A. The following exhibits are attached to and made a part of this Agreement:

Exhibit A – RFQ 7284 – External Audit (on file at the purchasing office)

Exhibit B – Consultant’s Scope of Services Offer and Project Schedule

Exhibit C – Consultant’s Compensation Rate Sheet

Exhibit D – Consultant’s Insurance Requirements

What is called for by one exhibit shall be as binding as if called for by all. In the event of an inconsistency or conflict in this Agreement and any of the provisions of the exhibits, the inconsistency or conflict shall be resolved by giving precedence first to this Agreement then to the exhibits in the order in which they are listed above.

B. This Agreement shall be governed by, construed, and enforced in accordance with, and subject to, the laws of the State of Texas or federal law, where applicable, without regard to the conflict of law principles of any jurisdiction. In the event there shall be any dispute arising out of the terms and conditions of, or in connection with, this Agreement, the party seeking relief shall submit such dispute to the District Courts of Denton County or if federal diversity or subject matter jurisdiction exists, to the United States District Court for the Eastern District of Texas-Sherman Division.

C. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be team presented in proposal. However, nothing herein shall limit CONSULTANT from using other equally qualified and competent members of its firm to perform the services required herein.

D. CONSULTANT shall commence, carry on, and complete any and all projects with all applicable dispatch, in a sound, economical, and efficient manner and in accordance with the provisions hereof. In accomplishing the projects, CONSULTANT shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by the OWNER.

- E. The OWNER shall assist the CONSULTANT by placing at the CONSULTANT's disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project, and arranging for the access thereto, and make all provisions for the CONSULTANT to enter in or upon public and private property as required for the CONSULTANT to perform services under this Agreement.
- F. The captions of this Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of this Agreement.
- G. 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.

ARTICLE XXII
INDEPENDENT CONTRACTOR

CONSULTANT shall provide services to OWNER as an independent contractor, not as an employee of the OWNER. CONSULTANT shall not have or claim any right arising from employee status.

ARTICLE XXIII
RIGHT TO AUDIT

The OWNER shall have the right to audit and make copies of the books, records and computations pertaining to this agreement. The CONTRACTOR shall retain such books, records, documents and other evidence pertaining to this agreement during 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 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 this agreement, and to allow the OWNER 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 OWNER 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 business days of receipt of an invoice.

Failure to comply with the provisions of this section shall be a material breach of this contract and shall constitute, in the OWNER'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.

ARTICLE XXIV**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.

ARTICLE XXV**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, 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.

ARTICLE XXVI**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 OWNER 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.

ARTICLE XXVII
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.

IN WITNESS HEREOF, the City of Denton, Texas has caused this Agreement to be executed by its duly authorized City Manager, and CONSULTANT has executed this Agreement through its duly authorized undersigned officer on this date 7/29/2020.

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

CITY OF DENTON, TEXAS
“OWNER”

DocuSigned by:
David Gaines _____
C06778D32052461...
David Gaines
PRINTED NAME

DocuSigned by:
Todd Hileman _____
E776C711BA0D454...
AN, CITY MANAGER

Finance Director
TITLE

ATTEST:
CITY SECRETARY

Finance
DEPARTMENT

DocuSigned by:
Rosa Rios _____
1C5CA8C5E175493...

WEAVER AND TIDWELL, L.L.P
A TEXAS CORPORATION
“CONSULTANT”

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

DocuSigned by:
John Deburro _____
C198408F07EB458...

BY: Mack Peinward _____
7F9D328BF0204E5...

BY: JOHN DEBURRO

ITS: AUDIT PARTNER

2020-641300

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

EXHIBIT B

June 4, 2020

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

RE: Pricing Schedule for External Audit Services – RFQ #7284

As a partner of Weaver and Tidwell, L.L.P., (Weaver) I certify that I am entitled to represent the firm, empowered to submit this pricing schedule, and authorized to sign a contract with the City of Denton. The following pages present our cost proposal and billing schedules for providing financial auditing services that meet the requirements of your request for qualifications #7284.

Weaver prides itself on offering the capabilities of a much larger firm without the expense. With our streamlined operations, we can provide the knowledge and experience you need, combined with a personal touch and individual attention.

One of the most important factors in Weaver's ability to perform cost-efficient services is our function-specific approach to rendering professional services. Weaver can field a team with experience at every level. As a result, we can apply staff time at the most cost-effective levels and rates.

All-Inclusive Maximum Price

Services Included	FY2020	FY2021	FY2022	TOTAL
Audit of City of Denton financial statements and single audit for the year ending September 30	\$115,000	\$116,000	\$119,000	\$350,000
Agreed-upon Procedures Report for Texas Commission on Environmental Quality	\$1,500	\$1,500	\$1,500	\$4,500

This proposal is an irrevocable offer for a period of 120 days from the RFQ closing date. If you have any questions regarding this proposal or any other matter, please do not hesitate to contact me at any time.

Sincerely,



John DeBurro, CPA | Partner, Public Sector Assurance Services
Direct: 972.448.6970 | Email: john.deburro@weaver.com

EXHIBIT B**Billing Schedule**

We will bill the City as our work progresses. The proposed billing schedules are as follows:

Timing of Billing	FY2020	FY2021	FY2022
At the completion of interim fieldwork	\$24,000	\$24,000	\$25,000
January	\$33,000	\$33,500	\$34,500
February	\$33,000	\$33,500	\$34,500
March	\$25,000	\$25,000	\$25,000
Total	\$115,000	\$116,000	\$119,000

*the agreed-upon procedures engagement fee will be billed upon completion of the engagement

Out-of-pocket Expenses

As indicated in the previous pages, Weaver's fees are all-inclusive: we will not charge for travel or administrative expenses.

Rates for Additional Services

If the City requests additional services outside the established scope of work, Weaver will first discuss the services and associated costs with you.

EXHIBIT C**All-Inclusive Maximum Price**

Services Included	FY2020	FY2021	FY2022	TOTAL
Audit of City of Denton financial statements and single audit for the year ending September 30	\$115,000	\$116,000	\$119,000	\$350,000
Agreed-upon Procedures Report for Texas Commission on Environmental Quality	\$1,500	\$1,500	\$1,500	\$4,500

Timing of Billing	FY2020	FY2021	FY2022
At the completion of interim fieldwork	\$24,000	\$24,000	\$25,000
January	\$33,000	\$33,500	\$34,500
February	\$33,000	\$33,500	\$34,500
March	\$25,000	\$25,000	\$25,000
Total	\$115,000	\$116,000	\$119,000

*the agreed-upon procedures engagement fee will be billed upon completion of the engagement

Out-of-pocket Expenses

As indicated in the previous pages, Weaver's fees are all-inclusive: we will not charge for travel or administrative expenses.

Rates for Additional Services

If the City requests additional services outside the established scope of work, Weaver will first discuss the services and associated costs with you.

EXHIBIT C

Exhibit D

CITY OF DENTON INSURANCE REQUIREMENTS FOR CONTRACTORS

Bidder's attention is directed to the insurance requirements below. It is highly recommended that bidders confer with their respective insurance carriers or brokers to determine in advance of Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low bidder fails to comply strictly with the insurance requirements, that bidder may be disqualified from award of the contract. Upon bid award, all insurance requirements shall become contractual obligations, which the successful bidder 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 bid award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance, containing the bid 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 bid opening, since the insurance requirements may not be modified or waived after bid opening unless a written exception has been submitted with the 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- VII or better**.
- Any deductibles or self-insured retentions shall be declared in the bid 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 before the expiration date.*
- Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

[X] A. General Liability Insurance:

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

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

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

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

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

[X] Automobile Liability Insurance:

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than **\$500,000.00** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

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

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

[X] Workers' Compensation Insurance

Contractor shall purchase and maintain Worker's 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 Worker's 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 combined bodily injury and property damage per occurrence with a _____ aggregate.
- Professional Liability Insurance**
Professional liability insurance with limits not less than \$1,000,000 per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.
- Builders' Risk Insurance**
Builders' Risk Insurance, on an All-Risk form for 100% of the completed value shall be provided. Such policy shall include as "Named Insured" the City of Denton and all subcontractors as their interests may appear.
- Commercial Crime**
Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than _____ each occurrence are required.
- Additional Insurance**
Other insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the "Specific Conditions" of the contract specifications.

ATTACHMENT 1

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

A. Definitions:

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

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

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

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

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

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

Certificate Of Completion

Envelope Id: 1F76BA295E4B487293CD2F71C6E30E02	Status: Completed
Subject: Please DocuSign: City Council Contract 7284 External Audit	
Source Envelope:	
Document Pages: 23	Signatures: 5
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Erica Garcia
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	erica.garcia@cityofdenton.com
	IP Address: 198.49.140.104

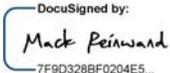
Record Tracking

Status: Original	Holder: Erica Garcia	Location: DocuSign
7/8/2020 3:11:45 PM	erica.garcia@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Erica Garcia erica.garcia@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: 198.49.140.104	Sent: 7/8/2020 3:19:32 PM Viewed: 7/8/2020 3:19:44 PM Signed: 7/8/2020 3:21:00 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: 7/8/2020 3:21:03 PM Viewed: 7/8/2020 3:27:19 PM Signed: 7/8/2020 3:27:31 PM
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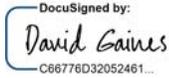
Mack Reinwand mack.reinwand@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 7/8/2020 3:27:34 PM Viewed: 7/8/2020 4:08:17 PM Signed: 7/8/2020 4:08:49 PM
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John Deburro john.deburro@weaver.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 98.158.244.194	Sent: 7/8/2020 4:08:52 PM Viewed: 7/8/2020 7:05:23 PM Signed: 7/8/2020 7:15:37 PM
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ID: d9700f7e-5996-4eac-bf60-ebf4d4159bd7

Signer Events	Signature	Timestamp
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David Gaines
 David.Gaines@cityofdenton.com
 Finance Director
 Security Level: Email, Account Authentication (None)

DocuSigned by:

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 Signature Adoption: Pre-selected Style
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 ID: e69c4a4f-7e71-43fc-ab92-59dbd8e72d6d

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

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 Signed: 7/29/2020 1:12:05 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Odd Hileman
 odd.hileman@cityofdenton.com
 City Manager
 City of Denton
 Security Level: Email, Account Authentication (None)

DocuSigned by:

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 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

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Electronic Record and Signature Disclosure:
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 ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21

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

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 Signed: 7/29/2020 3:59:43 PM

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:

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 Using IP Address: 198.49.140.104

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Electronic Record and Signature Disclosure:
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Agent Deliver Events	Status	Timestamp
Intermediary Deliver Events	Status	Timestamp
Certified Deliver Events	Status	Timestamp

Car Cop Events	Status	Timestamp
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: 7/8/2020 3:21:03 PM
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: 7/9/2020 9:55:27 AM
Colina Parker colina.parker@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 7/29/2020 3:59:46 PM
Madison Rorschach Madison.Rorschach@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 7/29/2020 3:59:47 PM
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Motor Events	Signature	Timestamp
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Signing Complete	Security Checked	7/29/2020 3:59:47 PM
Completed	Security Checked	7/29/2020 3:59:47 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:	<ul style="list-style-type: none"> •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 PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF DENTON AND WEAVER AND TIDWELL, L.L.P., AMENDING THE CONTRACT APPROVED BY THE CITY COUNCIL ON JULY 28, 2020, IN THE NOT-TO-EXCEED AMOUNT OF \$354,500.00; SAID FIRST AMENDMENT TO PROVIDE EXTERNAL AUDIT SERVICES FOR THE CITY OF DENTON'S FISCAL YEAR 2022-23, INCLUDING AN AUDIT OF THE FINANCIAL STATEMENTS AND SINGLE AUDIT FOR THE YEAR ENDING SEPTEMBER 30, 2023, AND AN AGREED-UPON PROCEDURES REPORT FOR THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AS MANAGED BY THE CITY AUDITOR'S OFFICE; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7284 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$123,500.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$478,000.00).

WHEREAS, on July 28, 2020, City Council awarded a contract to Weaver and Tidwell, L.L.P. in the amount of \$354,500.00, for External Audit services for the City of Denton; 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 Weaver and Tidwell, L.L.P., which is on file in the office of the Purchasing Agent, in the amount of One Hundred Twenty-Three Thousand Five Hundred and 0/100 (\$123,500.00) 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 \$478,000.00.

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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

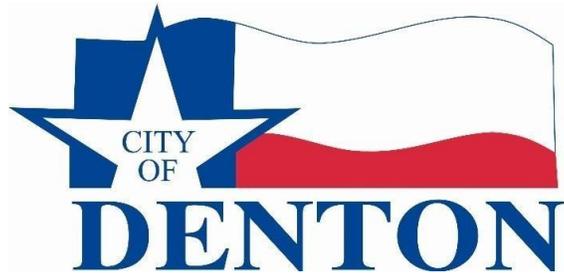
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

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: 2023.04.17 13:22:35 -05'00'



DocuSign City Council Transmittal Coversheet

PSA	7284
File Name	EXTERNAL AUDIT
Purchasing Contact	Christina Dormady
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND WEAVER AND TIDWELL, L.L.P
PSA 7284**

THE STATE OF TEXAS §

COUNTY OF DENTON §

THIS FIRST AMENDMENT TO CONTRACT 7284 (“Amendment”) by and between the City of Denton, Texas (“City”) and **Weaver and Tidwell, L.L.P** (“Consultant”); to that certain contract executed on 7/29/2020, in the original not-to-exceed amount of \$354,500 (the “Agreement”); for services related to **External Audit**.

WHEREAS, the City deems it necessary to further expand the services provided by Consultant to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$123,500 with this Amendment for an aggregate not-to-exceed amount of \$478,000; 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. The additional services described in Exhibit “A” of this Amendment, attached hereto and incorporated herein for all purposes, for professional services related to the **External Audit**, are hereby authorized to be performed by Consultant. For and in consideration of the additional services to be performed by Consultant, the City agrees to pay, based on the cost estimate detail attached as Exhibit “A”, a total fee, including reimbursement for non-labor expenses an amount not to exceed \$123,500.
2. This Amendment modifies the Agreement amount to provide an additional \$123,500 for the additional services with a revised aggregate not to exceed total of \$478,000.

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 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

“CONSULTANT”

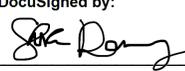
Weaver and Tidwell, L.L.P

By:

ATTEST
JESUS SALAZAR,
INTERIM CITY SECRETARY

By: DocuSigned by:

By:



AUTHORIZED SIGNATURE, TITLE

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

By:

By: DocuSigned by:

By:



4B070831B4AA438...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

DocuSigned by:
 Madison Rorschach
SIGNATURE PRINTED NAME

City Auditor

TITLE

City Auditor's Office

DEPARTMENT

EXHIBIT A

March 21, 2023

City of Denton
Procurement Department
901B Texas Street
Denton, Texas 76209

RE: Pricing Schedule for External Audit Services - RFQ #7284

As a partner of Weaver and Tidwell, L.L.P., (Weaver) I certify that I am entitled to represent the firm, empowered to submit this pricing schedule, and authorized to sign a contract with the City of Denton. The following pages present our cost proposal and billing schedules for providing financial auditing services that meet the requirements of your request for qualifications #7284.

Weaver prides itself on offering the capabilities of a much larger firm without the expense. With our streamlined operations, we can provide the knowledge and experience you need, combined with a personal touch and individual attention.

One of the most important factors in Weaver's ability to perform cost-efficient services is our function-specific approach to rendering professional services. Weaver can field a team with experience at every level. As a result, we can apply staff time at the most cost-effective levels and rates.

All-Inclusive Maximum Price

Services Included	FY2023
Audit of City of Denton financial statements and single audit for the year ending September 30	\$122,000
Agreed-upon Procedures Report for Texas Commission on Environmental Quality	\$1,500

This proposal is an irrevocable offer for a period of 120 days from the RFQ closing date. If you have any questions regarding this proposal or any other matter, please do not hesitate to contact me at any time.

Sincerely,



Sara Dempsey, CPA | Partner, Public Sector Assurance Services
Direct: (972) 448-6958 | Email: sara.dempsey@weaver.com

EXHIBIT A

Billing Schedule

We will bill the City as our work progresses. The proposed billing schedules are as follows:

Timing of Billing	FY2023
At the completion of interim fieldwork	\$25,600
January	\$35,400
February	\$35,400
March	\$25,600
Total	\$122,000

*the agreed-upon procedures engagement fee will be billed upon completion of the engagement

Out-of-pocket Expenses

As indicated in the previous pages, Weaver's fees are all-inclusive: we will not charge for travel or administrative expenses.

Rates for Additional Services

If the City requests additional services outside the established scope of work, Weaver will first discuss the services and associated costs with you.

EXHIBIT A

All-Inclusive Maximum Price

Services Included	FY2023
Audit of City of Denton financial statements and single audit for the year ending September 30	\$122,000
Agreed-upon Procedures Report for Texas Commission on Environmental Quality	\$1,500

Timing of Billing	FY2023
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Total	\$122,000

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Rates for Additional Services

If the City requests additional services outside the established scope of work, Weaver will first discuss the services and associated costs with you.

Certificate Of Completion

Envelope Id: 4578AB4D8D79447DB45000EA3A2FC8BB	Status: Sent
Subject: Complete with DocuSign: 7284 1st Amendment Final	
Source Envelope:	
Document Pages: 6	Signatures: 3
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Christina Dormady
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	christina.dormady@cityofdenton.com
	IP Address: 198.49.140.10

Record Tracking

Status: Original	Holder: Christina Dormady	Location: DocuSign
4/7/2023 4:20:30 PM	christina.dormady@cityofdenton.com	

Signer Events

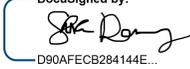
Signer Events	Signature	Timestamp
Christina Dormady christina.dormady@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 4/7/2023 4:35:44 PM Viewed: 4/7/2023 4:35:59 PM Signed: 4/7/2023 4:36:09 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/7/2023 4:36:11 PM Viewed: 4/10/2023 8:16:59 AM Signed: 4/10/2023 8:18:39 AM
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Marcella Lunn marcella.lunn@cityofdenton.com Mack Reinwand City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/10/2023 8:18:41 AM Viewed: 4/10/2023 8:54:16 AM Signed: 4/10/2023 8:55:57 AM
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Sara Dempsey sara.dempsey@weaver.com Weaver and Tidwell LLP Security Level: Email, Account Authentication (None)	 Signature Adoption: Drawn on Device Using IP Address: 199.247.45.34	Sent: 4/10/2023 8:55:59 AM Viewed: 4/10/2023 8:59:48 AM Signed: 4/10/2023 9:00:02 AM
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Signer Events	Signature	Timestamp
<p>Madison Rorschach madison.rorschach@cityofdenton.com City Auditor City of Denton Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:  7F94A06651EE443...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 4/10/2023 9:00:04 AM Viewed: 4/10/2023 9:13:12 AM Signed: 4/10/2023 9:13:45 AM</p>

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<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	Sent: 4/10/2023 9:13:48 AM
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Electronic Record and Signature Disclosure:
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<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)</p>
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

<p>Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None)</p>
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Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; color: blue;">COPIED</div>	<p>Sent: 4/7/2023 4:36:11 PM</p>
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Electronic Record and Signature Disclosure:
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<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; color: blue;">COPIED</div>	<p>Sent: 4/10/2023 9:13:48 AM Viewed: 4/10/2023 9:54:41 AM</p>
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Carbon Copy Events	Status	Timestamp
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Electronic Record and Signature Disclosure:
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

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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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:	<ul style="list-style-type: none"> •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 76201
www.cityofdenton.com

Legislation Text

File #: ID 23-891, **Version:** 1

AGENDA CAPTION

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 Nexus Solutions USA, Inc. through February 28, 2025, for airport vegetation management; and declaring an effective date (File 7333 - extending a contract with Nexus Solutions USA, Inc., to February 28, 2025).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 Nexus Solutions USA, Inc. through February 28, 2025, for airport vegetation management; and declaring an effective date (File 7333 – extending a contract with Nexus Solutions USA, Inc., to February 28, 2025).

INFORMATION/BACKGROUND

On May 5, 2020, the City Council approved a three (3) year contract with Nexus Solutions USA, Inc. for the Airfield Vegetation Management Program for Denton Enterprise Airport. These services include one standard application of recommended chemicals to 150 acres, three (3) times a year, for the first year and 250 acres for the remaining two (2) years. The Airfield Vegetation Management Program helps reduce hazardous wildlife populations, reduces mowing cycles performed on the airfield, and promotes flight safety. The grass on the additional 100 acres was newly established and was deemed not ready to be added to the program. With the extension of the contract, we will now be adding the additional 100 acres to the program and will not be requiring any additional funds at this time.

On February 11, 2020, the City of Arlington awarded a contract to Nexus Solutions USA, Inc., through a competitive bid process. The dates of the contract are March 1, 2020, through February 28, 2023, with the option to renew for two additional one year periods which Arlington has extended. The contract includes three (3) standard applications of recommended chemicals per fiscal year. The City of Denton has an Interlocal Agreement in place with the City of Arlington, therefore staff recommends utilizing Arlington’s contract for the purchase of this service. Nexus Solutions' pricing under Arlington’s contract is the same as the City’s current contract resulting in no price increases.

Pricing obtained through the City of Arlington has been competitively bid and meets the statutory requirements of Texas Local Government Code 271.102.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On May 5, 2020, City Council approved a contract with Nexus Solutions USA, Inc., in the not-to-exceed amount of \$130,000 (Ordinance 20-869).

RECOMMENDATION

Award Amendment No. 1 with Nexus Solutions USA, Inc., to continue to provide airport vegetation management, for a contract extension through February 28, 2025.

PRINCIPAL PLACE OF BUSINESS

Nexus Solutions USA, Inc.
Galivants Ferry, SC

ESTIMATED SCHEDULE OF PROJECT

The term of the Agreement is extended until February 28, 2025.

FISCAL INFORMATION

These services will be funded from the Airport CIP RAMP Grant account 340101.6506. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$130,000.

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: Scott Gray 940-349-7744.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. 20-869

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO UTILIZE A CONTRACT THROUGH THE CITY OF ARLINGTON, FOR THE AIRFIELD VEGETATION MANAGEMENT PROGRAM AT DENTON ENTERPRISE AIRPORT, AS AWARDED BY THE CITY OF ARLINGTON IFB #20-0032; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 7333 – AWARDED TO NEXUS SOLUTIONS USA, INC. IN THE NOT-TO-EXCEED AMOUNT OF \$130,000).

WHEREAS, pursuant to Ordinance 2013-158, the City of Arlington 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 on behalf of the City of Denton; and

WHEREAS, the City Manager, or a designated employee, has reviewed and recommended that the herein described materials, equipment, supplies, or services can be purchased by the City through the City of Arlington IFB #20-0032 at less cost than the City would expend if bidding these items individually; 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 shown in the “File Number” referenced herein and on file in the office of the Purchasing Agent, are hereby accepted and approved as being the lowest responsible bids for such items:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
7333	Nexus Solutions USA, Inc.	\$130,000

SECTION 2. By the acceptance and approval of the items set forth in the referenced file number, the City accepts the offer of the persons submitting the bids to the City of Arlington IFB #20-0032 for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, conditions, specifications, standards, quantities and for the specified sums contained in the bid documents and related documents filed with the City of Arlington Bid #20-0032 and the purchase orders issued by the City.

SECTION 3. Should the City and persons submitting approved and accepted items set forth in the referenced file number wish to enter into a formal written agreement as a result of the City’s ratification of bids awarded by the City of Arlington, the City Manager, or his 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 and standards contained in the Proposal submitted to the City of Arlington, 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 his designee.

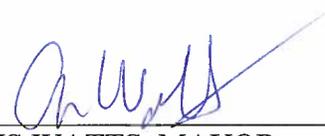
SECTION 5. By the acceptance and approval of the items set forth in the referenced file number, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approval purchase orders or pursuant to a written contract made pursuant thereto as authorized herein.

SECTION 6. 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 KEELY BRIGGS, the ordinance was passed and approved by the following vote [6 - 1]:

	Aye	Nay	Abstain	Absent
Mayor Chris Watts:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Gerard Hudspeth, District 1:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Keely G. Briggs, District 2:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Jesse Davis, District 3:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
John Ryan, District 4:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Deb Armintor, At Large Place 5:	<u> </u>	<u>✓</u>	<u> </u>	<u> </u>
Paul Meltzer, At Large Place 6:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>

PASSED AND APPROVED this the 5th day of May, 2020.



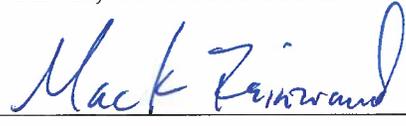
CHRIS WATTS, MAYOR

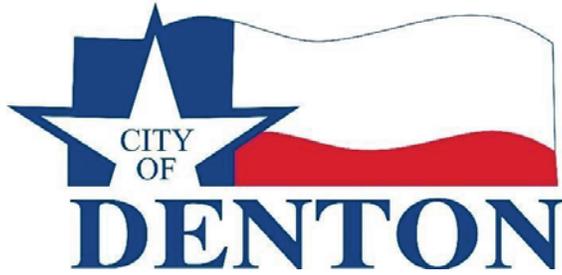
ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____



APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: _____



DocuSign City Council Transmittal Coversheet

FILE	7333
File Name	AIRFIELD VEGETATION MANAGEMENT
Purchasing Contact	Cori Power
City Council Target Date	May 5, 2020
Piggy Back Option	No
Contract Expiration	February 28, 2023
Ordinance	20-869

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND NEXUS SOLUTIONS USA, INC.
(File # 7333)**

THIS CONTRACT is made and entered into this date 05/05/2020, by and between **NEXUS SOLUTIONS USA, INC.**, a South Carolina Corporation, whose address is **333 Frye Rd, Galivants Ferry, SC 29544**, hereinafter referred to as "Supplier," 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 in accordance with the Supplier's price sheet, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "C"**. 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 Arlington Purchasing Contract #20-0032 with Nexus Solutions USA, Inc., (**Exhibit "B" on file at the office of the Purchasing Agent**);
- (c) Nexus Solutions USA, Inc. price sheet (**Exhibit "C"**);
- (d) City of Denton Standard Terms and Conditions (**Exhibit "D"**);
- (e) Certificate of Interested Parties Electronic Filing (**Exhibit "E"**);
- (f) Insurance Requirements (**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

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***
File 7333

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:
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AUTHORIZED SIGNATURE

Printed Name: Johnny Staples

Title: President

843-443-5778

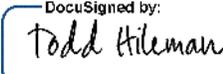
PHONE NUMBER

jstaples@nexus4me.com

4328 EMAIL ADDRESS

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

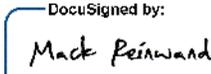
CITY OF DENTON, TEXAS

BY:  _____
DocuSigned by:
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TODD HILEMAN
CITY MANAGER

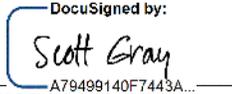
ATTEST:
ROSA RIOS, CITY SECRETARY

BY:  _____
DocuSigned by:
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APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY:  _____
DocuSigned by:
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THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

 _____
DocuSigned by:
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SIGNATURE Scott Gray
PRINTED NAME

Director

TITLE

Airport, Capital Planning, Facilities

DEPARTMENT

Exhibit A
Special Terms and Conditions

1. Contract Term

The contract term will coincide with the expiration date of February 28, 2023, and effective from date of award or notice to proceed as determined by the City of Denton Purchasing Department.

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. 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.

2. Total Contract Amount

The contract total shall not exceed \$130,000.00. Pricing shall be per Exhibit C attached.

Exhibit C



BID PRICE SCHEDULE FOR 20-0032

DESCRIPTION	# of Applications	UNIT	UNIT PRICE	EXT. PRICE (# of Applications * Unit Price)
Bids must be submitted on the form furnished by the City and in accordance with the specifications by the estimated quantities listed below. Estimated quantities listed are based upon the best available data and serve only as a guide and in no way represents an intended or guaranteed amount. As stewards of public funds, the City maintains all adopted budgetary parameters in the performance of its contracts. The ability to maintain a sense of fiscal responsibility shall be favorably considered in the evaluation of submittals. The City reserves the right to purchase according to actual need and may or may not meet or exceed the estimated quantities shown.				
1	3/Year	JA	\$10,400.00	\$31,200.00
Review of the created Airfield Vegetation Management Program (AVMP) and one standard application of recommended chemicals to 160 acres (Unit Price). The annual contract will include 3 standard applications per year.				
2	1	1 Acre	\$20.00	\$20.00
Single application of additional target chemicals to 1 acre, incorporated into the standard application, <u>as may</u> be recommended.				
3	1	1 Acre	\$25.00	\$25.00
Single application of year-round fire ant control to 1 acre, incorporated into the standard application.				
4	1	1 Acre	\$895.00	\$895.00
Single application of 50/50 mix of hulled and un-hulled Bermuda grass seed to 1 acre.				
5	sum of lines 1-4		YEAR 1 TOTAL	\$32,140.00
6	sum of lines 1-4		YEAR 2 TOTAL	\$32,140.00
7	sum of lines 1-4		YEAR 3 TOTAL	\$32,140.00
8	sum of lines 5-7		3-YEAR GRAND TOTAL	\$96,420.00
Company Name:	Nexus Solutions USA, Inc.		Signature:	

In accordance with the terms, conditions, and scope of goods or services set forth herein, the Bidder hereby submits the aforementioned prices listed.

Company Name:	Nexus Solutions USA, Inc.		Signature:	
Product shipping from:	Texas, USA		Delivery (days) after ARO:	10 days
Above Prices are F.O.B. DELIVERED		Terms: NET 30	Pricing: FIRM	

Exhibit D
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.

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

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

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

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

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

10. WORKFORCE

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

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

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

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

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

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

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, 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.

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

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

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

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual

or damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

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

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

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

14. TRAVEL EXPENSES: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

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

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

17. RIGHT TO AUDIT:

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written

request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

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

18. SUBCONTRACTORS:

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

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

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

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

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

19. WARRANTY-PRICE:

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

B. The Contractor certifies that the prices in the Offer have been arrived at independently without

consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

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

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

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

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

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

not impair the City's rights under this section.

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

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

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

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

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

27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

hereof.

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

30. **DELAYS:**

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

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

31. **INDEMNITY:**

A. Definitions:

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

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

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

A. General Requirements:

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

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

- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

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

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

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse 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 the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee

information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

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

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

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

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

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

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

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

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

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

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 Contract.

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

49. **DISPUTE RESOLUTION:**

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

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of

such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

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

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

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

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

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

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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

55. **EQUAL OPPORTUNITY**

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

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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

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. City's standard terms and conditions**
- 3. Purchase order**
- 4. Supplier terms and conditions**

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.

Exhibit F
INSURANCE REQUIREMENTS AND
WORKERS' COMPENSATION REQUIREMENTS

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

STANDARD PROVISIONS:

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

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

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
 - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.
 - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
 - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- *Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.*
- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the

contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

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.

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.

Builders' Risk Insurance

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

Environmental Liability Insurance

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

Riggers Insurance

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

Commercial Crime

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

Additional Insurance

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

ATTACHMENT 1**[] Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities****A. Definitions:**

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

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

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

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - 1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - 2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project

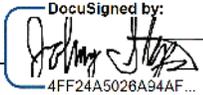
and for one year thereafter.

- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - 1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - 2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - 3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 4. obtain from each other person with whom it contracts, and provide to the contractor:
 - a. a certificate of coverage, prior to the other person beginning work on the project; and
 - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - 7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-

Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

Exhibit 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.			
<p>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).</p> <p>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.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>			
1	Name of vendor who has a business relationship with local governmental entity. NEXUS SOLUTIONS USA, INC.		
2	<input type="checkbox"/> 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 7 th 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. <div style="text-align: center;"> <u>Chase Patterson</u> Name of Officer </div> <p>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.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>D. Describe each employment or business and family relationship with the local government officer named in this section. none </p>		
4	<input checked="" type="checkbox"/> I have no Conflict of Interest to disclose.		
5			4/7/2020 _____ Date
	_____ g business with the governmental entity		

Certificate Of Completion

Envelope Id: AA75C87B02E3400DBA0B69171FD6C860	Status: Completed
Subject: Please DocuSign: City Council Contract 7333 Airfield Vegetation Management	
Source Envelope:	
Document Pages: 31	Signatures: 6
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Cori Power
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	cori.power@cityofdenton.com
	IP Address: 198.49.140.104

Record Tracking

Status: Original	Holder: Cori Power	Location: DocuSign
4/2/2020 5:21:10 PM	cori.power@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
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cori.power@cityofdenton.com		Viewed: 4/2/2020 5:26:54 PM
Buyer		Signed: 4/2/2020 5:27:56 PM
City of Denton	Using IP Address: 198.49.140.104	
Security Level: Email, Account Authentication (None)		

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lori.hewell@cityofdenton.com		Viewed: 4/2/2020 5:34:18 PM
Purchasing Manager		Signed: 4/2/2020 5:35:15 PM
City of Denton	Signature Adoption: Pre-selected Style	
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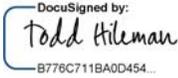
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mack.reinwand@cityofdenton.com		Viewed: 4/6/2020 4:20:39 PM
City of Denton		Signed: 4/6/2020 4:34:19 PM
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Johnny Staples		Sent: 4/6/2020 4:34:22 PM
jstaples@nexus4me.com		Viewed: 4/7/2020 6:02:36 AM
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Signer Events	Signature	Timestamp
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<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p>	<p>Completed</p> <p>Using IP Address: 198.49.140.104</p>	<p>Sent: 4/7/2020 7:19:55 AM Viewed: 5/6/2020 8:22:30 AM Signed: 5/6/2020 8:23:33 AM</p>
<p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		
<p>Todd Hileman Todd.Hileman@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:  B776C711BA0D454...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 47.186.192.80</p>	<p>Sent: 5/6/2020 8:23:36 AM Viewed: 5/6/2020 9:38:59 AM Signed: 5/6/2020 9:39:05 AM</p>
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<p>Rosa Rios rosa.rios@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:  1C5CA8C5E175493...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150</p>	<p>Sent: 5/6/2020 9:39:08 AM Viewed: 5/6/2020 1:01:59 PM Signed: 5/6/2020 1:02:48 PM</p>
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Agent Deliver Events	Status	Timestamp
Intermediar Deliver Events	Status	Timestamp
Certified Deliver Events	Status	Timestamp
Car on Cop Events	Status	Timestamp
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 4/2/2020 5:27:58 PM Viewed: 5/6/2020 1:38:47 PM</p>
<p>Electronic Record and Signature Disclosure:</p>		

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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

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Sent: 4/7/2020 7:19:53 AM

Jane Richardson
 jane.richardson@cityofdenton.com
 Assistant City Secretary
 City of Denton
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
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Zolaina Parker
 Zolaina.Parker@cityofdenton.com
 City of Denton
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
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Chase Patterson
 Chase.Patterson@cityofdenton.com
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
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Sent: 5/6/2020 1:02:51 PM

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Contract Administrator
 City of Denton
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
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Electronic Record and Signature Disclosure
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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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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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- 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:	<ul style="list-style-type: none"> •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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- 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 NEXUS SOLUTIONS USA, INC. THROUGH FEBRUARY 28, 2025, FOR AIRPORT VEGETATION MANAGEMENT; AND DECLARING AN EFFECTIVE DATE (FILE 7333 – EXTENDING A CONTRACT WITH NEXUS SOLUTIONS USA, INC., TO FEBRUARY 28, 2025).

WHEREAS, Ordinance 20-869 authorized a contract to Nexus Solutions USA, Inc. for the Airfield Vegetation Management Program at Denton Enterprise Airport, 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 20-869 be authorized between the City and Nexus Solutions USA, Inc., to expire on February 28, 2025; 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 Nexus Solutions USA, Inc., authorized by Ordinance 20-869, is hereby extended under File 7333 until February 28, 2025.

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 File 7333 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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

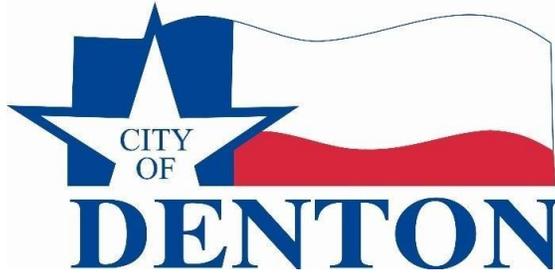
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

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: 2023.04.17 13:25:28 -05'00'



DocuSign City Council Transmittal Coversheet

FILE	7333
File Name	Airfield Vegetation Management
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND NEXUS SOLUTIONS USA, INC

THIS FIRST AMENDMENT TO CONTRACT 7333 (this “Amendment”) by and between the City of Denton, Texas (“City”) and NEXUS SOLUTIONS USA, INC. (“Contractor”) to that certain contract executed on May 5, 2020 in the original not-to-exceed amount of \$130,000 (the “Agreement”); for services related to Airport Vegetation Management.

WHEREAS, the City deems it necessary to further expand the services provided by Contractor to the City pursuant to the terms of the Agreement, and to provide an additional one (1) year term with the option for an additional one (1) year renewal; and

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:

1. This Amendment modifies the Agreement to provide an additional one (1) year term with the option for an additional one (1) year renewal for additional services and materials to be provided in accordance with the terms of the Agreement.

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 _____.

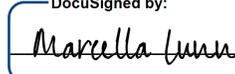
“CONTRACTOR”
Nexus Solutions USA, Inc

DocuSigned by:
By: 
AUTHORIZED SIGNATURE, TITLE

“CITY”
CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

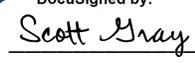
APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
By: 
4B070831B4AA438...

ATTEST:
ROSA RIOS, CITY SECRETARY

By: _____

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

DocuSigned by:
 Scott Gray
SIGNATURE PRINTED NAME

Airport Director
TITLE

Airport
DEPARTMENT

Certificate Of Completion

Envelope Id: 6F7A50AAF8834B18A942FEE61FFECCDC	Status: Sent
Subject: Please DocuSign: City Council Contract 7333 Airfield Vegetation Management Amendment 1	
Source Envelope:	
Document Pages: 3	Signatures: 3
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Gabby Leeper
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	Gabby.Leeper@cityofdenton.com
	IP Address: 198.49.140.104

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Signer Events

Signer Events	Signature	Timestamp
Gabby Leeper gabby.leeper@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.104	Sent: 3/28/2023 11:39:08 AM Viewed: 3/28/2023 11:39:22 AM Signed: 3/28/2023 11:42:17 AM

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Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/28/2023 11:42:20 AM Viewed: 3/28/2023 12:00:41 PM Signed: 3/28/2023 12:01:01 PM
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Marcella Lunn marcella.lunn@cityofdenton.com Mack Reinwand City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/28/2023 12:01:03 PM Viewed: 3/31/2023 2:19:27 PM Signed: 3/31/2023 2:19:52 PM
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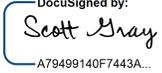
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Johnny Staples jstaples@nexus4me.com Security Level: Email, Account Authentication (None)	 Signature Adoption: Drawn on Device Using IP Address: 166.194.154.100 Signed using mobile	Sent: 3/31/2023 2:19:54 PM Resent: 4/10/2023 10:10:57 AM Viewed: 4/10/2023 9:45:26 PM Signed: 4/10/2023 9:46:38 PM
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ID: e9e4849f-fcd1-4970-b9eb-f9bd9a7f4b0e

Signer Events	Signature	Timestamp
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Scott Gray
 scott.gray@cityofdenton.com
 Airport Director
 x
 Security Level: Email, Account Authentication (None)

DocuSigned by:

 A79499140F7443A...
 Signature Adoption: Pre-selected Style
 Using IP Address: 66.52.82.51
 Signed using mobile

Sent: 4/10/2023 9:46:40 PM
 Viewed: 4/10/2023 9:47:11 PM
 Signed: 4/10/2023 9:47:41 PM

Electronic Record and Signature Disclosure:
 Accepted: 4/10/2023 9:47:11 PM
 ID: 6d807177-8b4a-4f1f-b118-cbb704731cd2

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

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Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication (None)

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Rosa Rios
 rosa.rios@cityofdenton.com
 Security Level: Email, Account Authentication (None)

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 Accepted: 4/6/2023 9:38:14 AM
 ID: 5101cc7f-22ec-4658-b927-8f4d467d418b

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
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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 City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign Chase Patterson chase.patterson@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/28/2022 12:05:43 PM ID: 753146b8-2a81-4287-862f-1425e9b38354	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 4/10/2023 9:47:44 PM Viewed: 4/11/2023 8:04:15 AM

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	3/28/2023 11:39:08 AM
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Payment Events	Status	Timestamps
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- 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:	<ul style="list-style-type: none"> •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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City of Denton

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

Legislation Text

File #: ID 23-892, Version: 1

AGENDA CAPTION

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 Innovative Transportation Solutions, Inc., for transportation consulting services on various projects for the Capital Projects Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8179 - Professional Services Agreement for consulting services awarded to Innovative Transportation Solutions, Inc., for two (2) years, with the option for three (3) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$630,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 Innovative Transportation Solutions, Inc., for transportation consulting services on various projects for the Capital Projects Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8179 – Professional Services Agreement for consulting services awarded to Innovative Transportation Solutions, Inc., for two (2) years, with the option for three (3) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$630,000.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

Innovative Transportation Solutions, Inc. (ITS) has provided the City of Denton with quality transportation consultant services since 2002. ITS has been able to identify and produce many opportunities to leverage municipal funds with county, regional, state, and federal funds to advance transportation infrastructure projects throughout the City of Denton and Denton County improving mobility for Denton residents.

ITS provides a unique service to the City of Denton and the continued use of ITS services is integral to the development of future transportation infrastructure for the City of Denton. It is expected this contract will result in an overall savings of tax dollars above and beyond the expenditure for these services. ITS was integral in assisting the City of Denton in securing over 50 million dollars in funding as a part of the County 2023 TRIP bond. ITS's extensive knowledge regarding State and regional funding opportunities will be extremely important over the course of the proposed contract as the Texas Department of Transportation (TxDOT) develops a procurement method for implementing Phase II of the 35 Express project, Loop 288 West project, and facilitating funding for the proposed FM 1515/Airport Road widening project.

Request for Qualifications (RFQ) for professional surveying services was sent to 838 prospective firms, including 31 Denton firms, for these services. In addition, the RFQ was placed on the Procurement website for prospective respondents to download, and advertised in the local newspaper. Three (3) statements of qualifications (SOQ) were received. The SOQs were evaluated based on published criteria including identification and understanding of the City's requirements, past performance and experience, experience with specific issues of the project, qualifications of key personnel, creativity and thoroughness of proposed approach and/or methodology to providing services, and availability and dedication to the city of Denton

projects. Based upon this evaluation, the recommended award is to Innovative Transportation Solutions, Inc., and is determined to be the most qualified firm for the City.

NIGP Code Used for Solicitation:	918 - (Service Only) - Consulting Services
Notifications sent for Solicitation sent in IonWave:	838
Number of Suppliers that viewed Solicitation in IonWave:	33
HUB-Historically Underutilized Business Invitations sent out:	103
SBE-Small Business Enterprise Invitations sent out:	352
Responses from Solicitation:	3

RECOMMENDATION

Award a contract with Innovative Transportation Solutions, Inc., for transportation consulting services on various projects for the Capital Projects Department, in a two (2) year, with the option for three (3) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$630,000.

PRINCIPAL PLACE OF BUSINESS

Innovative Transportation Solutions, Inc.
Farmers Branch, TX

ESTIMATED SCHEDULE OF PROJECT

This is an initial two (2) year contract with options to extend the contract for three (3) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

These services will be funded from Capital Projects/Engineering account 840100.7879. Requisition #159656 has been entered into the Purchasing software system in the amount of \$126,000. The budgeted amount for this item is \$630,000.

EXHIBITS

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

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Trevor Crain, 940-349-7426.

Legal point of contact: Marcella Lunn at 940-349-8333.

Exhibit 2
RFQ 8179 - Evaluation Sheet for Transportation Consulting Services

		Respondent's Business Name:	Innovative Transportation Solutions, Inc.	Aguirre & Fields, LP	NSC Engineering PLLC
		Principal Place of Business (City and State):	Farmers Branch, TX	Sugar Land, TX	Carrollton, TX
Item #	Scoring Criteria				
1	Experience and qualifications of the Respondent and key personnel available for this project - 20%	20.00	15.00	11.00	
2	Experience of the Firm - 20%	20.00	13.00	12.00	
3	Past Performance - 30%	27.00	19.50	18.00	
4	Identification and understanding of the City's requirements - 10%	9.50	6.00	7.00	
5	Creativity and thoroughness of proposed approach and/or methodology to providing services - 10%	7.00	6.50	6.50	
6	Availability and dedication to City of Denton projects - 10%	7.50	7.50	6.50	
Total Score:		91.00	67.50	61.00	

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 INNOVATIVE TRANSPORTATION SOLUTIONS, INC., FOR TRANSPORTATION CONSULTING SERVICES ON VARIOUS PROJECTS FOR THE CAPITAL PROJECTS DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8179 – PROFESSIONAL SERVICES AGREEMENT FOR CONSULTING SERVICES AWARDED TO INNOVATIVE TRANSPORTATION SOLUTIONS, INC., FOR TWO (2) YEARS, WITH THE OPTION FOR THREE (3) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$630,000.00).

WHEREAS, Innovative Transportation Solutions, Inc., the professional 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, this procurement was undertaken as part of the City’s governmental function; 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 authorized to enter into the professional service contract attached hereto with Innovative Transportation Solutions, Inc., for transportation consulting services on various projects for the Capital Projects Department.

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, Texas 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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

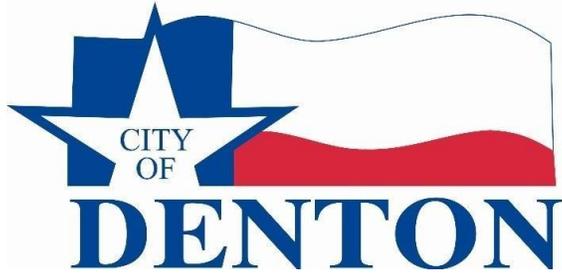
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  Digitally signed by Marcella Lunn
 DN: cn=Marcella Lunn, o=City of Denton, email=marcella.lunn@cityofdenton.com, c=US
 Date: 2023.04.17 13:27:14 -05'00'



DocuSign City Council Transmittal Coversheet

RFQ	8179
File Name	Transportation Consulting Services
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**PROFESSIONAL SERVICES AGREEMENT
FOR CONSULTING SERVICES
FILE 8179**

STATE OF TEXAS §

COUNTY OF DENTON §

THIS AGREEMENT (the “Agreement”) is made and entered into on _____, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called “OWNER” and Innovative Transportation Solutions, Inc., with its corporate office at 2701 Valley View Lane, Farmers Branch, TX 75234, hereinafter called “CONSULTANT,” acting herein, by and through their duly authorized representatives.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**ARTICLE I
CONSULTANT AS INDEPENDENT CONTRACTOR**

The OWNER has selected CONSULTANT on the basis of demonstrated competence and qualifications to perform the services herein described for a fair and reasonable price pursuant to Chapter 2254 of the Texas Government Code. The OWNER hereby contracts with the CONSULTANT as an independent contractor and not as an employee, and as such, the OWNER will not assert control over the day-to-day operations of the CONSULTANT. The CONSULTANT is customarily engaged to provide services as described herein independently and on a nonexclusive basis in the course of its business. This Agreement does not in any way constitute a joint venture between OWNER and CONSULTANT. The CONSULTANT hereby agrees to perform the services described herein based on the skills required for the scope of work in connection with the Project as stated in the sections to follow, with diligence and in accordance with the highest professional standards customarily obtained for such services in the State of Texas. The professional services set out herein are in connection with the following described project:

The Project shall include, without limitation, Transportation Consulting Services, as described in Exhibit A, which is on file at the purchasing office and incorporated herein (the “Project”).

**ARTICLE II
SCOPE OF BASIC SERVICES**

The CONSULTANT shall perform the following services in a professional manner:

- A. The CONSULTANT shall perform all those services as necessary and as described in the OWNER's RFQ – 8179 Transportation Consulting Services, which is on file at the purchasing office and made a part hereof as **Exhibit A** as if written word for word herein.
- B. To perform all those services set forth in CONSULTANT's proposal, which proposal is attached hereto and made a part hereof as **Exhibit B** as if written word for word herein.
- C. CONSULTANT shall perform all those services set forth in individual task orders, as described in **Exhibit B**, which shall be attached to this Agreement and made a part hereof.
- D. If there is any conflict between the terms of this Agreement and the exhibits attached to this Agreement, the terms and conditions of this Agreement will control over the terms and conditions of the attached exhibits or task orders.

ARTICLE III **ADDITIONAL SERVICES**

Additional services to be performed by the CONSULTANT, if authorized by the OWNER, which are not included in the above-described Basic Services, may be negotiated as needed, per rates included in **Exhibit B**.

- A. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- B. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- C. Assisting OWNER in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- D. Assisting OWNER in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by CONSULTANT on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- E. Visits to the site in excess of the number of trips included in **Exhibit A**.
- F. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

ARTICLE IV
TIME OF COMPLETION

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, the contract term will be two (2) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional three (3) one-year period.

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. 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.

ARTICLE V
COMPENSATION

A. COMPENSATION TERMS:

1. "Subcontract Expense" is defined as expenses incurred by the CONSULTANT in employment of others in outside firms for services related to this agreement.
2. "Direct Non-Labor Expense" is defined as that expense for any assignment incurred by the CONSULTANT for supplies, transportation and equipment, travel, communications, subsistence, and lodging away from home, and similar incidental expenses in connection with that assignment.

B. BILLING AND PAYMENT: For and in consideration of the professional services to be performed by the CONSULTANT herein, the OWNER agrees to pay, based on the cost estimate detail at an hourly rate shown in **Exhibit B** which is attached hereto and made a part of this Agreement as if written word for word herein, a total fee, including reimbursement for direct non-labor expenses not to exceed \$630,000.

Partial payments to the CONSULTANT will be made on the basis of detailed monthly statements rendered to and approved by the OWNER through its City Manager or his designee; however, under no circumstances shall any monthly statement for services exceed the value of the work performed at the time a statement is rendered.

Nothing contained in this Article shall require the OWNER to pay for any work which is unsatisfactory, as reasonably determined by the City Manager or his designee, or which is not submitted in compliance with the terms of this Agreement. The OWNER shall not be required to make any payments to the CONSULTANT when the CONSULTANT is in default under this Agreement.

It is specifically understood and agreed that the CONSULTANT shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by the OWNER for any charge, expense, or reimbursement above the

maximum not to exceed fee as stated, without first having obtained written authorization from the OWNER. The CONSULTANT shall not proceed to perform the services listed in Article III "Additional Services," without obtaining prior written authorization from the OWNER.

- C. **ADDITIONAL SERVICES:** For additional services authorized in writing by the OWNER in Article III, the CONSULTANT shall be paid based on the Schedule of Charges at an hourly rate shown in **Exhibit B**. Payments for additional services shall be due and payable upon submission by the CONSULTANT and approval by the City staff, and shall be in accordance with subsection B hereof. Statements shall not be submitted more frequently than monthly.

- D. **PAYMENT:** If the OWNER fails to make payments due the CONSULTANT for services and expenses within thirty (30) days after receipt of the CONSULTANT's undisputed statement thereof, the amounts due the CONSULTANT will be paid interest in accordance with the Texas Government Code 2251.025. Additionally, the CONSULTANT may, after giving seven (7) days' written notice to the OWNER, suspend services under this Agreement until the CONSULTANT has been paid in full all amounts due for services, expenses, and charges. Nothing herein shall require the OWNER to pay the late charge if the OWNER reasonably determines that the work is unsatisfactory, in accordance with this Article V, "Compensation," there is a bona fide dispute concerning the amount due, or the invoice was not mailed to the address or in the form as described in this Agreement. The OWNER will notify CONSULTANT of any disputes within twenty-one (21) days of receipt of the invoice.

- E. **Invoices** shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299. A pro-forma invoice shall be sent to the contract administrator. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice or items; whichever is later, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

ARTICLE VI
OBSERVATION AND REVIEW OF THE WORK

The CONSULTANT will exercise reasonable care and due diligence in discovering and promptly reporting to the OWNER any defects or deficiencies in the work of the CONSULTANT or any subcontractors or subconsultants.

ARTICLE VII
OWNERSHIP OF DOCUMENTS

All documents prepared or furnished by the CONSULTANT (and CONSULTANT's subcontractors or subconsultants) pursuant to this Agreement are instruments of service and shall become the property of the OWNER upon the termination of this Agreement. The

CONSULTANT is entitled to retain copies of all such documents. The documents prepared and furnished by the CONSULTANT are intended only to be applicable to this Project, and OWNER's use of these documents in other projects shall be at OWNER's sole risk and expense. In the event the OWNER uses any of the information or materials developed pursuant to this Agreement in another project or for other purposes than specified herein, CONSULTANT is released from any and all liability relating to their use in that project.

ARTICLE VIII
INDEMNITY AGREEMENT

THE CONSULTANT SHALL INDEMNIFY AND SAVE AND HOLD HARMLESS THE OWNER AND ITS OFFICERS, OFFICIALS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, DEMANDS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO COURT COSTS AND REASONABLE ATTORNEY FEES ASSERTED AGAINST OR INCURRED BY THE OWNER, AND INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BODILY AND PERSONAL INJURY, DEATH AND PROPERTY DAMAGE, RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE CONSULTANT OR ITS OFFICERS, SHAREHOLDERS, AGENTS, OR EMPLOYEES INCIDENTAL TO, RELATED TO, AND IN THE EXECUTION, OPERATION, OR PERFORMANCE OF THIS AGREEMENT.

Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

ARTICLE IX
INSURANCE

During the performance of the services under this Agreement, CONSULTANT shall maintain insurance in compliance with the requirements of **Exhibit C** which is attached hereto and made a part of this Agreement as if written word for word herein.

ARTICLE X
ALTERNATIVE DISPUTE RESOLUTION

The parties may agree to settle any disputes under this Agreement by submitting the dispute to mediation with each party bearing its own costs of mediation. No mediation arising out of or relating to this Agreement, involving one party's disagreement may include the other party to the disagreement without the other's approval. Mediation will not be a condition precedent to suit.

ARTICLE XI
TERMINATION OF AGREEMENT

- A. Notwithstanding any other provision of this Agreement, either party may terminate by giving thirty (30) days' advance written notice to the other party.
- B. This Agreement may be terminated in whole or in part in the event of either party substantially failing to fulfill its obligations under this Agreement. No such termination will be affected unless the other party is given (1) written notice (delivered by certified mail, return receipt requested) of intent to terminate and setting forth the reasons specifying the non-performance, and not less than fifteen (15) calendar days to cure the failure; and (2) an opportunity for consultation with the terminating party prior to termination.
- C. If the Agreement is terminated prior to completion of the services to be provided hereunder, CONSULTANT shall immediately cease all services and shall render a final bill for services to the OWNER within thirty (30) days after the date of termination. The OWNER shall pay CONSULTANT for all services properly rendered and satisfactorily performed and for reimbursable expenses to termination incurred prior to the date of termination, in accordance with Article V "Compensation." Should the OWNER subsequently contract with a new consultant for the continuation of services on the Project, CONSULTANT shall cooperate in providing information. The CONSULTANT shall turn over all documents prepared or furnished by CONSULTANT pursuant to this Agreement to the OWNER on or before the date of termination, but may maintain copies of such documents for its use.

ARTICLE XII
RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Approval by the OWNER shall not constitute, nor be deemed a release of the responsibility and liability of the CONSULTANT, its employees, associates, agents, subcontractors, and subconsultants for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the OWNER for any defect in the design or other work prepared by the CONSULTANT, its employees, subcontractors, agents, and consultants.

ARTICLE XIII
NOTICES

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

To CONSULTANT:

Innovative Transportation Solutions, Inc.
John R. Polster
2701 Valley View Lane
Farmers Branch, TX 75234

To OWNER:

City of Denton
Purchasing Manager –File 8179
901B Texas Street
Denton, Texas 76201

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

ARTICLE XIV
ENTIRE AGREEMENT

This Agreement and related exhibits constitute the complete and final expression of this Agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

ARTICLE XV
SEVERABILITY

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

ARTICLE XVI
COMPLIANCE WITH LAWS

The CONSULTANT shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as those laws may now read or hereinafter be amended.

ARTICLE XVII
DISCRIMINATION PROHIBITED

In performing the services required hereunder, the CONSULTANT shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, national origin or ancestry, age, or physical handicap.

ARTICLE XVIII
PERSONNEL

- A. The CONSULTANT represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, or have any contractual relations with the OWNER. CONSULTANT shall inform the OWNER of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.

- B. All services required hereunder will be performed by the CONSULTANT or under its supervision. All personnel engaged in work shall be qualified, and shall be authorized and permitted under state and local laws to perform such services.

ARTICLE XIX
ASSIGNABILITY

The CONSULTANT acknowledges that this Agreement is based on the demonstrated competence and specific qualifications of the CONSULTANT and is therefore personal as to the CONSULTANT. Therefore, the CONSULTANT shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the OWNER.

ARTICLE XX
MODIFICATION

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

ARTICLE XXI
MISCELLANEOUS

- A. The following exhibits are attached to and made a part of this Agreement:

Exhibit A – RFQ – 8179 Transportation Consulting Services (on file at the purchasing office)

Exhibit B – Consultant’s Rate Sheet

Exhibit C – Consultant’s Insurance Requirements

What is called for by one exhibit shall be as binding as if called for by all. In the event of an inconsistency or conflict in this Agreement and any of the provisions of the exhibits, the inconsistency or conflict shall be resolved by giving precedence first to this Agreement then to the exhibits in the order in which they are listed above.

- B. This Agreement shall be governed by, construed, and enforced in accordance with, and subject to, the laws of the State of Texas or federal law, where applicable, without regard to the conflict of law principles of any jurisdiction. In the event there shall be any dispute arising out of the terms and conditions of, or in connection with, this Agreement, the party seeking relief shall submit such dispute to the District Courts of Denton County or if federal diversity or subject matter jurisdiction exists, to the United States District Court for the Eastern District of Texas-Sherman Division.

- C. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be John R. Polster. However, nothing herein shall limit CONSULTANT from using other equally qualified and competent members of its firm to perform the services required herein.
- D. CONSULTANT shall commence, carry on, and complete any and all projects with all applicable dispatch, in a sound, economical, and efficient manner and in accordance with the provisions hereof. In accomplishing the projects, CONSULTANT shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by the OWNER.
- E. The OWNER shall assist the CONSULTANT by placing at the CONSULTANT's disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project, and arranging for the access thereto, and make all provisions for the CONSULTANT to enter in or upon public and private property as required for the CONSULTANT to perform services under this Agreement.
- F. The captions of this Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of this Agreement.
- G. 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.

ARTICLE XXII
INDEPENDENT CONTRACTOR

CONSULTANT shall provide services to OWNER as an independent contractor, not as an employee of the OWNER. CONSULTANT shall not have or claim any right arising from employee status.

ARTICLE XXIII
RIGHT TO AUDIT

The OWNER shall have the right to audit and make copies of the books, records and computations pertaining to this agreement. The CONTRACTOR shall retain such books, records, documents and other evidence pertaining to this agreement during 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 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 this agreement, and to allow the OWNER 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 OWNER 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 business days of receipt of an invoice.

Failure to comply with the provisions of this section shall be a material breach of this contract and shall constitute, in the OWNER'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.

ARTICLE XXIV

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.

ARTICLE XXV

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.

ARTICLE XXVI

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.

ARTICLE XXVII

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.

ARTICLE XXVIII

Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

ARTICLE XXIX

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 Consultant submits a disclosure of interested parties (Form 1295) to the City at the time the Consultant submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Consultant will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The consultant 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 OWNER 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.

ARTICLE XXX
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 Consultant shall complete and submit the City's Conflict of Interest Questionnaire.

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 HEREOF, the City of Denton, Texas has caused this Agreement to be executed by its duly authorized City Manager, and CONSULTANT has executed this Agreement through its duly authorized undersigned officer on this date_____.

CONSULTANT

BY: John R Polster
AUTHORIZED SIGNATURE

Printed Name: John R Polster

Title: President

972-880-3183

PHONE NUMBER

jpolster@itsinc-tx.com

EMAIL ADDRESS

2023-980429

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY
CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn
4B070831B4AA436...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

DocuSigned by:
 Trevor Crain
7B46FEAB11BC4F2...
SIGNATURE PRINTED NAME

Director of Capital Projects
TITLE
Capital projects
DEPARTMENT



INNOVATIVE TRANSPORTATION SOLUTIONS INC.

2701 Valley View Lane ♦ Farmers Branch, Texas 75234 ♦ (972) 484-2525 ♦ (972) 484-4545

March 2, 2023

Ms. Erica Garcia
Buyer
City of Denton
Materials Management
901 B Texas Street
Denton, TX 76209

Dear Ms. Garcia:

In response to your request for pricing in relation to the contract between ITS and the City of Denton to continue providing transportation consultation services, this letter will serve as notification that ITS does not intend to ask for changes to the agreed upon contract amount as stated in the contract executed on March 6, 2018. We respectfully request to continue with an annual contract amount of \$126,000 made payable in monthly installments of \$10,500 per month as stated in the agreement. This fee covers all the services proposed in the contract, plus any additional assignments identified by city staff.

Cordially,

A handwritten signature in blue ink, appearing to read 'John R. Polster', is written over the word 'Cordially,'.

John R. Polster
President, ITS
Office: (972) 484-2525
Cell: (972) 880-3183

EXHIBIT B

| **RESPONSE TO RFQ #8179** | pricing sheet

INNOVATIVE TRANSPORTATION SOLUTIONS, INC.
SCHEDULE OF BILLABLE RATES

Principal	\$275 per hour
Program Manager	\$275 per hour
Contract Tech	\$105 per hour
Administrative Tech	\$ 75 per hour

Exhibit C

Bidder's attention is directed to the insurance requirements below. It is highly recommended that bidders confer with their respective insurance carriers or brokers to determine in advance of Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low bidder fails to comply strictly with the insurance requirements, that bidder may be disqualified from award of the contract. Upon bid award, all insurance requirements shall become contractual obligations, which the successful bidder 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 bid award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance, containing the bid 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 bid opening, since the insurance requirements may not be modified or waived after bid opening unless a written exception has been submitted with the 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- VII or better**.
- Any deductibles or self-insured retentions shall be declared in the bid 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 before the expiration date.***
- Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

[X] A. General Liability Insurance:

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an

occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

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

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

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

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

[X] Automobile Liability Insurance:

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than \$500,000.00 either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

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

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

[X] Workers' Compensation Insurance

Contractor shall purchase and maintain Worker's 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 Worker's 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 combined bodily injury and property damage per occurrence with a _____ aggregate.

Professional Liability Insurance

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

Builders' Risk Insurance

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

Commercial Crime

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

Additional Insurance

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

ATTACHMENT 1

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

A. Definitions:

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

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

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

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

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

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

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.

Innovative Transportation Solutions, 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.

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:

John R Polster

4/6/2023

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm>. 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: A31AAE865A7D457795927C4A319FDB23	Status: Sent
Subject: Please DocuSign: City Council Contract 8179 Transportation Consulting Services	
Source Envelope:	
Document Pages: 27	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Erica Garcia
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	erica.garcia@cityofdenton.com
	IP Address: 198.49.140.10

Record Tracking

Status: Original	Holder: Erica Garcia	Location: DocuSign
4/4/2023 9:43:31 AM	erica.garcia@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Erica Garcia erica.garcia@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 4/4/2023 9:53:53 AM Viewed: 4/4/2023 9:54:53 AM Signed: 4/4/2023 9:55:58 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)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/4/2023 9:56:00 AM Viewed: 4/4/2023 1:17:01 PM Signed: 4/4/2023 1:17:45 PM
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Electronic Record and Signature Disclosure:
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Marcella Lunn marcella.lunn@cityofdenton.com Mack Reinwand City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/4/2023 1:17:48 PM Viewed: 4/5/2023 4:32:20 PM Signed: 4/5/2023 4:34:14 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

John R Polster jpolster@itsinc-tx.com President Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 47.184.74.101	Sent: 4/5/2023 4:34:18 PM Viewed: 4/6/2023 12:20:20 PM Signed: 4/6/2023 12:22:13 PM
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ID: 949b9017-eccb-4676-92f0-0f9adca6da73

Signer Events	Signature	Timestamp
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Trevor Crain
 Trevor.Crain@cityofdenton.com
 Director of Capital Projects
 City of Denton
 Security Level: Email, Account Authentication (None)

DocuSigned by:

 7B46EEAB11BC4F2...
 Signature Adoption: Pre-selected Style
 Using IP Address: 174.246.96.250
 Signed using mobile

Sent: 4/6/2023 12:22:16 PM
 Viewed: 4/6/2023 12:41:22 PM
 Signed: 4/6/2023 12:42:05 PM

Electronic Record and Signature Disclosure:
 Accepted: 4/6/2023 12:41:22 PM
 ID: 510639cf-502a-46b0-ab0f-33a55ee83510

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

Sent: 4/6/2023 12:42:09 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Rosa Rios
 rosa.rios@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

COPIED

Sent: 4/4/2023 9:56:01 AM

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 Not Offered via DocuSign

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

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Sent: 4/6/2023 12:42:09 PM
Viewed: 4/10/2023 9:55:58 AM

City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Trevor Crain
Trevor.Crain@cityofdenton.com
Security Level: Email, Account Authentication
(None)
Electronic Record and Signature Disclosure:
Accepted: 4/6/2023 2:46:39 PM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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:	<ul style="list-style-type: none"> •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 76201
www.cityofdenton.com

Legislation Text

File #: ID 23-894, **Version:** 1

AGENDA CAPTION

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 Ben E Keith Company, for the supply of food and concessions at the Water Works Park and Civic Center Pool concession stands for the Parks and Recreation Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 7854-02 - awarded to Ben E Keith Company, 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 \$363,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 Ben E Keith Company, for the supply of food and concessions at the Water Works Park and Civic Center Pool concession stands for the Parks and Recreation Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 7854-02 – awarded to Ben E Keith Company, 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 \$363,000.00).

INFORMATION/BACKGROUND

Historically, the concession stands at the Water Works Park have been operated by Parks and Recreation Department (PARD) staff since the park opened in 2003. The Civic Center Pool concession stand has been operated by PARD since 2007. The concession stands offer food and refreshments during public swims and special events. A three-year history of concessions expenditures is as follows for Water Works Park and the Civic Center Pool:

FY 2017-2018	\$49,850.09
FY 2018-2019	\$55,500.89
FY 2020-2021	\$70,370.13
FY 2021-2022	\$84,021.17

PARD staff will be opening the Tidal Wave Concession Stand for Summer 2023 for extended park hours from 11 am - 7 pm. The stand was closed during the Summer of 2021 due to damage from the 2021 winter storm. With the extension of park operation hours to coincide with lunch and dinner times, staff is preparing for an increase in sales and expenditures for FY 2023-2024. Staff based the contract amount on an estimate from previous history and an anticipated increase in costs due to eco-friendly supplies.

Contracting out for concession supplies is a common practice in the aquatics industry. It allows the organization to receive the most competitive pricing and the efficiency of on-site delivery. The concession stands at the Water Works Park and the Civic Center Pool operate with a goal of a minimum of one hundred percent cost recovery. Data gathered from previous fiscal years confirm that operations at the concession stands have been a profitable venture for the City.

Request for Proposals was sent to 39 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. One (1) proposal was received and references were checked to ensure the vendor can provide

the services requested in the Scope of Work. The department is awarding the contract to Ben E Keith Company.

NIGP Code Used for Solicitation:	375, 380, 385
Notifications sent for Solicitation sent in IonWave:	39
Number of Suppliers that viewed Solicitation in IonWave:	8
HUB-Historically Underutilized Business Invitations sent out:	7
SBE-Small Business Enterprise Invitations sent out:	21
Responses from Solicitation:	1

RECOMMENDATION

Award a contract with Ben E Keith Company, for the supply of food and concessions at the Water Works Park and Civic Center Pool concession stands for the Parks and Recreation Department, 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 \$363,000.

PRINCIPAL PLACE OF BUSINESS

Ben E Keith Company
Fort Worth, 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 food and concessions items will be funded from 207002.6390 and 411160.6390. Requisition #159833 has been entered into the Purchasing software system in the amount of \$89,000. The budgeted amount for this item is \$363,000.

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: Monica Martin, 940-349-8808.

Legal point of contact: Marcella Lunn 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 CONTRACT WITH BEN E KEITH COMPANY, FOR THE SUPPLY OF FOOD AND CONCESSIONS AT THE WATER WORKS PARK AND CIVIC CENTER POOL CONCESSION STANDS FOR THE PARKS AND RECREATION DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 7854-02 – AWARDED TO BEN E KEITH COMPANY, 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 \$363,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the supply of food and concessions at the Water Works Park and Civic Center Pool concession stands 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 request for proposals; and

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

<u>RFP</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
7854-02	Ben E Keith Company	\$363,000.00

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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

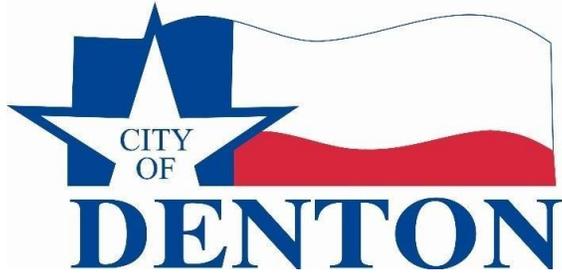
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

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@cityofd-
enton.com, c=US
Date: 2023.04.20 13:47:41
-05'00'



DocuSign City Council Transmittal Coversheet

RFP	7854-02
File Name	Supply of Concessions
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND BEN E KEITH COMPANY.
(CONTRACT 7854-02)**

THIS CONTRACT is made and entered into this date _____, by and between **Ben E Keith Company** a Texas corporation, whose address is 7650 Will Rogers Blvd, Fort Worth, TX 76140 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 and/or services in accordance with the City's document RFP 7854-02 - Supply of Food for Concessions, 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 RFP 7854-02 (**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

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 Contract # 7854-02

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.

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.

Contract # 7854-02

CONTRACTOR

BY: DocuSigned by:
Lee Griswold
724B7B6272924E7...
AUTHORIZED SIGNATURE

Printed Name: Lee Griswold

Title: District Sales Manager

9722075570
PHONE NUMBER

lmggriswold@benekeith.com
EMAIL ADDRESS

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
JESUS SALAZAR, INTERIM CITY
SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: DocuSigned by:
Marcella Luna
4B070631B4AA438...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

DocuSigned by:
Gary Packan Gary Packan
SIGNATURE PRINTED NAME

Director of Parks and Recreation
TITLE

Parks and Recreation
DEPARTMENT

Exhibit A

Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed \$363,000. Pricing shall be per Exhibit F attached.

2. The Quantities

The quantities indicated on Exhibit F 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.

3. Contract Terms

The contract term will be one (1) 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.

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.

Exhibit C
Standard Purchase Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

10. WORKFORCE

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

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

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

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

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, Contract # 7854-02

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

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

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

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

12. INVOICES:

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within Contract # 7854-02

thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

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

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

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

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

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

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

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

14. TRAVEL EXPENSES: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

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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

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has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

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

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

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

19. WARRANTY-PRICE:

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

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

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

20. WARRANTY – TITLE: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

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

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the

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Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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

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

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

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

27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

30. **DELAYS:**

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

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

31. **INDEMNITY:**

A. Definitions:

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

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE

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PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

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

A. General Requirements:

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:
City of Denton
Materials Management Department
901B Texas Street
Denton, Texas 76209
- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without

expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

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

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

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

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

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

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

33. CLAIMS: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse 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

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Act, Chapter 552, and Texas Government Code.

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

37. CONFIDENTIALITY: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute,

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acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

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

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

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

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

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

42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or
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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 their 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
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or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

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

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

49. DISPUTE RESOLUTION:

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

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the Contract # 7854-02

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 their authorized designee.

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

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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

55. EQUAL OPPORTUNITY

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

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

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

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

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

ii. "Cost of components" means -

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

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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

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
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affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

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

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

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

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

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

Exhibit D
INSURANCE REQUIREMENTS AND
WORKERS' COMPENSATION REQUIREMENTS

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

STANDARD PROVISIONS:

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

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

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
 - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.
 - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
 - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

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

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

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.

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.

[] **Builders' Risk Insurance**

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

[] **Environmental Liability Insurance**

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

[] **Riggers Insurance**

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

[] **Commercial Crime**

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

[] **Additional Insurance**

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

ATTACHMENT 1**[] Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities****A. Definitions:**

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

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

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

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

project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

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

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

Exhibit E
Certificate of Interested Parties Electronic Filing

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

Contractor will be required to furnish 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.

EXHIBIT F

Price will be determined at date of order placed based on the posted price on vendors platform, Entrée, plus an additional not to exceed markup rate of 12%.

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.

Ben E Keith Company

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

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

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

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes

No

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

4 I have no Conflict of Interest to disclose.

DocuSigned by:

Lee Griswold

4/20/2023

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm>. 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: 6B8C92E69033490ABB14449B3AB9E8AA
 Subject: Please DocuSign: City Council Contract 7854-02
 Source Envelope:
 Document Pages: 35
 Certificate Pages: 6
 AutoNav: Enabled
 Enveloped Stamping: Enabled
 Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent
 Envelope Originator:
 Erica Garcia
 901B Texas Street
 Denton, TX 76209
 erica.garcia@cityofdenton.com
 IP Address: 198.49.140.104

Record Tracking

Status: Original
 4/17/2023 11:13:45 AM
 Holder: Erica Garcia
 erica.garcia@cityofdenton.com

Location: DocuSign

Signer Events

Erica Garcia
 erica.garcia@cityofdenton.com
 Buyer
 City of Denton
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Signature

Completed
 Using IP Address: 198.49.140.104

Timestamp

Sent: 4/17/2023 11:17:54 AM
 Viewed: 4/17/2023 11:18:12 AM
 Signed: 4/17/2023 11:19:15 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


 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Sent: 4/17/2023 11:19:19 AM
 Viewed: 4/17/2023 11:19:46 AM
 Signed: 4/17/2023 11:20:59 AM

Marcella Lunn
 marcella.lunn@cityofdenton.com
 Mack Reinwand 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: 4/17/2023 11:21:01 AM
 Viewed: 4/17/2023 1:00:54 PM
 Signed: 4/17/2023 1:06:08 PM

Lee Griswold
 limgriswold@benekeith.com
 District Sales Manager
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
 Accepted: 4/20/2023 9:56:13 AM
 ID: 7144a801-6e40-4d41-99d1-5ac627799773


 Signature Adoption: Pre-selected Style
 Using IP Address: 130.45.5.41

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 Resent: 4/19/2023 11:01:16 AM
 Resent: 4/20/2023 8:46:02 AM
 Resent: 4/20/2023 9:43:44 AM
 Viewed: 4/20/2023 9:56:13 AM
 Signed: 4/20/2023 9:58:05 AM

Signer Events	Signature	Timestamp
<p>Gary Packan Gary.Packan@cityofdenton.com Director of Parks and Recreation Parks and Recreation Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:  AC6AE9F7A4264A9...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 4/20/2023 9:58:08 AM Viewed: 4/20/2023 10:23:22 AM Signed: 4/20/2023 10:23:43 AM</p>

Electronic Record and Signature Disclosure:
Accepted: 4/20/2023 10:23:22 AM
ID: e2196f19-b565-488c-bdde-402009699baf

<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	<p>Sent: 4/20/2023 10:23:46 AM</p>
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Hensley
sara.hensley@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Jesus Salazar
jesus.salazar@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 4/19/2023 11:07:17 AM
ID: 30bd57f7-b273-439e-b86c-6349853f566e

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

<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 4/17/2023 11:19:19 AM</p>
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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 City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign Monica Martin monica.martin@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 4/18/2023 2:34:46 PM ID: ea64e474-1f53-4c7b-98fa-1e3e15e1c7b2	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 4/20/2023 10:23:46 AM Viewed: 4/20/2023 10:26:15 AM

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/17/2023 11:17:54 AM
Envelope Updated	Security Checked	4/20/2023 8:46:01 AM
Envelope Updated	Security Checked	4/20/2023 8:46:02 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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:	<ul style="list-style-type: none"> •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 76201
www.cityofdenton.com

Legislation Text

File #: PD21-0007d, **Version:** 1

AGENDA CAPTION

Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas regarding a request by Aimee Bisset, 97 Land Company, LLC., on behalf of the owner, Tony Riley, to rezone approximately 20.92 acres from a Suburban Corridor (SC) District to a Planned Development Mixed-Use Neighborhood (PD-MN) District. The site is generally located at the northeast corner of Loop 288 and FM 428, in the City of Denton, Denton County, Texas. THE APPLICANT HAS WITHDRAWN THIS ITEM FROM CONSIDERATION. (PD21-0007d, Sherman Drive Mixed Use, Angie Manglaris).



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Department of Development Services

ACM: Cassey Ogden

DATE: May 2, 2023

SUBJECT

Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas regarding a request by Aimee Bisset, 97 Land Company, LLC., on behalf of the owner, Tony Riley, to rezone approximately 20.92 acres from a Suburban Corridor (SC) District to a Planned Development Mixed-Use Neighborhood (PD-MN) District. The site is generally located at the northeast corner of Loop 288 and FM 428, in the City of Denton, Denton County, Texas. **THE APPLICANT HAS WITHDRAWN THIS ITEM FROM CONSIDERATION.** (PD21-0007d, Sherman Drive Mixed Use, Angie Manglaris).

BACKGROUND

The is a rezoning request from Suburban Corridor (SC) District to a Planned Development (PD) District with a Mixed-Use Neighborhood (MN) base zoning district to facilitate the development and site design of a multifamily development. At the April 12, 2023, Planning and Zoning Commission Meeting, the Planning and Zoning Commission considered this request and held the public hearing. The Commission voted (6-1) to recommend denial of the request.

Following the Planning and Zoning Commission Meeting, the applicant requested to withdraw this item from consideration on April 13, 2023. No further action is needed.

EXHIBITS

1. Agenda Information Sheet

Respectfully submitted:
Tina Firgens, AICP
Deputy Director of Development Services/
Planning Director

Prepared by:
Angie Manglaris, AICP
Senior Planner



City of Denton

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

Legislation Text

File #: ID 23-753, **Version:** 1

AGENDA CAPTION

Consider adoption of an ordinance of the City of Denton, Texas, amending the fiscal year 2022-2023 budget and annual program of services of the City of Denton to allow for adjustments to the Tourist & Convention Fund of two hundred and fifty thousand dollars (\$250,000) for the purpose of providing funding to the Denton Black Film Festival Institute, Inc. to support in part the production of a documentary series on Quakertown; declaring a public purpose; directing the City Secretary attach a copy to the 2022-2023 budget; requiring approval by at least five votes; and providing a severability clause, an open meetings clause, and an effective date.



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Cassey Ogden

DATE: May 2, 2023

SUBJECT

Consider adoption of an ordinance of the City of Denton, Texas, amending the fiscal year 2022-2023 budget and annual program of services of the City of Denton to allow for adjustments to the Tourist & Convention Fund of two hundred and fifty thousand dollars (\$250,000) for the purpose of providing funding to the Denton Black Film Festival Institute, Inc. to support in part the production of a documentary series on Quakertown; declaring a public purpose; directing the City Secretary attach a copy to the 2022-2023 budget; requiring approval by at least five votes; and providing a severability clause, an open meetings clause, and an effective date.

BACKGROUND

City staff is proposing to amend the City's FY 2022-2023 Tourist & Convention Fund budget as follows: Increase appropriations in the Tourist & Convention Fund by \$250,000 for the purpose of supporting a Quakertown docuseries. The Denton Black Film Festival Institute (DBFFI) will be working with South Road Pictures to produce a four-part documentary series on the history of Quakertown.

This amendment increases the expenditure budget for the Tourist & Convention Fund from \$3,814,355 to \$4,064,355.

RECOMMENDATION

Staff recommends the adoption of the ordinance.

FISCAL INFORMATION

This ordinance will amend the FY 2022-2023 Budget and Annual Program of Services to allow for an increase to the Tourist & Convention Fund by \$250,000.

EXHIBITS

1. Agenda Information Sheet
2. Ordinance
3. Presentation

Respectfully submitted:
Aimee Kaslik
Interim Finance Director
940-349-7899

Prepared by:
Danielle Stanford
Budget Manager
940-349-7507

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AMENDING THE FISCAL YEAR 2022-2023 BUDGET AND ANNUAL PROGRAM OF SERVICES OF THE CITY OF DENTON TO ALLOW FOR ADJUSTMENTS TO THE TOURIST & CONVENTION FUND OF TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) FOR THE PURPOSE OF PROVIDING FUNDING TO THE DENTON BLACK FILM FESTIVAL INSTITUTE, INC. TO SUPPORT IN PART THE PRODUCTION OF A DOCUMENTARY SERIES ON QUAKERTOWN; DECLARING A PUBLIC PURPOSE; DIRECTING THE CITY SECRETARY ATTACH A COPY TO THE 2022-2023 BUDGET; REQUIRING APPROVAL BY AT LEAST FIVE VOTES; AND PROVIDING A SEVERABILITY CLAUSE; AN OPEN MEETINGS CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Ordinance No. 22-257, the City Council of Denton, Texas, approved the Fiscal Year 2022-2023 Budget and Annual Program of Services (the “Budget”); and

WHEREAS, the City of Denton desires to increase funding in the Tourist & Convention Fund to provide funding to the Denton Black Film Festival Institute, Inc. to support in part the production of a documentary series on Quakertown; and

WHEREAS, the City Council finds that this Budget Amendment serves an important municipal purpose as eligible items for expenditure in the current Budget, consistent with Section 102.010 of the Texas Local Government Code and other applicable laws; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth in the above preamble to this Ordinance are true and correct and are hereby adopted.

SECTION 2. The Fiscal Year 2022-2023 Budget and Annual Program of Services is hereby amended by the City Council as follows: to allow for adjustments to the Tourist & Convention Fund of \$250,000 increasing appropriations from \$3,814,355 to \$4,064,355.

SECTION 3. This Ordinance shall be filed with the City Secretary, who is directed to attach a copy of this Ordinance to the Fiscal Year 2022-2023 Budget and Annual Program of Services.

SECTION 4. This Ordinance was approved by at least five members of the City Council as required by Section 8.08 of the City Charter.

SECTION 5. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Ordinance, or the application thereof to any person or under any circumstances is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of Denton, Texas, hereby declares it would have enacted such remaining portions despite any such invalidity.

SECTION 6. It is officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law, and the public notice of the time, place and purpose of this meeting was given as required by law.

SECTION 7. 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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: **Susan Keller** _____
Digitally signed by Susan Keller
 Date: 2023.04.28 09:00:27 -05'00'



Tourist & Convention Fund Budget Amendment

May 2, 2023 - ID23-753



FY 22-23 Tourist & Convention Fund Proposed Budget Amendment

- The proposed budget amendment will increase the expenditure budget for the Tourist & Convention Fund by \$250,000 from \$3,814,355 to \$4,064,355.
- The additional expense is to provide funding to the Denton Black Film Festival Institute, Inc. to support in part the production of a documentary series on Quakertown.

FY 22-23 Tourist & Convention Fund Proposed Budget Amendment

Summary of Estimated Project Costs	Proposed Budget
Production (equipment, location, crew, and directors fee)	\$ 372,323
Postproduction (editing, audio, and finishing)	\$ 119,600
Total Project Cost	\$491,923

On March 22, 2023, the Community Partnership Committee recommended funding in the amount of \$250,000 from HOT Funds.

Questions



May 2, 2023 - ID23-753



City of Denton

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

Legislation Text

File #: ID 23-916, **Version:** 1

AGENDA CAPTION

Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute an agreement between the City of Denton and the Denton Black Film Festival Institute, Inc., for the payment and use of hotel tax revenue in support of the Quakertown Docuseries; and providing an effective date. (\$250,000 - Community Partnership Committee recommends approval 3-0)



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Finance
ACM: Cassey Ogden
DATE: May 2, 2023

SUBJECT

Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute an agreement between the City of Denton and the Denton Black Film Festival Institute, Inc., for the payment and use of hotel tax revenue in support of the Quakertown Docuseries; and providing an effective date. (\$250,000 – Community Partnership Committee recommends approval 3-0)

BACKGROUND

On September 13, City Staff presented a Work Session as a result of a two-minute pitch from Council Member Byrd regarding a possible project to memorialize the former residents of Quakertown, an African American community that once stood where Quakertown Park now exists. The conclusion of the Work Session resulted in the direction from Council for staff to proceed with commemoration events through 2023 including temporary signage in the park. Additionally, to explore a permanent memorial option in the Downtown Master Plan which covers Quakertown Park

One of the programming goals is to share Quakertown's history with the wider Denton community by sharing art, music, culture, and learning in a respectful and collaborative environment.

In February 2023 Council Member Davis connected Denton Black Film Festival Institute (DBFFI), a current recipient of Hotel Occupancy Tax (HOT) funds, with the City Manager's Office to present an opportunity to partner with South Road Pictures, a Creative Content Studio, to sponsor a four-part docuseries on the history of Quakertown.

This agreement allows for the total expenditure of \$250,000 from the Hotel Occupancy Tax (HOT) funds to support DBFFI in their work with South Road Pictures to produce a four-part documentary series on the history of Quakertown. The term of the agreement is June 1, 2023 through June 30, 2024.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

The Community Partnership Committee reviewed the request during a March 22, 2023 meeting and recommended approval.

FISCAL INFORMATION

The DBFFI received \$51,500 under the FY 2022-2023 HOT Program. Approval of this contract will bring the total allocated amount for this organization to \$301,500.

EXHIBITS

Exhibit 1 Agenda Information Sheet
Exhibit 2 Ordinance

Respectfully submitted:
Laura Behrens
Assistant Director
Procurement/Warehouse/Grants

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON BLACK FILM FESTIVAL INSTITUTE, INC., FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE IN SUPPORT OF THE QUAKERTOWN DOCUSERIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, TEX. TAX CODE §351.101(a) authorizes the CITY to use revenue from its municipal hotel occupancy tax to promote tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes the CITY to contract with independent entities, for programs and activities of the type funded with revenue from the municipal hotel occupancy tax; and

WHEREAS, the agreements and amounts have been reviewed and approved by the Community Partnership Committee and the City Council deems use of the funds are in the public interest; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or designee, is hereby authorized to execute an agreement between the City of Denton and the Denton Black Film Festival Institute, Inc. for the payment and use of hotel tax revenue, under the terms and conditions contained in the agreement, a copy of which is attached hereto and made a part hereof.

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 _____; the Ordinance was passed and approved by the following vote [___ - ___]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

A handwritten signature in blue ink, appearing to read "Mack Reinwand", written in a cursive style.

BY: _____

AGREEMENT BETWEEN THE CITY OF DENTON AND DENTON BLACK FILM FESTIVAL INSTITUTE, INC. (PY2023) PROVIDING FOR THE PAYMENT AND USE OF HOTEL TAX REVENUE

THIS AGREEMENT made between the City of Denton, Texas, a municipal corporation (the “CITY”), and the DENTON BLACK FILM FESTIVAL INSTITUTE, INC., a legal entity incorporated under the laws of the State of Texas (the “DENTON BLACK FILM FESTIVAL INSTITUTE”).

WHEREAS, TEX. TAX CODE §351.002 authorizes CITY to levy by ordinance a municipal hotel occupancy tax (“hotel tax”) not exceeding seven percent (7%) of the consideration paid by a hotel occupant; and

WHEREAS, by ordinance, CITY has provided for the assessment and collection of a municipal hotel occupancy tax in the City of Denton of seven percent (7%); and

WHEREAS, TEX. TAX CODE §351.101(a) authorizes CITY to use revenue from its municipal hotel occupancy tax to promote tourism and the convention and hotel industry by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

WHEREAS, DENTON BLACK FILM FESTIVAL INSTITUTE is well equipped to perform those activities; and

WHEREAS, TEX. TAX CODE §351.101(c) authorizes CITY to delegate by contract with DENTON BLACK FILM FESTIVAL INSTITUTE, as an independent entity, the management and supervision of programs and activities of the type described hereinabove funded with revenue from the municipal hotel occupancy tax;

NOW, THEREFORE, in consideration of the performance of the mutual covenants and promises contained herein, CITY and DENTON BLACK FILM FESTIVAL INSTITUTE agree, and contract as follows:

I. HOTEL TAX REVENUE PAYMENT

1.1 Consideration. For and in consideration of the activities to be performed by DENTON BLACK FILM FESTIVAL INSTITUTE under this Agreement, CITY agrees to pay to DENTON BLACK FILM FESTIVAL INSTITUTE a portion of the hotel tax revenue collected by CITY at the rates and in the manner specified herein (such payments by CITY to DENTON BLACK FILM FESTIVAL INSTITUTE sometimes herein referred to as the “agreed payments” or “hotel tax funds”).

1.2 Amount of Payments.

(a) As used in this Agreement, the following terms shall have the following specific meanings:

(i) The term “hotel tax revenue” shall mean the gross monies collected and received by CITY as municipal hotel occupancy tax at the rate of seven percent (7%) of the price paid for a room in a hotel, pursuant to Texas Tax Code §351.002 and City Ordinance. Hotel tax revenue will include penalty and interest related to the late payments of the tax revenue by the taxpayer.

(ii) The term “Collection period” will mean the collection period for CITY’s fiscal year. It will include hotel tax revenue due to CITY for the relevant fiscal year and collected through the 22nd day of the month following the close of the relevant fiscal year.

(iii) The term “base payment amount” shall mean a net amount of money equal to the total hotel tax revenue collected by CITY during any relevant period of time (*i.e.*, fiscal year or fiscal quarter), less: (1) attorney and auditing costs incurred during such period for costs of collection or auditing of hotel taxpayers (attorney and auditing costs include fees paid to attorneys or agents not in the regular employ of CITY for which attorneys or agents effect compliance or collection of the hotel tax from taxpayers); and (2) court costs and other expenses incurred in litigation against, or auditing of, such taxpayers.

(iv) The term “contract quarter” shall refer to any quarter of the calendar year in which this Agreement is in force. Contract quarters will end on March 31st, June 30th, September 30th, and December 31st of each contract year.

(b) In return for satisfactory performance of the activities set forth in this Agreement and all attachments hereto, CITY shall pay to DENTON BLACK FILM FESTIVAL INSTITUTE an amount of money in each contract year equal to the lesser amount of Seven and Sixty-Seven Hundredths percent (7.67%) of the annual base payment amount, or the fixed contract amount of Two Hundred Fifty Thousand Dollars (\$250,000). This amount will be paid in one lump sum after the 1st of June 2023. If CITY’s Chief Financial Officer determines that hotel tax receipts to the CITY are not meeting the anticipated budget projection, CITY may reduce DENTON BLACK FILM FESTIVAL INSTITUTE’s current budget at any time during the contract period. Payment is subject to refund of any unused or improperly expended funds from the prior contract period, and CITY’s timely receipt of the required quarterly reports.

1.3 Dates of Payments.

(a) The term “payments” shall mean payments by CITY to DENTON BLACK FILM FESTIVAL INSTITUTE of those amounts specified in ¶1.2, above, as determined by the hotel tax revenue collected.

(b) Each quarterly payment shall be paid upon receipt of the required reports and after the 25th day following the last day of the contract quarter. If any quarterly financial report is not received within thirty (30) days of the end of the applicable contract quarter, the recipient may be held in breach of this Agreement. CITY may withhold the quarterly payment(s) until the appropriate reports are received and approved, which approval shall not be unreasonably withheld.

1.4 Other limitations regarding consideration.

(a) The funding of this project in no way commits CITY to future funding of this program beyond the current contract period. Any future funding is solely the responsibility of DENTON BLACK FILM FESTIVAL INSTITUTE

(b) It is expressly understood that this contract in no way obligates the General Fund or any other monies or credits of CITY.

(c) CITY may withhold further allocations if CITY determines that DENTON BLACK FILM FESTIVAL INSTITUTE's expenditures deviate materially from their approved budget.

1.5 Additional performance requirement.

In addition to the activities to be performed, DENTON BLACK FILM FESTIVAL agrees that it will execute an Agreement with Southroad Pictures that states "In consideration for the funds provided by the City of Denton, Southroad Pictures will not deny any reasonable request by the City of Denton to be acknowledged for its provision of hotel tax funds in support of the Quakertown historical documentary series."

II. USE OF HOTEL TAX REVENUE

2.1 Use of Funds. For and in consideration of the payment by CITY to DENTON BLACK FILM FESTIVAL INSTITUTE of the agreed payments of hotel tax funds specified above, DENTON BLACK FILM FESTIVAL INSTITUTE agrees to use such hotel tax funds only for advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; as well as the promotion of tourism through the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major arts forms, as authorized by TEX. TAX CODE §351.101(a). Funds for any calendar year which are unused by midnight December 31st of that year shall be refunded to CITY within thirty (30) days.

Advertising materials purchased with the hotel occupancy tax funds must be targeted to reach audiences outside the Denton city limits. These materials include, but are not limited to, signs, posters, postcards, newsletters, print advertising, digital marketing, billboards, radio and television.

DENTON BLACK FILM FESTIVAL INSTITUTE agrees to the use of the hotel tax funds for the promotion of tourism through the encouragement, promotion, improvement, and application of the arts by using the funds for the creation and production of an historical documentary series about the Quakertown Community by Southroad Pictures.

Further, DENTON BLACK FILM FESTIVAL INSTITUTE agrees that it will enter into an agreement with Southroad Pictures that states “Southroad Pictures agrees it will make use of the hotel tax funds provided by the City of Denton in accordance with Texas law and with the Agreement executed on _____ between the City of Denton and the DENTON BLACK FILM FESTIVAL INSTITUTE. Southroad Pictures further agrees it will comply with Sections 1.5, 2.2 through 2.3, and 3.1 through 3.4 of said Agreement.”

2.2 Administrative Costs. The hotel tax funds received from the CITY by the DENTON BLACK FILM FESTIVAL INSTITUTE may be spent for day-to-day operations, office supplies, salaries, travel expenses, and other administrative costs allowed by TEX. TAX CODE §351.101(e), but only if specified in DENTON BLACK FILM FESTIVAL INSTITUTE’s budget attached hereto as Exhibit “A” and incorporated herein for all purposes and each are directly attributable to work on programs which promote tourism and the hotel and convention industry, and if each promotes at least one of the six statutory purposes enumerated within TEX. TAX CODE §351.101(a).

2.3 Specific Restrictions on Use of Funds.

(a) That portion of total administrative costs of the DENTON BLACK FILM FESTIVAL INSTITUTE for which hotel tax funds may be used shall not exceed that portion of the DENTON BLACK FILM FESTIVAL INSTITUTE’s administrative costs actually incurred in conducting the activities specified in ¶2.1 above.

(b) Hotel tax funds may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of local tourism and the convention and hotel industry or the performance of the person’s job in an efficient and professional manner.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

3.1 Budget.

(a) DENTON BLACK FILM FESTIVAL INSTITUTE shall adhere to the budget (Exhibit “A”) as approved by the City Council for each calendar year, for all operations of DENTON BLACK FILM FESTIVAL INSTITUTE in which the hotel tax funds shall be used by DENTON BLACK FILM FESTIVAL INSTITUTE. In other words, CITY should be able to audit specifically the purpose of each individual expenditure of hotel tax funds from the separate account relating to hotel tax. CITY shall not pay to DENTON BLACK FILM FESTIVAL INSTITUTE any hotel tax revenues as set forth in Section I of this contract during any program year of this Agreement unless a budget for such respective program year has been approved in writing by the Denton City Council, authorizing the expenditure of funds.

(b) DENTON BLACK FILM FESTIVAL INSTITUTE acknowledges that approval of the budget (Exhibit “A”) by the Denton City Council creates a fiduciary duty in DENTON BLACK FILM FESTIVAL INSTITUTE with respect to the hotel tax funds paid by CITY to DENTON BLACK FILM FESTIVAL INSTITUTE under this Agreement. DENTON BLACK FILM FESTIVAL INSTITUTE shall expend hotel tax funds only in the manner and for the purposes specified in this Agreement, TEX. TAX CODE §351.101(a) and in the budget as approved by CITY.

(c) Upon the application or consent of DENTON BLACK FILM FESTIVAL INSTITUTE, the City Manager or his designate may authorize minor amendments to the approved budget as necessary to carry out the intent of this Agreement, in a manner consistent with efficient use of public funds, and in accordance with State law. Such minor amendments may not increase the overall funding set forth in ¶1.2(b), extend the term, or otherwise alter the performance obligations of DENTON BLACK FILM FESTIVAL INSTITUTE, without approval of the City Council by ordinance.

3.2 Separate Accounts. DENTON BLACK FILM FESTIVAL INSTITUTE shall maintain any hotel tax funds paid to DENTON BLACK FILM FESTIVAL INSTITUTE by CITY in a separate account or with segregated fund accounting, such that any reasonable person can ascertain the revenue source of any given expenditure.

3.3 Financial Records. DENTON BLACK FILM FESTIVAL INSTITUTE shall maintain complete and accurate financial records of each expenditure of the hotel tax funds made by DENTON BLACK FILM FESTIVAL INSTITUTE. These funds are required to be classified as restricted funds for audited financial purposes, and may not be used for contracted services, including, but not limited to, auditing fees or attorney fees. Upon reasonable advance written request of the Denton City Council, the City Manager or designate, or any other person, DENTON BLACK FILM FESTIVAL INSTITUTE shall make such financial records available for inspection and review by the party making the request. DENTON BLACK FILM FESTIVAL INSTITUTE understands and accepts that all such financial records, and any other records relating to this Agreement shall be subject to the Texas Public Information Act, TEX. GOV'T CODE, ch. 552, as hereafter amended.

3.4 Quarterly Reports. After initial receipt of hotel tax funds, and within thirty (30) days after the end of every quarter thereafter, until all funds have been expended and reported to CITY, DENTON BLACK FILM FESTIVAL INSTITUTE shall furnish to CITY: (1) a completed financial report, (2) a list of the expenditures or copies of the invoices or receipts made with regard to hotel tax funds pursuant to TEX. TAX CODE §351.101(c), social media and/or digital marketing expenditures require invoices to be provided and shall include performance measures, and (3) a copy of all financial records (*e.g.*, copies of front and back cleared checks or bank statements, and other relevant documentation). Both the financial and expenditure reports will be in a form either determined or approved by the City Manager or designate. DENTON BLACK FILM FESTIVAL INSTITUTE shall respond promptly to any request from the City Manager of CITY, or designate, for additional information relating to the activities performed under this Agreement.

3.5 Notice of Meetings. DENTON BLACK FILM FESTIVAL INSTITUTE shall give the City Manager of CITY, or his designate, reasonable advance written notice of the time and place of all meetings of DENTON BLACK FILM FESTIVAL INSTITUTE 's Board of Directors, as well as any other meeting of any constituency of DENTON BLACK FILM FESTIVAL INSTITUTE, at which this Agreement or any matter subject to this Agreement shall be considered.

IV. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall commence on June 1, 2023 and terminate at midnight on June 30, 2024. However, the program period shall commence on June 1, 2023, and terminate at midnight on May 31, 2024. Only those expenditures authorized by Chapter 351 of the

Texas Tax Code and the program guidelines, which are actually incurred during the program period, for events and activities taking place within the program period, are eligible for funding under this Agreement, and any ineligible expenditures or unspent funds shall be forfeited to CITY upon termination of this Agreement.

4.2 Termination Without Cause.

(a) This Agreement may be terminated by either party, with or without cause, by giving the other party sixty (60) days advance written notice.

(b) In the event this contract is terminated by either party pursuant to ¶4.2(a), CITY agrees to reimburse DENTON BLACK FILM FESTIVAL INSTITUTE for any contractual obligations of DENTON BLACK FILM FESTIVAL INSTITUTE undertaken by DENTON BLACK FILM FESTIVAL INSTITUTE in satisfactory performance of those activities specified in ¶¶2.1 and 2.2 above, and that were approved by the Council through the budget, as noted in ¶3.1. This reimbursement is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in ¶¶2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement. Notwithstanding any provision hereof to the contrary, the obligation of CITY to reimburse DENTON BLACK FILM FESTIVAL INSTITUTE, or to assume the performance of any contractual obligations of DENTON BLACK FILM FESTIVAL INSTITUTE, for or under any contract entered into by DENTON BLACK FILM FESTIVAL INSTITUTE as contemplated herein, shall not exceed 66 2/3% of the current payment.

(c) Further, upon termination pursuant to ¶4.2(a), DENTON BLACK FILM FESTIVAL INSTITUTE will provide CITY: 1) within ten (10) business days from the termination notification, a short-term budget of probable expenditures for the remaining sixty (60) day period between termination notification and contract termination. This budget will be presented to Council for approval within ten (10) business days after receipt by CITY. If formal approval is not given within ten (10) business days, and the budget does not contain any expenditures that would be prohibited by the Texas Tax Code, and is within the current contractual period approved budget; the budget will be considered approved; 2) within thirty (30) days, a full accounting of all expenditures not previously audited by CITY; 3) within five (5) business days of a request from CITY, a listing of expenditures that have occurred since the last required reporting period; 4) a final accounting of all expenditures and tax funds on the day of termination. DENTON BLACK FILM FESTIVAL INSTITUTE will be obligated to return any unused funds, or funds determined to be used improperly. Any use of remaining funds by DENTON BLACK FILM FESTIVAL INSTITUTE after notification of termination is conditioned upon such contractual obligations having been incurred and entered into in the good faith performance of those services contemplated in ¶¶2.1 and 2.2 above, and further conditioned upon such contractual obligations having a term not exceeding the full term of this Agreement.

4.3 Automatic Termination. This Agreement shall automatically terminate upon the occurrence of any of the following events:

(a) The termination of the legal existence of DENTON BLACK FILM FESTIVAL INSTITUTE;

(b) The insolvency of DENTON BLACK FILM FESTIVAL INSTITUTE, the filing of a petition in bankruptcy, either voluntarily or involuntarily, or an assignment by DENTON BLACK FILM FESTIVAL INSTITUTE for the benefit of creditors;

(c) The continuation of a breach of any of the terms or conditions of this Agreement by either CITY or DENTON BLACK FILM FESTIVAL INSTITUTE for more than thirty (30) days after written notice of such breach is given to the breaching party by the other party; or

(d) The failure of DENTON BLACK FILM FESTIVAL INSTITUTE to submit a financial quarterly report which complies with the reporting procedures required herein and generally accepted accounting principles prior to the beginning of the next contract term, or quarterly as required by ¶1.3 hereof.

4.4 Right to Immediate Termination Upon Litigation. Notwithstanding any other provision of this Agreement, to mitigate damages and to preserve evidence and issues for judicial determination, either party shall have the right to terminate this Agreement upon immediate notice to the other party in the event that any person has instituted litigation concerning the activities of the non-terminating party, and the terminating party reasonably believes that such activities are required or prohibited under this Agreement.

4.5 In the event that this Agreement is terminated pursuant to ¶¶4.3 or 4.4, DENTON BLACK FILM FESTIVAL INSTITUTE agrees to refund any and all unused funds, or funds determined by CITY to have been used improperly, within thirty (30) days after termination of this Agreement.

GENERAL PROVISIONS

5.1 Subcontract for Performance of Services. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by DENTON BLACK FILM FESTIVAL INSTITUTE with another private entity, person, or organization for the performance of those services described in ¶2.1 above. In the event that DENTON BLACK FILM FESTIVAL INSTITUTE enters into any arrangement, contractual or otherwise, with such other entity, person or organization, DENTON BLACK FILM FESTIVAL INSTITUTE shall cause such other entity, person, or organization to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to TEX. TAX CODE ch. 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments and hotel tax funds.

5.2 Independent Contractor. DENTON BLACK FILM FESTIVAL INSTITUTE shall operate as an independent contractor as to all services to be performed under this Agreement and not as an officer, agent, servant, or employee of CITY. DENTON BLACK FILM FESTIVAL INSTITUTE shall have exclusive control of its operations and performance of services hereunder, and such persons, entities, or organizations performing the same, and DENTON BLACK FILM FESTIVAL INSTITUTE shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. DENTON BLACK FILM FESTIVAL INSTITUTE

shall not be considered a partner or joint venturer with CITY, nor shall DENTON BLACK FILM FESTIVAL INSTITUTE be considered, nor in any manner hold itself out as, an agent or official representative of CITY.

5.3 Indemnification. DENTON BLACK FILM FESTIVAL INSTITUTE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND 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 IN CONNECTION WITH THE PERFORMANCE BY DENTON BLACK FILM FESTIVAL INSTITUTE OF 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.

5.4 Assignment. DENTON BLACK FILM FESTIVAL INSTITUTE shall not assign this Agreement without first obtaining the written consent of CITY.

5.5 Notice. Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

City Manager
CITY OF DENTON
215 E. McKinney
Denton, TX 76201

DENTON BLACK FILM FESTIVAL INSTITUTE

Executive Director
DENTON BLACK FILM FESTIVAL INSTITUTE, INC.
P.O. Box 1217
Denton, Texas 76202

5.6 Inurement. This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of CITY and DENTON BLACK FILM FESTIVAL INSTITUTE and their respective successors and assigns.

5.7 Application of Laws. All terms, conditions, and provisions of this Agreement are subject to all applicable federal laws, state laws, the Charter of CITY of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto.

5.8 Exclusive Agreement. This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which

are not fully expressed herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance in this Agreement from the terms and conditions of any other document relating to this transaction or these transactions.

5.9 Duplicate Originals. This Agreement is executed in duplicate originals.

5.10 Headings. The headings and subheadings of the various sections and paragraphs of this Agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section and paragraph so designated.

5.11 Severability. If any section, subsection, paragraph, sentence, clause, phrase or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

5.12 Insurance. DENTON BLACK FILM FESTIVAL INSTITUTE shall, at a minimum, provide insurance as follows:

1. \$1,000,000 Commercial General Liability or \$1,000,000 Event Insurance, covering all events taking place on City-owned property,
2. \$1,000,000 Liquor/Dram Shop Liability for all events occurring on City-owned property where alcohol will be provided or served.

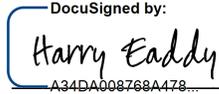
CITY must be named as an additional insured on all policies (except Workers' Compensation) and proof of coverage shall be submitted prior to any payment by CITY.

EXECUTED this _____ day of _____, 2023.

THE CITY OF DENTON, TEXAS

By: _____
SARA HENSLEY,
CITY MANAGER

DENTON BLACK FILM FESTIVAL
INSTITUTE, INC.

By: 
A34DA008768A478...
Executive Director

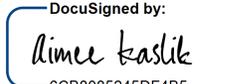
ATTEST:
JESSE SALAZAR, INTERIM CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

By:  _____
DocuSigned by:
DD57D955AE4E4F3...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations and
business terms.

 _____ Aimee Kaslik
DocuSigned by:
6CB8085245DF4B5... PRINTED NAME

SIGNATURE PRINTED NAME

Interim Finance Director
TITLE

Finance
DEPARTMENT

Exhibit A

Denton Black Film Festival

Hotel Occupancy Tax Program

Budget 2023

Advertising

<i>Art Department Labor</i>	\$ 19,950
<i>Media</i>	\$ 2,500

subtotal	\$ 22,450
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Art

<i>Film Crew</i>	\$ 169,950
<i>Film Production</i>	\$ 11,000
<i>Site Operations</i>	\$ 20,000
<i>Equipment Rental</i>	\$ 26,600

subtotal	\$ 227,550
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Total Budget	\$ 250,000
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City of Denton

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

Legislation Text

File #: ID 23-865, **Version:** 1

Consider approval of a resolution of the City of Denton, Texas, authorizing and approving the creation of Denton Public Facility Corporation, a public facility corporation, pursuant to Chapter 303 of the Texas Local Government Code; approving the articles of incorporation; appointing the initial directors of the corporation; approving the initial bylaws for the corporation; and providing an effective date.



AGENDA INFORMATION SHEET

DEPARTMENT: Community Services
CM/DCM/ACM: Frank Dixon, Assistant City Manager
DATE: May 2, 2023

SUBJECT

Consider approval of a resolution of the City of Denton, Texas, authorizing and approving the creation of Denton Public Facility Corporation, a public facility corporation, pursuant to Chapter 303 of the Texas Local Government Code; approving the articles of incorporation; appointing the initial directors of the corporation; approving the initial bylaws for the corporation; and providing an effective date.

STRATEGIC ALIGNMENT

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

BACKGROUND

On [June 28, 2022](#), Council Member Watts made a two-minute pitch request and received support for work session to discuss the City creating Public Facility Corporations to partner with developers to develop affordable housing in Denton ([ID 22-420](#)).

On [October 25, 2022](#), Council provided direction to staff to create a development program authorizing the formation of Public Facility Corporations for future affordable housing projects ([ID 22-1453](#))

Staff has prepared the documents necessary to create Denton Public Facility Corporation (DPFC) as a public facility corporation pursuant to Chapter 303 of the Texas Local Government Code. There are two actions necessary to complete the formation of the PFC.

1. Approval of the Resolution by City Council accepting the formation documents and approving submissions to the Secretary of State and business filings required to form the DPFC.
2. Appoint the initial three (3) board members to the DPFC to complete the bylaws.

OPTIONS

- Approve the Resolution
 - Accepting the formation documents (Articles of Incorporation and Bylaws)
 - Authorizing submission to the Secretary of State and filings
 - Appointing the initial three (3) board members.

OR

- Take no further action regarding the formation of Public Facility Corporations.

RECOMMENDATION

- Approve the Resolution

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

- [June 28, 2022](#): CM Watts made a two-minute pitch request and received support for work session to discuss the City creating Public Facility Corporations to partner with developers to develop affordable housing in Denton ([ID 22-420](#))
- [October 25, 2022](#): Council provided direction to staff to create a development program authorizing the formation of Public Facility Corporations for future affordable housing projects ([ID 22-1453](#))

EXHIBITS

1. Exhibit 1 – Agenda Information Sheet
2. Exhibit 2 – Presentation
3. Exhibit 3 – Resolution, Articles of Incorporation, and Bylaws

Respectfully submitted:
Dani Shaw
Director of Community Services



Denton Public Facility Corporation

MAY 2, 2023

ID 23-865

COMMUNITY SERVICES

642

BACKGROUND – COUNCIL ACTIONS

- On June 28, 2022, CM Watts made a two-minute pitch request and received support for a work session to discuss the City creating Public Facility Corporations to partner with developers to develop affordable housing in Denton.
- On October 25, 2022, Council provided direction to staff to create a development program authorizing the formation of Public Facility Corporations for future affordable housing projects.

CREATING PFC



Step 1:

- Preparing Bylaws and Certificate of Formation

Step 2:

- City Council Approval

ACTION: Approve the formation docs, appoint initial board members, and authorize submitting to SOS

Step 3:

- Submission to the Secretary of State

Step 4:

- File for Franchise Tax Exemption and EIN

Step 5:

- Organizational Meeting

NEXT STEPS TO A DEVELOPMENT DEAL

- Inform Development Community of PFC Program and Application
- Complete PFC Formation
 - Submission to Secretary of State and approval.
 - Organizing Meeting: Initial Board of Directors Orientation, Articles, By-laws, Establish Key Priorities and Role in Deal Structures.

Board of Directors to approve or deny applications

- Receive Applications
 - Review applications to ensure that the project would only be feasible with a property tax exemption and the project is alignment with the City's affordable housing goals
 - Board set Term Sheets, Agreements negotiated to a substantially finalized form.

TO APPROVE PFC

There are two actions necessary to complete the formation of the PFC.

1. Approval of the Resolution by City Council accepting the formation documents and approving submissions to the Secretary of State and necessary filings required to form the DPFC.
2. Appoint the initial three (3) board members to the DPFC to complete the bylaws.



QUESTIONS?



RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF DENTON, TEXAS, AUTHORIZING AND APPROVING THE CREATION OF DENTON PUBLIC FACILITY CORPORATION, A PUBLIC FACILITY CORPORATION, PURSUANT TO CHAPTER 303 OF THE TEXAS LOCAL GOVERNMENT CODE; APPROVING THE ARTICLES OF INCORPORATION; APPOINTING THE INITIAL DIRECTORS OF THE CORPORATION; APPROVING THE INITIAL BYLAWS FOR THE CORPORATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton, Texas (the “City”) desires to create Denton Public Facility Corporation (“DPFC”) as a public facility corporation pursuant to Chapter 303 of the Texas Local Government Code, as amended (“Act”); and

WHEREAS, the purpose of the DPFC will be to provide for the financing, refinancing, acquisition, and construction of public facilities as defined in Section 303.003 of the Act, including, but not limited to, multifamily housing; and

WHEREAS, the City Council of the City (“City Council”) has determined that it is in the public interest and to the benefit of the citizens of the State of Texas and the residents of the City to create the DPFC to finance, refinance, or provide for the costs of public facilities to be created in the City, as provided under Section 303.023 of the Act; and

WHEREAS, the City Council has considered the Articles of Incorporation and the Bylaws proposed to be used in organizing the DPFC and has found and determined that they are in proper form and content and should be approved; and

WHEREAS, the City Council has reviewed the foregoing and determined that the creation of DPFC should be approved and authorized; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. That the City Council hereby authorizes and approves the creation of DPFC to act on behalf of the City as a public facility corporation under the Act pursuant to the terms of this resolution (“Resolution”).

SECTION 2. That the Articles of Incorporation of the DPFC, attached hereto as Exhibit “A”, and to be filed with the Secretary of State of the State of Texas is hereby approved and ratified.

SECTION 3. That the form of Bylaws, attached hereto as Exhibit “B”, are approved to be adopted as the Bylaws of the DPFC.

SECTION 4. That the City Manager or their designee is hereby authorized and directed to take such further action in the consummation of the transactions herein contemplated and to do any and all other acts and things necessary or proper in furtherance thereof, as the City Manager

or their designee shall deem to be necessary or desirable, and all acts heretofore taken by the City Manager to such end are hereby expressly ratified and confirmed as the acts and deeds of the City.

SECTION 5. 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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  _____
Digitally signed by Scott Bray
Date: 2023.04.25 12:19:31
-05'00'

EXHIBIT A

**ARTICLES OF INCORPORATION
OF
DENTON PUBLIC FACILITY CORPORATION
*A PUBLIC FACILITY CORPORATION AND INSTRUMENTALITY OF THE CITY OF DENTON***

We, the undersigned natural persons, each of whom is at least eighteen years of age, citizens of the State of Texas, and residents of the City of Denton, Texas (the “City”), acting as the incorporators of a public nonprofit corporation under the Public Facility Corporation Act, as amended, Chapter 303, Texas Local Government Code (“Act”) with the approval of the City Council of the City, as evidenced by the resolution attached hereto as Exhibit “A” and made a part of these Articles of Incorporation for all purposes, do hereby adopt the following Articles of Incorporation for the Denton Public Facility Corporation (the “Corporation”):

**ARTICLE ONE
NAME**

The name of the Corporation is “Denton Public Facility Corporation”.

**ARTICLE TWO
AUTHORIZATION**

The Corporation is a nonprofit public corporation.

**ARTICLE THREE
DURATION**

Subject to the provisions of Article Thirteen hereof, the period of duration of the Corporation is perpetual.

**ARTICLE FOUR
PURPOSE AND LIMITATIONS**

(a) The Corporation is organized exclusively for the purpose of assisting the City in financing, refinancing or providing public facilities. The Corporation shall have and possess the broadest possible powers to finance 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 of the City under the terms of the Act. The Corporation is authorized to issue “bonds” as defined and permitted by the Act on behalf of the City; provided, however, no bonds, notes, interim certificates, or other evidence of indebtedness may be issued by the Corporation unless such bonds are first

approved by resolution of the City. The Corporation is a public corporation and a public instrumentality as defined by the United States Treasury Department and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to section 103 and 141 of the Internal Revenue Code of 1986, as amended. The Corporation is authorized to act on behalf of the City as provided in these Articles of Incorporation.

(b) In the fulfillment of its corporate purpose, the Corporation shall have and may exercise the powers described in paragraph (a) of this Article, together with all of the other powers granted to corporations that are incorporated under the Act, and to the extent not in conflict with the Act, the Corporation shall additionally have and may exercise all of the rights, powers, privileges, authorities, and functions given by the general laws of the State to nonprofit corporations under the Texas Non-Profit Corporation Act, as amended, Texas Revised Civil Statutes Annotated Article 1396-101, et seq., or any other applicable laws of the State.

(c) The Corporation shall have the purposes and powers permitted by the Act, but the Corporation does not have, and shall not exercise the powers of sovereignty of the City, including the power to tax, eminent domain, or police power. However, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practice and Remedies Code), the Corporation is a governmental unit, and its actions are governmental functions.

(d) No bonds or other obligations, contracts, or agreements of the Corporation are or shall ever be deemed to be or constitute the contracts, agreements, bonds, other debt instruments, or other obligations or the lending of credit, or a grant of the public money or things of value, of, belonging to, or by the State, the City, or any other political corporation, subdivision or agency of the State, or a pledge of the faith and credit of any of them. Any and all of such contracts, agreements, bonds or other debt instruments, and other obligations, contracts and agreements shall be payable solely and exclusively from the revenues and funds received by the Corporation from the sources authorized by the Act and from such other sources as may be otherwise lawfully available and belonging to the Corporation from time to time.

(e) The City, in its sole discretion, may alter the Corporation's structure, name, organization, programs, or activities; consistent with the Act and subject to limitations provided by law relating to the impairment of contracts entered into by the Corporation.

ARTICLE FIVE FINANCING

(a) Before the consummation of the sale and delivery of any bonds, the Corporation shall obtain approval by the City, evidenced by the adoption of a written resolution.

(b) In the exercise of the powers of the Corporation, the Corporation may enter into loan, lease, trust, 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 the specific uses, and the method of withdrawals and expenditure of the proceeds of the bonds) must be approved by written resolution of the City.

ARTICLE SIX
MEMBERS

The Corporation has no members and is a non-stock corporation.

ARTICLE SEVEN
AMENDMENTS

These Articles of Incorporation may be amended at any time as provided in the Act to make any changes and add any provisions that might have been included in the Articles of Incorporation in the first instance. Any amendment may be accomplished in either of the following manners:

(a) The members of the board of directors of the Corporation shall file with the City a written application requesting approval of the amendments to the Articles of Incorporation, specifying in such application the amendments proposed to be made. The City shall consider such application and, if it shall, by appropriate resolution, duly find and determine that it is advisable that the proposed amendments be made, it shall approve the form of the proposed amendments. The board of directors of the Corporation may then amend the Articles of Incorporation by adopting such amendment at a meeting of the board of directors. The Corporation's president or vice president and the secretary of the City shall execute the amendment on behalf of the Corporation. The amendment and a certified copy of the resolution of the City shall be delivered to the Secretary of State as required by the Act; or

(b) The City may, at its sole discretion, and at any time, amend these Articles of Incorporation and alter or change the structure, name, organization, programs or activities of the Corporation, or terminate or dissolve the Corporation (subject to the provisions of the Act) by resolution or as otherwise provided in the Act.

ARTICLE EIGHT
ADDRESS

The street address of the initial registered office of the Corporation is 215 E McKinney St, Denton, TX 76201, and the name of its initial registered agent at that address is _____.

ARTICLE NINE
BOARD OF DIRECTORS

(a) The affairs of the Corporation shall be managed by a board of directors which shall be composed entirely of persons appointed by the City Council of the City of Denton. Except for the initial number and terms of office set forth herein, the number of directors and the terms of office

Denton Public Facility Corporation
Articles of Incorporation

Page 3 of 5

Adopted: _____ by Resolution No. _____

of the directors shall be fixed by the bylaws of the Corporation. A majority of the entire membership of the board of directors, including any vacancies, is a quorum. The board of directors shall conduct all meetings within the boundaries of the City.

(b) The number of directors on the initial board of directors is three (3). The names and street addresses of the persons who are to serve as the initial directors are as follows:

NAMES	ADDRESSES
	215 E McKinney St, Denton, TX 76201
	215 E McKinney St, Denton, TX 76201
	215 E McKinney St, Denton, TX 76201

(c) The board of directors shall elect a president, treasurer, secretary, and any other officers that the Corporation considers necessary, if any, to serve as executive officers of the Corporation, as more specifically provided in the Corporation’s bylaws.

(d) Meetings of the board of directors are subject to the Texas Open Meetings Act, Texas Government Code, Chapter 551, and the Corporation is subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

(e) Any director or officer may resign at any time and a successor shall be appointed in accordance with the procedures set forth in the Bylaws.

ARTICLE TEN
BYLAWS

The initial bylaws of the Corporation shall be adopted by the Corporation’s board of directors and shall, together with these Articles of Incorporation, govern the initial affairs of the Corporation until and unless amended in accordance with the provisions of the Act and these Articles of Incorporation. The bylaws and each amendment and repeal of the bylaws must be approved by the City by resolution.

ARTICLE ELEVEN
INCORPORATOR

The name and street address of each incorporator is:

Name	Address
Sara Hensley	215 E. McKinney St., Denton, TX 76201

ARTICLE TWELVE
CITY APPROVAL

(a) The City has specifically authorized the Corporation by resolution to act on its behalf to further the public purposes stated in these Articles of Incorporation, and the City has by resolution, dated _____, 2023, approved these Articles of Incorporation. A copy of this resolution is on file among the permanent public records of the City and the Corporation.

(b) The City is the Corporation's "Sponsor" (as defined by the Act) and has caused this Corporation to be created. The address of the City is 215 E McKinney St, Denton, TX 76201.

ARTICLE THIRTEEN
TERMINATION

The City, by written resolution, may authorize and direct the termination of the Corporation. However, the Corporation shall not be terminated, and its business shall not be terminated, by act of the City or otherwise, so long as the Corporation is obligated to pay any bonds.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation as of _____, 2023.

Sara Hensley, Incorporator

EXHIBIT B

BYLAWS OF
DENTON PUBLIC FACILITY CORPORATION
a Texas Public Facility Corporation

ARTICLE I
PURPOSE AND POWERS

- AI 1. **Purpose.** Denton 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.
- AI 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.
- AI 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.

ARTICLE II
BOARD OF DIRECTORS

- AII 1. **Powers.** The property and affairs of the Corporation shall be managed by a board of directors (the "Board") which shall be appointed by 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.
- AII 2. **Initial Board of Directors.** The directors constituting the initial Board shall be those directors named in the Articles of Incorporation.
- AII 3. **Number of Directors.** The number of directors may be changed by amendment to these Bylaws, but such number must be at least three (3).
- AII 4. **Term.** Each director shall serve a term of three (3) years. Each director shall hold office for the term for which the director is appointed unless sooner removed or unless the director sooner resigns. Each director, including the initial directors, shall be eligible for reappointment. If a director is a member of the Governing Body, that director's term shall terminate upon their removal from the Governing Body unless earlier terminated pursuant to this section.

- All 5. **Removal of a Director.** Any director may be removed from office at any time, with or without cause, by the Governing Body.
- All 6. **Vacancies.** Vacancies on the Board shall exist on the death, resignation, or removal of any director, or when the size of the Board is increased pursuant to these Bylaws. 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.
- All 7. **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.
- All 8. **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.
- All 9. **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.
- All 10. **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, an employee or officer of the City, or a permanent resident of the City of Denton who has been appointed by the Governing Body.
- All 11. **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

- AIII 1. **Titles of Officers.** The officers of the Corporation shall be a President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time elect or appoint. All officers of the Corporation, except the secretary and treasurer, shall be members of the Board.
- AIII 2. **Terms of Office.** Officers shall serve for one-year term or until his or her successor is elected or appointed. Upon the expiration of the terms, each officer shall have the right to be re-appointed or re-elected.
- AIII 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.
- AIII 4. **Vacancies.** A vacancy in an officer position shall be filled by a vote of a majority of the Board.
- AIII 5. **President.** 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.
- AIII 6. **Vice President.** 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.
- AIII 7. **Treasurer.** The treasurer shall be the chief fiscal officer of the Corporation and shall have the responsibility to see to the handling, custody, and security of all funds and securities of the Corporation in accordance with these Bylaws. When necessary or proper, the treasurer may endorse and sign, on behalf of the Corporation, for collection or issuance, checks, notes, and other obligations in or drawn upon such bank, banks or depositories as shall be designated by the Board consistent with these Bylaws. The treasurer shall see to the entry in the books of the Corporation full and accurate accounts of all money received and paid

out on account of the Corporation. The treasurer shall, at the expense of the Corporation, give such bond for the faithful discharge of his/her duties in such form and amount as the Board may require.

- a. **City's Chief Financial Officer.** The Board shall appoint the Chief Financial Officer ("CFO") of the City or his or her designee to serve as an Assistant Treasurer, who shall have the same level of access to the books and records of the Corporation as the Treasurer. The Assistant Treasurer may perform any duty required of or power granted to the Treasurer in these Bylaws and/or in any resolution or order approved by the Board.

AIII 8. **Secretary.** The secretary shall keep the minutes of all meetings of the Board in books provided for that purpose; shall cause the giving and serving of all notices; 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; 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. The Board may appoint one or more persons to serve as an Assistant Secretary, which person may, but need not, be a director. 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.

AIII 9. **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. The City Manager may provide other staff support as deemed necessary by the City Manager.

- a. The powers and duties of the general manager shall include the following:
 - i. 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;
 - ii. Except as otherwise herein provided, to hire and remove all subordinates, employees, agents, or contractors of the Corporation;
 - iii. 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;

- iv. 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;
 - v. 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;
 - vi. 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;
 - vii. 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;
 - viii. 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
 - ix. To act as budget supervisor with the treasurer and as such prepare and submit to the Board the annual budget.
- b. The general manager shall execute all necessary documents in performance of the duties specified in this section.
 - c. 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.
 - d. The general manager shall make recommendations to the Board regarding the engagement and retainment of contractors for professional services, as needed by Corporation.

AIII 10. **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.

- AIII 11. **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

- AIV 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.
- AIV 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.
- AIV 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.
- AIV 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.
- AIV 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.
- AIV 6. **Quorum.** A simple majority of the entire membership of the Board, including any vacancies, is a quorum, unless law requires the act of a greater number.
- AIV 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

AV 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. The 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. 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.

AV 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 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.

AV 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

AVI 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.

AVI 2. **Amendments to Bylaws.** These Bylaws may be amended as set forth in the Articles of Incorporation.

AVI 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

- AVII 1. **Principal Office.** The principal office and the registered office of the Corporation shall be 215 E McKinney St, Denton, TX 76201.
- AVII 2. **Fiscal Year.** The fiscal year of the Corporation shall be the same as the fiscal year of the City.
- AVII 3. **Seal.** No seal of the Corporation shall be required.
- AVII 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.
- AVII 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.
- AVII 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.

- AVII 7. **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.
- AVII 8. **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
- AVII 9. **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.
- AVII 10. **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 POWERS AND LIMITATIONS

- AVIII 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.
- AVIII 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

- AIX 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.
- AIX 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.
- AIX 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 procured in accordance with all laws, ordinances, orders, resolutions, criteria, and policies that are applicable to the City.
- AIX 4. **Fair Housing.** Any Public Facility related to multifamily residential development must adhere to Chapter 14, ARTICLE VIII of the City of Denton Code of Ordinances, as amended.

ARTICLE X
CODE OF ETHICS

- AX 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

AXI 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.

AXI 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.

AXI 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 initial Directors of the Corporation, and we consent to, and hereby adopt, the foregoing Bylaws, consisting of thirteen (13) pages, as the Bylaws of this Corporation.

Dated: _____

By: _____

[Director 1 Name], Director

By: _____

[Director 2 Name], Director

By: _____

[Director 3 Name], Director



City of Denton

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

Legislation Text

File #: ID 23-883, Version: 1

AGENDA CAPTION

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 Eurovia Atlantic Coast, LLC dba Sunmount Paving Company, for the 2019 Street Bond Neighborhood 4 project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8110 - awarded to Eurovia Atlantic Coast, LLC dba Sunmount Paving Company, in the not-to-exceed amount of \$7,541,673.42). The Public Utilities Board recommends approval (6 - 0).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: May 2, 2023

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 Eurovia Atlantic Coast, LLC dba Sunmount Paving Company, for the 2019 Street Bond Neighborhood 4 project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8110 – awarded to Eurovia Atlantic Coast, LLC dba Sunmount Paving Company, in the not-to-exceed amount of \$7,541,673.42). [The Public Utilities Board recommends approval \(6 - 0\).](#)

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility

INFORMATION/BACKGROUND

Neighborhood 4 contains 24 street segments that will be reconstructed as part of the 2019 Street Reconstruction Bond. The project will adhere to a holistic approach aimed at limiting future construction disruptions by replacing other aging public infrastructure within the limits of the project area. This includes replacing existing aging water and sanitary sewer lines, and limited sidewalk improvements.

In Q1 2022, the City initiated preliminary design services for improvements to Neighborhood 4 in partnership with HDR, Inc. as part of the overall program management efforts to plan and construct street segments included within the 2019 Street Reconstruction Bond. The Capital Projects Department anticipated advertising the project in Q1 2023, and the construction contract awarded in Q3 2023. With the approval of this contract, both estimates will be met.

The Neighborhood 4 Project has a total project construction cost of \$7,541,673.42. This estimate includes a \$7,182,546.11 total base proposal amount and a 5% contingency of \$359,127.31. 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 946 prospective suppliers, including 69 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Three (3) proposals were received and were evaluated based on published criteria including key personnel, quality and reputation, detailed schedule and plan, safety record, and price. Best and Final Offer (BAFO) was requested from the top firm. Based upon this evaluation, Eurovia Atlantic

Coast, LLC dba Sunmount Paving Company 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:	946
Number of Suppliers that viewed Solicitation in IonWave:	25
HUB-Historically Underutilized Business Invitations sent out:	94
SBE-Small Business Enterprise Invitations sent out:	334
Responses from Solicitation:	3

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On April 24, 2023, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

RECOMMENDATION

Award a contract with Eurovia Atlantic Coast, LLC dba Sunmount Paving Company, for the 2019 Street Bond Neighborhood 4 project for the Capital Projects Department, in a not-to-exceed amount of \$7,541,673.42.

PRINCIPAL PLACE OF BUSINESS

Eurovia Atlantic Coast, LLC dba Sunmount Paving Company
Justin, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with a completion date within 360 calendar days.

FISCAL INFORMATION

These services will be funded from a combination of the accounts listed below.

Account Name	Account Number	OR Amount
2019 Bond	350523473.1360.40100	\$1,669,000.38
2019 Bond	350523469.1360.40100	\$2,484,048.72
Water	630489523.1360.40100	\$1,811,551.03
Wastewater	640469545.1360.40100	\$1,138,416.70
Sidewalks	350549473.1360.40100	\$79,529.28

Requisition #159712 has been entered into the Purchasing software system in the amount of \$7,182,546.11. The budgeted amount for this item is \$7,541,673.42.

EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: Pricing Evaluation
- Exhibit 3: LLC Members
- Exhibit 4: Presentation
- Exhibit 5: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Taylor Holt, 940-349-8938.

Legal point of contact: Marcella Lunn at 940-349-8333.

Exhibit 2

CSP 8110 - Pricing Evaluation for the 2019 Street Bond Neighborhood 4

		Eurovia Atlantic Coast LLC dba Sunmount Paving Company	Jagoe-Public Company	Sundt Construction, Inc.
Respondent's Business Name:				
Principal Place of Business (City and State):		Justin, TX	Denton, TX	Irving, TX
Line #	Description			
1	Total Proposal Amount	\$7,182,546.11	\$7,340,695.35	\$8,934,630.00

5% Contingency:	\$359,127.31
Total Contract NTE Amount	\$7,541,673.42

Evaluation

Item #	CSP Criteria	Eurovia Atlantic Coast LLC dba Sunmount Paving Company	Jagoe-Public Company	Sundt Construction, Inc.
1	Offeror's Key Personnel - 10%	7.60	7.60	7.20
2	Quality, Reputation, and Ability to Complete Similar Projects on Schedule and Within Budget - 20%	12.80	13.60	16.00
3	Detailed Schedule and Written Plan - 15%	9.00	10.20	13.80
4	Offeror's Safety Record - 5%	5.00	2.00	5.00
5	Price, Total Cost of Ownership - 50%	50.00	48.92	40.19
Total Score:		84.40	82.32	82.19



Texas Secretary of State

Jane Nelson

[UCC](#) [Business Organizations](#) [Trademarks](#) [Notary](#) [Account](#) [Help/Fees](#) [Briefcase](#) [Logout](#)

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 803117321
Original Date of Filing: September 13, 2018
Formation Date: N/A
Tax ID: 32068378366

Entity Type: Foreign Limited Liability Company (LLC)
Entity Status: In existence
FEIN:

Name: Eurovia Atlantic Coast LLC
Address: 2911 N Graham Street
Charlotte, NC 28206 USA

Fictitious Name: N/A
Jurisdiction: DE, USA
Foreign Formation Date: September 7, 2018

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT
Last Update	Name		Title
May 16, 2022	ALAN CAHILL		MANAGER
May 16, 2022	ALAN CAHILL		DIRECTOR
May 16, 2022	P. FREDEICK O'DEA Jr		DIRECTOR
May 16, 2022	P. FREDEICK O'DEA Jr		MANAGER
May 16, 2022	PATRICK SULLIOT		DIRECTOR



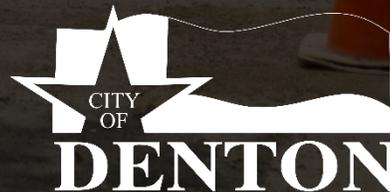
2019 Street Bond Neighborhood 4

Neighborhood Rehabilitation Program

Public Utility Board
Award of Construction Contract

May 2, 2023

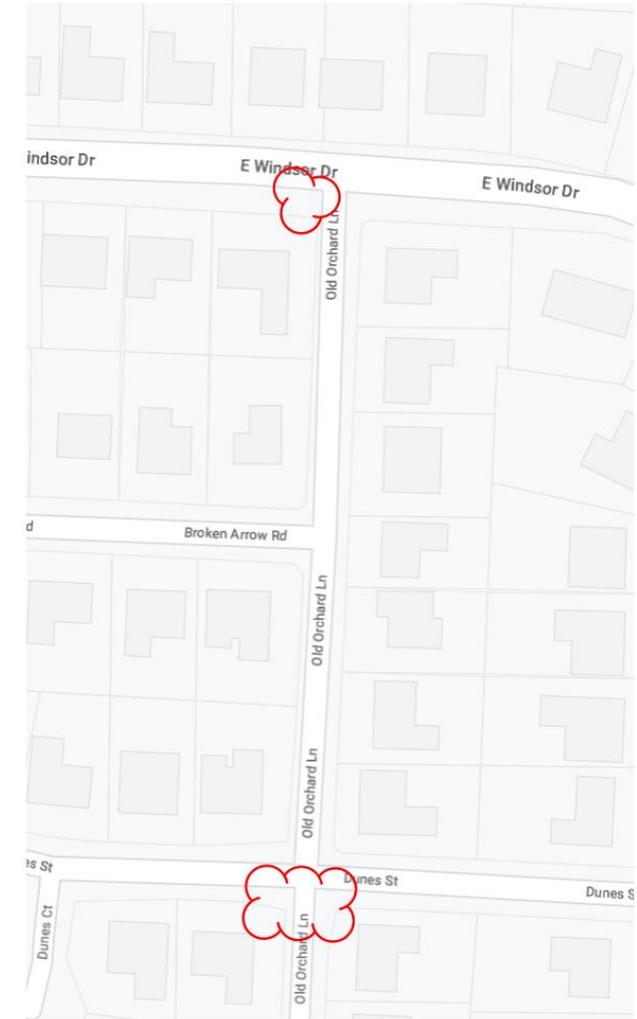
File ID 23-883



Neighborhood 4 Project Overview

- Full depth street reconstruction including curb and gutter.
- Limited sidewalk, water and sewer improvements.

STREET SEGMENT	FROM	TO	STREET SEGMENT	FROM	TO
Brightwood	<u>Wilsonwood Dr</u>	Longfellow Ln	Dunes Pl	Dunes St	<u>S Culdesac</u>
Broken Arrow	Dunes St	Old Orchard Ln	Jamestown	Williamsburg Rw	Mistywood Ln
Broken Bow	Dunes St	Windsor Dr E	Jamestown	Maid Marion Pl	Williamsburg Rw
Broken Bow	Windsor Dr	North	Jamestown	Locksley Ln	Maid Marion Pl
Chaparral	Cooper Branch E	East	Maid Marian	Jamestown Ln	Locksley Ln
Churchill	Wellington Dr	Windsor Dr E	Mill Pond	Emerson Ln	Old North Rd
Churchill	Churchill Cr	Wellington Dr	Old Orchard	Dunes St	Broken Arrow Rd
Churchill	Churchill Cir	Churchill Dr	Old Orchard	Dunes St	<u>S Culdesac</u>
Churchill	Wellington Dr	Churchill Dr	Old Orchard	Windsor Dr E	Broken Arrow Rd
Dunes	Broken Bow Rd	Old Orchard Ln	Pickwick	Oxford Ct	Windsor Dr E
Dunes	Old Orchard Ln	Dunes Pl	Wellington	Churchill Cr	Heather Ln
Dunes	Dunes Pl	Broken Arrow Rd	Wellington	Churchill Cr	Churchill Dr



*Clouded area denotes ADA ramp & sidewalk improvements

Proposals Received

	Sunmount Paving	Jagoe-Public Company	Sundt Construction
Total Proposal Amount	\$7,182,546.11	\$7,340,695.35	\$8,934,630.00
5% Contingency	\$359,127.31		
Total Contract NTE Amount	\$7,541,673.42		

CSP Criteria	Sunmount Paving	Jagoe-Public Company	Sundt Construction
Offeror's Key Personnel - 10%	7.60	7.60	7.20
Quality, Reputation, and Ability to Complete Similar Projects on Schedule and Within Budget - 20%	12.80	13.60	16.00
Detailed Schedule and Written Plan - 15%	9.00	10.20	13.80
Offeror's Safety Record - 5%	5.00	2.00	5.00
Price, Total Cost of Ownership - 50%	50.00	48.92	40.19
Total Score - 100%	84.40	82.32	82.19

Note: Competitive Sealed Proposal (CSP) was used for this solicitation.



Neighborhood 4 Schedule

Neighborhood 4 – 24 Segments

- 100 % Design Documents (Plan, Specifications, and Estimates) – Complete Q1 2023
- Project Bidding – Q1 2023
- Construction Initiation – Q3 2023
 - 360 days for final completion
- Construction Completion – Q4 2024*
 - *Date is weather dependent

Staff Recommendation

Approval of a contract between the City of Denton and Sunmount Paving Company in the not-to-exceed amount of \$7,541,673.42

Breakdown:

- Base Bid: \$7,182,546.11
- 5% Contingency: \$359,127.31
- Not-to-exceed: \$7,541,673.42

Questions?

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH EUROVIA ATLANTIC COAST, LLC DBA SUNMOUNT PAVING COMPANY, FOR THE 2019 STREET BOND NEIGHBORHOOD 4 PROJECT FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8110 – AWARDED TO EUROVIA ATLANTIC COAST, LLC DBA SUNMOUNT PAVING COMPANY, IN THE NOT-TO-EXCEED AMOUNT OF \$7,541,673.42).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the 2019 Street Bond Neighborhood 4 project for the Capital Projects 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.

<u>CSP</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8110	Eurovia Atlantic Coast, LLC dba Sunmount Paving Company	\$7,541,673.42

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 _____. 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:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

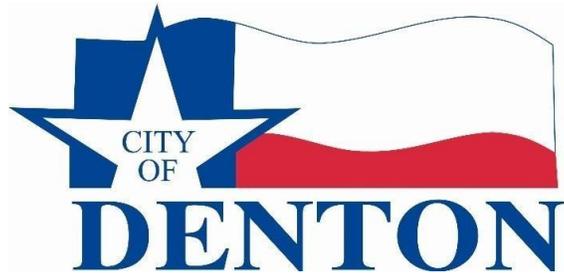
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o=City
of Denton,
email=marcella.lunn@cityofdenton.com, c=US
Date: 2023.04.07 10:59:28 -05'00'



DocuSign City Council Transmittal Coversheet

RFP	8110
File Name	2019 Street Bond Neighborhood 4
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

SECTION 00 52 44**AGREEMENT - CSP**

THIS AGREEMENT, authorized on _____ is made by and between the City of Denton, a Texas home rule municipal corporation, acting by and through its duly authorized City Manager, (“City”), and Eurovia Atlantic Coast, LLC dba Sunmount Paving Company, authorized to do business in Texas, acting by and through its duly authorized representative, (“Contractor”).

City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein.

Article 2. PROJECT

The project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

2019 Street Bond Neighborhood 4

CSP 8110 / Project Number #220006-1

Article 3. CONTRACT PRICE

City agrees to pay Contractor for performance of the Work in accordance with the Contract Documents an amount, in current funds, of Seven Million One Hundred Eighty-Two Thousand Five Hundred Forty-Six Dollars and 11/100 Cents (\$7,182,546.11). At the sole option of the City, a five (5) percent contingency in the amount of Three Hundred Fifty-Nine Thousand One Hundred Twenty-Seven Dollars and 31/100 Cents (\$359,127.31) may be used for a total not-to-exceed amount of Seven Million Five Hundred Forty-One Thousand Six Hundred Seventy-Three Dollars and 42/100 Cents (\$7,541,673.42)

Article 4. CONTRACT TIME**4.1 Time is of the essence.**

All time limits for Milestones, if any, Substantial Completion and Final Acceptance as stated in the Contract Documents are of the essence to this Contract.

4.2 Substantial Completion.

The Work will be Substantially Complete, as defined in the Supplementary Conditions, within 330 Calendar 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.

4.3 Final Acceptance.

The Work will be complete for Final Acceptance within 360 Calendar 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.

1 4.5 Liquidated Damages:

2 Contractor recognizes that *time is of the essence* to achieve Milestones, Substantial Completion,
3 and Final Acceptance of the Work, and City will suffer financial and other losses if the Work is not
4 completed within the times specified in the Contract Documents. The Contractor also recognizes
5 the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the
6 actual loss suffered by the City if the Work related to the Milestones, Substantial Completion, or
7 Final Acceptance is not completed on time. Accordingly, instead of requiring any such proof,
8 Contractor agrees that liquidated damages for delay (but not as a penalty):

- 9 1. *Substantial Completion*: If the Contractor neglects, refuses, or fails to achieve Substantial
10 Completion, as defined in the Supplementary Conditions, within the time (as duly adjusted
11 pursuant to the Contract) specified in Paragraph 4.2, Contractor shall pay City *One
12 Thousand Dollars (\$1,000.00)* for each day that expires after such time, until Substantial
13 Completion is achieved.
- 14 2. *Final Acceptance*: If Contractor neglects, refuse, or fails to complete the Work within the
15 time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.3, for completion
16 and readiness for Final Payment, Contractor shall pay City *One Thousand Dollars
17 (\$1,000.00)* for each day that expires after such time, until the date determined by City as
18 stated in the City-issued Letter of Final Acceptance.

19 **Article 5. CONTRACT DOCUMENTS**

20 5.1 CONTENTS:

21 A. The Contract comprises the entire agreement between City and Contractor concerning the
22 Work and consists of this Agreement and the items set forth below. The Contract
23 Documents consist of all items below other than this Agreement:

- 24 1. Attachments to this Agreement:
 - 25 a. Proposal Form
 - 26 1) Proposal Form
 - 27 2) Unit Price Proposal Form
 - 28 3) Vendor Compliance to State Law Non-Resident Offeror
 - 29 4) State and Federal documents (*project specific*)
 - 30 b. Current Prevailing Wage Rate Table
 - 31 c. Worker's Compensation Affidavit
 - 32 d. General Conditions.
 - 33 e. Supplementary Conditions.
- 34 2. The following located in File 8110 at:
35 [https://lfpweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&](https://lfpweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1)
36 [dbid=0&repo=MaterialsManagement&cr=1](https://lfpweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1)
37
 - 38 a. Specifications described in the Table of Contents (Section 00 00 00) of the
39 Project's Contract Documents.
 - 40 b. Drawings.
 - 41 c. Addenda.
 - 42 d. Documentation submitted by Contractor prior to Notice of Award.
- 43 3. The following which shall be issued after the Effective Date of this Agreement and
44 delivered to the City within ten (10) days of the Effective Date and before beginning
45 Work:
46
 - 47 a. Payment Bond

- 1 b. Performance Bond
- 2 c. Maintenance Bond
- 3 d. Power of Attorney for the Bonds
- 4 e. Form 1295 – Certificate of Interested Parties (email to City’s Materials
- 5 Management department)
- 6 f. Insurance Certificate
- 7 4. Specifications specifically made a part of the Contract Documents by attachment or,
- 8 if not attached, as incorporated by reference and described in the Table of Contents
- 9 of the Project’s Contract Documents.
- 10 5. The following which may be delivered or issued after the Effective Date of the
- 11 Agreement and, if issued, become an incorporated part of the Contract Documents:
- 12 a. Notice to Proceed.
- 13 b. Field Orders.
- 14 c. Change Orders.
- 15 d. Letter of Final Acceptance.
- 16
- 17

1 **Article 6. INDEMNIFICATION**

2 **6.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own**
3 **EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS,**
4 **AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR**
5 **PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE**
6 **OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND**
7 **SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS,**
8 **AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES**
9 **UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS**
10 **SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS**
11 **ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING**
12 **SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION**
13 **OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED**
14 **TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL**
15 **COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN**
16 **DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**

17
18 **6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD**
19 **HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS,**
20 **SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS**
21 **FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY**
22 **OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF,**
23 **RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE**
24 **PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES,**
25 **SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT.**
26 **THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO**
27 **OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT**
28 **ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN**
29 **WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE**
30 **CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT**
31 **LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND**
32 **LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH**
33 **CLAIMS AND CAUSES OF ACTIONS.**

34
35 **Article 7. MISCELLANEOUS**

36 **7.1 Capitalized Terms.**

37 Unless otherwise stated herein, capitalized terms used in this Agreement which are defined
38 in Article 1 of the General Conditions will have the meanings indicated in the General
39 Conditions.

40 **7.2 Assignment of Contract.**

41 This Agreement, including all of the Contract Documents may not be assigned by the
42 Contractor without the advance express written consent of the City.

1 7.3 Successors and Assigns.

2 City and Contractor each binds itself, its partners, successors, assigns and legal
3 representatives to the other party hereto, in respect to all covenants, agreements and
4 obligations contained in the Contract Documents.

5 7.4 Severability.

6 Any provision or part of the Contract Documents held to be unconstitutional, void or
7 unenforceable by a court of competent jurisdiction shall be deemed stricken, and all
8 remaining provisions shall continue to be valid and binding upon City and Contractor.

9 7.5 Venue and Waiver of Sovereign Immunity.

10 This Agreement, including all of the Contract Documents is performable in the State of
11 Texas. Venue shall be in the state district courts of Denton County, Texas. The City's
12 sovereign immunity is waived only to the extent set forth and in accordance with the
13 provisions of Subchapter I, Chapter 271 of the Texas Local Government Code or as otherwise
14 specifically waived by law. The City does not waive its sovereign immunity to suit in federal
15 court.

16 7.6 Authority to Sign.

17 Contractor hereby certifies that the person signing the Agreement on its behalf is the duly
18 authorized signatory of the Contractor.

19

20 7.7 Prohibition on Contracts with Companies Boycotting Israel.

21 Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government
22 Code, the City is prohibited from entering into a contract with a company for goods or
23 services unless the contract contains a written verification from the company that it: (1)
24 does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

25 The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms
26 in Section 808.001 of the Texas Government Code. ***By signing this contract, Contractor***
27 ***certifies that Contractor's signature provides written verification to the City that***
28 ***Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of***
29 ***the contract.***

30

31 7.8 Immigration Nationality Act.

32 Contractor shall verify the identity and employment eligibility of its employees who perform
33 work under this Agreement, including completing the Employment Eligibility Verification
34 Form (I-9). Upon request by City, Contractor shall provide City with copies of all I-9 forms
35 and supporting eligibility documentation for each employee who performs work under this
36 Agreement. Contractor shall adhere to all Federal and State laws as well as establish
37 appropriate procedures and controls so that no services will be performed by any Contractor
38 employee who is not legally eligible to perform such services. **CONTRACTOR SHALL**
39 **INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES,**
40 **LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY**
41 **CONTRACTOR, CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS,**
42 **AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right
43 to immediately terminate this Agreement for violations of this provision by Contractor.

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7.9 No Third-Party Beneficiaries.

This Agreement gives no rights or benefits to anyone other than the City and the Contractor and there are no third-party beneficiaries.

7.10 No Cause of Action Against Engineer.

Contractor, its 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. 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 to Contractor or any other entity for those duties that belong to the City, and do not relieve Contractor or any other entity of its obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for performing, coordinating and completing all portions of the Work in accordance with the Contract Documents and any health or safety precautions required by such 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.

SIGNATURE PAGE TO FOLLOW

1 IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective
2 as of the date subscribed by the City’s City Manager or his designee (“Effective Date”).
3

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CITY OF DENTON

BY: _____

TITLE: _____

DATE: _____

CONTRACTOR
EUROVIA ATLANTIC COAST LLC DBA
SUNMOUNT PAVING COMPANY

DocuSigned by:
BY: John Rauer
42B1E8639E8145E
AUTHORIZED AGENT

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations and
business terms.

DocuSigned by:
Trevor Crain
7B46EEA8115C4F2...
SIGNATURE PRINTED NAME
Trevor Crain
Director of Capital Projects
TITLE
Engineering / Capital Projects
DEPARTMENT

John Rauer
NAME
Division Manager
TITLE
817-480-2345
PHONE NUMBER
john.rauer@eurovia.us
EMAIL ADDRESS

ATTEST:
ROSA RIOS, CITY SECRETARY

TEXAS ETHICS COMMISSION
1295 CERTIFICATION NUMBER

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn
4B070831B4AA438...

BAFO PROPOSAL FORM ATTACHMENT

To: Cori Power
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: CSP 8110 – 2019 Street Bond Neighborhood 4

The undersigned Offeror hereby submits this Proposal Form Revision and Best and Final Offer (this "BAFO") for CSP 8110 – 2019 Street Bond Neighborhood 4 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 Base Proposal Amount: \$ 7,180,046.11
Total BAFO Alternate A Amount: \$ 2,500.00
Total BAFO Proposal Amount: \$ 7,182,546.11

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 March 22nd, 2023 by the entity named below.

Respectfully submitted,
By: [Signature]
(Signature)

JOHN PAUER
(Printed Name)

49
50 Title: DIVISION MANAGER
51
52 Company: EUROVIA ATLANTIC COAST LLC
53 PBA SUNMOUNT PAVING COMPANY
54 Address: 11801 HARMONSON ROAD
55 JUSTIN TX 76247
56 State of Incorporation: DELAWARE
57 Email: John.rauere@eurovia.us
58 Phone: 817 430 0552

59

60

END OF SECTION

SECTION 00 42 44 - UNIT PRICE PROPOSAL FORM - CSP



City of Denton - Capital Projects
901-B Texas Street
Denton, TX 76209
Cori Power/Purchasing Dept.

From: Eurovia Atlantic Coast dba
Sunmount Paving Co.
11801 Harmonson Rd.
Justin, Tx
John Rauer
817-674-2247
John. Rauer@Eruovia.us

PROJ.: 2019 Street Bond Neighborhood 4

CSP: 8110
ENG
PMO: 220006-1

OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
1	01 58 13	TEMPORARY PROJECT SIGN	EA	2	2,500.00	\$ 5,000.00
2	01 70 00	MOBILIZATION	LS	1	475,000.00	\$ 475,000.00
3	02 41 14	PLUGING OF UTILITY LINES (6" WATERLINE)	LS	1	65,000.00	\$ 65,000.00
4	02 41 14	PLUGING OF UTILITY LINES (8" WATERLINE)	LS	1	15,000.00	\$ 15,000.00
5	02 41 14	UTILITY MANHOLE REMOVAL	EA	11	1,300.00	\$ 14,300.00
6	02 41 14	UTILITY MANHOLE ABANDONMENT	EA	3	2,400.00	\$ 7,200.00
7	02 41 14	FIRE HYDRANT REMOVAL	EA	13	800.00	\$ 10,400.00
8	02 41 14	REMOVE OR ABANDON SANITARY SEWER (6")	LS	1	23,000.00	\$ 23,000.00
9	02 41 15	REMOVE CONCRETE CURB AND GUTTER	LF	2,581	20.00	\$ 51,620.00
10	02 41 15	REMOVE SIDEWALK	SY	54	65.00	\$ 3,510.00
11	02 41 15	REMOVE DRIVEWAY	SY	55	65.00	\$ 3,575.00
12	02 41 15	REMOVE CONCRETE VALLEY GUTTER	SY	257	83.00	\$ 21,331.00
13	02 41 15	REMOVE ASPHALT PAVEMENT	SY	30651	9.00	\$ 275,859.00
14	31 10 00	SITE PREPARATION	LS	1	200,000.00	\$ 200,000.00
15	31 23 16	UNCLASSIFIED EXCAVATION	CY	50	165.00	\$ 8,250.00
16	31 24 00	EMBANKMENT	CY	50	205.00	\$ 10,250.00
17	31 25 14	STORMWATER POLLUTION PREVENTION PLAN	LS	1	1,463.36	\$ 1,463.36
18	31 25 14	SILT FENCE	LF	1,466	5.20	\$ 7,623.20
19	31 25 14	INLET PROTECTION	LF	140	9.75	\$ 1,365.00
20	31 25 14	REMOVE STORM WATER POLLUTION PREVENTION DEVICES	LS	1	2,805.50	\$ 2,805.50
21	32 11 29	QUICKLIME	TON	1,184	270.00	\$ 319,680.00
22	32 11 29	LIME TREATMENT	SY	30,651	25.05	\$ 767,807.55
23	32 12 16	ASPHALT PAVEMENT FOR SURFACE COURSE TY C	TON	159	340.00	\$ 54,060.00
24	32 12 16	ASPHALT PAVEMENT FOR SURFACE COURSE TY D	TON	3,268	190.00	\$ 620,920.00
25	32 12 16	ASPHALT PAVEMENT FOR BASE COURSE TY B	TON	10,117	133.50	\$ 1,350,619.50
26	32 16 00	CONCRETE VALLEY GUTTER	LF	357	106.00	\$ 37,842.00
27	32 16 00	CONCRETE CURB AND GUTTER	LF	2,581	56.00	\$ 144,536.00
28	32 16 00	DRIVEWAY APPROACH	SY	55	232.00	\$ 12,760.00
29	32 16 00	CURB RAMP (TY 5)	EA	1	8,900.00	\$ 8,900.00
30	32 16 00	CONCRETE SIDEWALK	SY	12	508.00	\$ 6,096.00
31	32 93 00	TOPSOIL	SY	699	14.00	\$ 9,786.00
32	32 93 00	SODDING	SY	699	24.00	\$ 16,776.00
33	33 01 30	POST CONSTRUCTION CCTV INSPECTION	LF	4,835	1.00	\$ 4,835.00
34	33 05 05	TRENCH SAFETY	LF	19,828	2.00	\$ 39,656.00
35	33 05 15	INSTALLATION OF WATER CARRIER PIPE IN CASING (STEEL)(16")	LF	108	350.00	\$ 37,800.00
36	33 05 62	MANHOLE (SAN SEWER)(4' DIA)	EA	28	10,000.00	\$ 280,000.00

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
37	33 05 98	LOCATION OF EXISTING UTILITIES	LS	1	50,000.00	\$ 50,000.00
38	33 14 11	PVC WATER PIPE (C-900)(8")	LF	7,935	108.00	\$ 856,980.00
39	33 14 13	WATER MAIN PIPE (WELDED STEEL)(8")	LF	30	250.00	\$ 7,500.00
40	33 14 17	NEW WATER SERVICE (1")	EA	122	2,000.00	\$ 244,000.00
41	33 14 17	NEW WATER SERVICE (2")	EA	7	3,900.00	\$ 27,300.00
42	33 14 20	6" GATE VALVE AND BOX	EA	1	2,400.00	\$ 2,400.00
43	33 14 20	8" GATE VALVE AND BOX	EA	19	3,200.00	\$ 60,800.00
44	33 14 25	CONNECTION TO EXISTING WATER MAINS (6")	EA	4	2,600.00	\$ 10,400.00
45	33 14 25	CONNECTION TO EXISTING WATER MAINS (8")	EA	4	3,900.00	\$ 15,600.00
46	33 14 25	TAPPING SLEEVE AND VALVE (6" X 6")(CITY PERFORMED)	EA	4	5,400.00	\$ 21,600.00
47	33 14 25	TAPPING SLEEVE AND VALVE (8" X 8")(CITY PERFORMED)	EA	3	7,200.00	\$ 21,600.00
48	33 14 25	TAPPING SLEEVE AND VALVE (12" X 8")(CITY PERFORMED)	EA	1	9,000.00	\$ 9,000.00
49	33 14 40	FIRE HYDRANT ASSEMBLY	EA	22	8,000.00	\$ 176,000.00
50	33 16 00	CURB RAMP (TY 7)	EA	4	2,100.00	\$ 8,400.00
51	33 31 14	PVC GRAVITY SEWER PIPE (8")(SDR-26)	LF	4,835	104.00	\$ 502,840.00
52	33 31 16	NEW SEWER SERVICE (4")	EA	58	2,000.00	\$ 116,000.00
53	33 32 11	BYPASS PUMPING OF EXISTING SEWER SYSTEMS	LS	1	45,000.00	\$ 45,000.00
54	34 71 13	INSTALLATION OF TRAFFIC CONTROL DEVICES	MO	12	7,500.00	\$ 90,000.00
TOTAL BASE PROPOSAL:						\$7,180,046.11

Alternate A - Environmental Impairment/Pollution Insurance						
1A		Environmental Impairment/Pollution Insurance	LS	1	\$ 2,500.00	\$ 2,500.00
TOTAL ALT. PROPOSAL:						\$2,500.00

2019 Street Bond Neighborhood 4	TOTAL PROPOSAL:	\$7,182,546.11
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SECTION 00 43 39

VENDOR COMPLIANCE TO STATE LAW NON-RESIDENT OFFEROR - CSP

Texas Government Code Chapter 2252 was adopted for the award of contracts to nonresident offerors. This law provides that, in order to be awarded a best value contract where the offeror also offered the lowest proposal price, nonresident offerors (out-of-state contractors whose corporate offices or principal place of business are outside the State of Texas) propose on projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident offeror by the same amount that a Texas resident offeror would be required to underbid a nonresident offeror in order to obtain a comparable contract in the State which the nonresident's principal place of business is located.

The appropriate blanks in Section A must be filled out by all nonresident offerors in order for your proposal to meet specifications. The failure of nonresident offerors to do so will automatically disqualify that offeror. Resident offerors must check the box in Section B.

A. Nonresident offerors in the State of _____, our principal place of business, are required to be _____ percent lower than resident offerors by State Law. A copy of the statute is attached.

Nonresident offerors in the State of _____, our principal place of business, are not required to underbid resident Offerors.

B. The principal place of business of our company or our parent company or majority owner is in the State of Texas.

OFFEROR:

Eurcia Atlantic Coast LLC
dba Sunmount Paving Co.
Company

By: John Bauer
(Please Print)

11801 Harmonson Rd
Address

Signature: [Signature]

Justin, TX 76247
City/State/Zip

Title: Division Manager
(Please Print)

Date: 2/22/2023

END OF SECTION

"General Decision Number: TX20230018 01/06/2023

Superseded General Decision Number: TX20220018

State: Texas

Construction Type: Heavy

Counties: Collin, Dallas, Denton, Ellis, Kaufman and Rockwall Counties in Texas.

Water and Sewer Lines/Utilities (Including Related Tunneling Where the Tunnel is 48" or Less in Diameter)

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)(2)-(60).

<p>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:</p>	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 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 2023.
<p>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:</p>	<ul style="list-style-type: none"> . Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 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 2023.

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

01/06/2023

PLUM0100-002 11/01/2021

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 34.48	13.07

SUTX1991-004 09/23/1991

	Rates	Fringes
Laborers:		
Common.....	\$ 7.25 **	
Utility.....	\$ 7.467 **	
Pipelayer.....	\$ 7.828 **	
Power equipment operators:		
Backhoe.....	\$ 10.804 **	
Crane.....	\$ 10.942 **	
Front End Loader.....	\$ 9.163 **	
Tunneling Machine (48" or less).....	\$ 9.163 **	
TRUCK DRIVER.....	\$ 8.528 **	

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 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

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) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of 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. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is

based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write 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 the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write 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 by 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

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

"General Decision Number: TX20230025 01/06/2023

Superseded General Decision Number: TX20220025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

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)(2)-(60).

<p>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:</p>	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 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 2023.
<p>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:</p>	<ul style="list-style-type: none"> . Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 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 2023.

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 01/06/2023

SUTX2011-007 08/03/2011

	Rates	Fringes
CONCRETE FINISHER (Paving and Structures).....	\$ 14.12	**
ELECTRICIAN.....	\$ 19.80	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 13.16	**
Structures.....	\$ 13.84	**
LABORER		
Asphalt Raker.....	\$ 12.69	**
Flagger.....	\$ 10.06	**
Laborer, Common.....	\$ 10.72	**
Laborer, Utility.....	\$ 12.32	**
Pipelayer.....	\$ 13.24	**
Work Zone Barricade Servicer.....	\$ 11.68	**
POWER EQUIPMENT OPERATOR:		
Asphalt Distributor.....	\$ 15.32	**
Asphalt Paving Machine.....	\$ 13.99	**
Broom or Sweeper.....	\$ 11.74	**
Concrete Pavement Finishing Machine.....	\$ 16.05	**
Concrete Saw.....	\$ 14.48	**
Crane Operator, Lattice Boom 80 Tons or Less.....	\$ 17.27	
Crane Operator, Lattice Boom over 80 Tons.....	\$ 20.52	
Crane, Hydraulic 80 Tons or Less.....	\$ 18.12	
Crawler Tractor.....	\$ 14.07	**
Excavator, 50,000 pounds or less.....	\$ 17.19	
Excavator, over 50,000 pounds.....	\$ 16.99	
Foundation Drill , Truck Mounted.....	\$ 21.07	
Foundation Drill, Crawler Mounted.....	\$ 17.99	
Front End Loader 3 CY or Less.....	\$ 13.69	**
Front End Loader, over 3 CY.....	\$ 14.72	**
Loader/Backhoe.....	\$ 15.18	**
Mechanic.....	\$ 17.68	
Milling Machine.....	\$ 14.32	**
Motor Grader, Fine Grade....	\$ 17.19	
Motor Grader, Rough.....	\$ 16.02	**
Pavement Marking Machine....	\$ 13.63	**
Reclaimer/Pulverizer.....	\$ 11.01	**
Roller, Asphalt.....	\$ 13.08	**
Roller, Other.....	\$ 11.51	**
Scraper.....	\$ 12.96	**
Small Slipform Machine.....	\$ 15.96	**
Spreader Box.....	\$ 14.73	**

Servicer.....\$ 14.58 **

Steel Worker (Reinforcing).....\$ 16.18 **

TRUCK DRIVER

- Lowboy-Float.....\$ 16.24
- Off Road Hauler.....\$ 12.25 **
- Single Axle.....\$ 12.31 **
- Single or Tandem Axle Dump
Truck.....\$ 12.62 **
- Tandem Axle Tractor with
Semi Trailer.....\$ 12.86 **
- Transit-Mix.....\$ 14.14 **

WELDER.....\$ 14.84 **

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

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) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of 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. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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 U.S. Department of Labor
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2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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 U.S. Department of Labor
 200 Constitution Avenue, N.W.
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4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

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SECTION 00 45 27

CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW - CSP

Pursuant to Texas Labor Code Section 406.096(a), as amended, Contractor certifies that it provides worker's compensation insurance coverage for all of its employees employed on 2019 Street Bond Neighborhood 4. Contractor further certifies that, pursuant to Texas Labor Code, Section 406.096(b), as amended, it will provide to City its subcontractor's certificates of compliance with worker's compensation coverage.

CONTRACTOR:

Eurovia Atlantic Coast LLC
dba Sunmount Paving Co.

By: John Rauer
(Please Print)

11801 Harmonson Rd
Address

Signature: [Signature]

Justin, Tx 76247
City/State/Zip

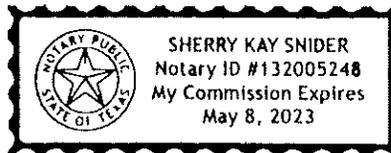
Title: Division Manager
(Please Print)

THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared John Rauer, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of Eurovia Atlantic Coast for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21st day of February, 2023



[Signature]
Notary Public in and for the State of Texas

END OF SECTION

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**1.01 *Defined Terms***

- A. Wherever used in the Contract or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument titled “Agreement”, “Agreement – CSP”, or “Agreement – Unit Price Bid” executed by the City and Contractor for the Work, setting forth the name of the Project, Contract Price, Contract Time and the items included in the Contract.
 3. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract.
 4. *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.
 5. *Award*—Authorization by the City Council for the City to enter into an Agreement.
 6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. The term “Bid” shall be defined to include the term “Proposal” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 7. *Bidder*—The individual or entity that submits a Bid directly to City. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda). The term “Bidding Documents” shall be defined to include the terms “Proposal Documents” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 9. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. The term “Bidding Requirements” shall be defined to include the terms “Proposal Requirements” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and will include the Request for Proposal or Invitation to Offerors, Instructions to Offerors, Offerors Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

10. *Business Day*—A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
11. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.
12. *Change Order*—A document which is prepared by the Contractor or City, approved by the City, and signed by Contractor and City, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*—The City of Denton is, a Texas home-rule municipal corporation acting by its City Council through its City Manager or his or her designee.
14. *City Attorney*—The officially appointed City Attorney of the City of Denton or his or her designee.
15. *City Council*—The duly elected and qualified governing body of the City of Denton.
16. *City Manager*—The officially appointed authorized City Manager of the City of Denton.
17. *Contract*—The entire and integrated set of written instruments between the City and Contractor concerning the Work comprised of the Agreement and all Contract Documents, which written instruments supersede all prior negotiations, representations, or agreements, whether written or oral, concerning the Work.
18. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
19. *Contract Documents*—Those items so designated as “Contract Documents.” in the Agreement at Paragraph 5.1.A. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 12.03 in the case of Unit Price Work). The Contract Price does not include any “Incentive”, if applicable.
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (a) achieve Milestones, if any and (bb) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 12.01 of these General Conditions for definition.
24. *Damage Claims*—A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day*—A day, unless otherwise defined, shall mean a Calendar Day.
26. *Drawings*—The part of the Contract Documents prepared or approved by an Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals, as defined, are not considered Drawings as so defined here.

27. *Effective Date of the Agreement*—The date, indicated in the Agreement, on which it becomes effective,, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the City.
28. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, text, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
29. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by the Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
30. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
31. *Extra Work*—Additional work made necessary by City-approved changes or alterations to the Contract Documents. Extra Work shall be part of the Work.
32. *Field Order*—A written directive issued by City that requires changes in the Work but does not involve a change to the Contract Price, Contract Time, or Drawings, Plan, or Shop Drawings.
33. *Final Acceptance*—The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.
34. *Final Inspection*—The inspection performed by the City to determine whether the Contractor has completed each and every part or appurtenance of the Work fully, entirely, and in conformance with the Contract Documents.
35. *General Requirements*—Sections of The information set forth in “Division 101 – General Requirements” of the Standard Construction Specification Documents.
36. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, P C B s , Petroleum, Hazardous Waste, Radioactive Material, or any other substance, product, waste or materials, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
37. *Hazardous Waste*—Any solid waste listed as hazardous or which possesses one or more hazardous characteristics as defined in applicable Laws and Regulations.
38. *Incidental or incidental*—Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.
39. *Laws and Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all

governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or any portion or part of the Work to be performed.

40. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
41. *Major Item*—An item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price.
42. *Milestone*—A principal event specified in the Contract Documents relating to the performance of an identified portion of the Work by an intermediate Contract Time prior to Final Acceptance of the Work.
43. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
44. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
45. *PCBs*—Polychlorinated biphenyls.
46. *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.
47. *Plans*—This term will have the same definition of as “Drawings”.
48. *Project* —The Work to be performed under the Contract.
49. *Project Manager*—The authorized representative of the City who will be assigned to the Project.
50. *Project Manual*—The documentary information prepared for bidding or proposing and furnishing the Work.
51. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising Contractor’s plan to achieve each Milestone and accomplish the Work within the Contract Time.
52. *Public Meeting*—An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
53. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
54. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

55. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
56. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
57. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
58. *Specifications or Technical Specifications* —The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Section 00 00 00) of the Project.
59. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
60. *Submittal*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to the City to illustrate some portion of the Work.
61. *Subsidiary or subsidiary*—*These terms will have the same* definition as “Incidental. or incidental”.
62. *Successful Bidder*—The Bidder to whom City issues a Notice of Award. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and is the Proposer or Offeror submitting the proposal or offer that provides the best value to the City and to whom the City issues a Notice of Award.
63. *Superintendent*—The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
64. *Supplementary Conditions*—The part of the Contract set forth at Division 00 73 00 that amends or supplements these General Conditions.
65. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
66. *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.

67. *Unit Price Work*—Work for which the Contract Price is determined by multiplying the unit price for the item by the estimated quantity of the item.
68. *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.
69. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
70. *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.

1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract includes the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by CityCity. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of judgment, action, or determination will be to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).
- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 1. does not conform to the Contract Documents; or
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to City’s written notice of Final Acceptance.
- D. *Furnish, Install, Perform, Provide*
 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to execute, carry out, furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City the performance bond, payment bond and maintenance bond that comply with the provisions of Chapter 2253 of the Texas Government Code. Work will not be allowed to begin until the performance and payment bonds have been provided by the Contractor to the City.
- B. Evidence of Contractor’s Insurance: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6. Work will not be allowed to begin until the evidence of insurance has been provided by the Contractor to the City.

2.02 *Copies of Documents*

- A. City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract, and three (3) additional copies of the Drawings. Additional printed copies will be furnished upon request at the cost of reproduction.

2.03 *Before Starting Construction*

Baseline starting Work, Contractor shall submit for review by City the following in accordance with the Contract Documents:

- A. Baseline Schedules in accordance with General Requirements, Section 01 32 16.
- B. Preliminary Schedule of Submittals.
- C. Preliminary Schedule of Values: For lump sum contracts, a Schedule of Values for all of the Work that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Meeting*

- A. Before any Work at the Site is started, the Contractor shall attend a Preconstruction Meeting as specified in Section 01 31 19.

2.05 *Public Meeting*

- A. Contractor may not mobilize any equipment, materials, or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

2.06 *Initial Acceptance of Schedules*

- A. No progress payment shall be made to Contractor until acceptable Project Schedules are submitted to City in accordance with the Contract Documents.

2.07 *Electronic Submittals and Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then City and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. City will issue clarifications and interpretations of the Contract Documents as provided herein.
- D. The Specifications may vary in form, forma and style. Some Specification sections may be written in varying degrees of streamlined or declarative style, and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims or Damage Claims.

- E. The cross-referencing of Specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross-referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not cross-referencing is provided in each section or whether the cross-referencing is complete or accurate.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of City, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements, and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.1717) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by City, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier; or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

3.04 Requirements of the Contract Documents

- A. During the performance of the Work and until final payment, Contractor shall submit to the City in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. City will be the interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. City will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. City's written clarification, interpretation, or decision will be final and binding on Contractor, unless Contractor appeals by filing a Contract Claim.

3.05 Reuse of Documents

- A. Contractor and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of CityCity and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without City's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**4.01** *Commencement of Contract Time; Notice to Proceed*

- A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work may be done at the Site prior to the date on which the Contract Time commences to run.

4.03 *Delays in Contractor's Progress*

- A. If Contractor is delayed, City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. The City shall be liable only to the extent allowed by the provisions of the Contract and as allowed by Subchapter I, Chapter 271 of the Texas Local Government Code.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, that the Contract specifies is to be furnished by the City.
- D. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of City, Contractor, and those for whom they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Time. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph 4.03. D. The Contractor is responsible for the prompt submission of a request for an adjustment to the Contract Time under this Paragraph to the City. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this Paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with City, as contemplated in Article 8); and

4. Acts of war or terrorism.
- E. Contractor's entitlement to an adjustment of Contract Time or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Time is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Time to which Contractor is otherwise entitled.
 3. Adjustments of Contract Time or Contract Price are subject to the provisions of Article 11.
- F. Each Contractor request or Change Order seeking an increase in Contract Time or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Time claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.08.
 6. Contractor shall also furnish such additional supporting documentation as City may require including, where appropriate, a revised Project Schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- G. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from undisclosed Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.03.F and 4.03.G.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. City shall furnish the Site. City shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which

Contractor must comply in performing the Work. City will be responsible for obtaining any necessary easements for permanent structures or permanent changes in existing facilities.

1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
 2. Unless otherwise specified in the Contract Documents, the City has or anticipates moving and/or relocating utilities, and obstructions to the Site. Any outstanding movement or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be moved and/or relocated by others.
- B. Upon reasonable written request of Contractor, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for any additional lands and access thereto not included in the Site that may be required for construction facilities or storage of materials and equipment. The cost of such shall be part of the Contract Price.

5.02 *Use of Site and Other Areas*

- A. Limitation on Use of Site and Other Areas
1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, worker car parking and the operations of workers to the Site, to adjacent areas that Contractor has arranged to use through construction easements or otherwise, and to other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with worker car parking, construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries, including death, and damage to or losses of property sustained by the owners or occupants of any such land or areas; provided that such damage, losses, injuries or deaths arose out of or result from the performance of the Work or arose out of or resulted from any other actions or conduct of the Contractor or those for whom Contractor is responsible.
 2. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to reduce the area impacted to only that necessary for proper execution of the Work and/or to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
 4. Should any Damage Claim be made by any such owner or occupant adversely impacted because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
 5. ***PURSUANT TO PARAGRAPH 7.21, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH ADVERSELY IMPACTED OWNER OR OCCUPANT AGAINST CITY.***
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Site Maintenance Cleaning:* If 24 hours after written notice is given to the Contractor that the clean-up at the Site is insufficient or occurring in a manner unsatisfactory to the City, the Contractor fails to correct the unsatisfactory condition and/or procedures, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice, and the costs of such direct corrective action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor under the Contract.
- D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City and any adjacent property owners, if applicable. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, surplus materials, waste materials, rubbish and other debris and shall restore to original condition or better all areas impacted or disturbed by the Work.
- E. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. Those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and
 2. Those drawings known to City of existing physical conditions at or contiguous to the Site, including those drawings known to City depicting existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities.).
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as technical data.

- C. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions 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 theirits officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. 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
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. 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
 4. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any “technical data” is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), notify City in writing about such condition.

- B. *Possible Price and Time Adjustments*
1. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under the Contract; or

- b. The existence of such condition reasonably could have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- C. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *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::
1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data;
 - b. 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;
 - c. coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
1. 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 (except in an emergency as required by Paragraph 7.17), 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.
 2. 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 11.
 3. 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.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports known to City relating to Hazardous Environmental Conditions that have been identified at the Site; or
 2. drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Reliance by Contractor on Technical Data*: Contractor is provided certain technical data identified in the Supplementary Conditions 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:
1. 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
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. 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
 4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for a Hazardous Environmental Condition uncovered or revealed at the Site if such Hazardous Environmental Condition was not shown or indicated in Drawings or Specifications or identified if the removal or remediation of such Hazardous Environmental Condition was not identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created by the actions of or with any materials brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible and the costs associated with the same.
- D. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.17); and (3) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. Contractor shall not be required to resume Work in connection with a Hazardous Environmental Condition identified pursuant to Paragraph 5.06.D or in any affected area until after City has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed.
- F. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work and the Contract Price. City may have such deleted portion of the Work performed by City's own forces or others.
- G. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.CityG OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.***
- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

6.02 *Performance, Payment, and Maintenance Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, in accordance with the provisions of the Texas Government Code Chapter 2253 or successor statute and as required by the City, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The performance and payment bonds must be provided by the Contractor to the City prior to the Contractor beginning any Work.

- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City. The maintenance bond(s) shall be provided as directed by the City as part of the close-out of the Contract and shall be provided prior to the final payment being made.
- C. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, or its right to do business is terminated in the State of Texas, then Contractor shall promptly notify City in writing and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, City may refuse to allow the Contractor to begin Work, exclude the Contractor from the Site and exercise City’s termination rights under Article 15.
- F. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance and endorsements (and other evidence of insurance requested by City or any other additional insured) establishing that Contractor has obtained and is maintaining the policies and coverages required by these General Conditions and the Supplementary Conditions prior to beginning any Work.
 - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as “additional insureds” on all liability policies.
 - 2. The Contractor’s general liability insurance shall include a “per project” or “per location” endorsement, that shall be identified in the certificate of insurance provided to the City.
 - 3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
 - 4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent

financial strength and solvency to the satisfaction City. If the rating is below that required, written approval of City is required.

5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage or to provide such certificates or other evidence of full compliance with the insurance requirements.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If If City agrees in writing that coverage is underwritten may be written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance or for the warranty period provided for under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements that either nullify or amend the required lines of coverage, nor or decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Notice of an Award has been issued or the Agreement executed, and the policy exclusions are determined to be unacceptable or the City desires that the Contractor obtain additional insurance coverage the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. For any proposed self-insured retention (SIR,) in excess of \$25,000.00, affecting insurance coverage, Contractor must obtain the written approval of the City in regard to asset value and stockholders' equity. In lieu of traditional insurance, proposed alternative coverage maintained through insurance pools or, risk retention groups, or self-funding will also require the written approval of the City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis must be acceptable to and approved in writing by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City will provide prior notice of 90 days and the insurance adjustments shall be incorporated into the Work by Change Order.

13. City shall be entitled, upon written request to Contractor and without expense to City, to receive copies of policies and endorsements thereto and. City may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

6.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability:* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury, including death, or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury including death, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. 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 policy shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, that are normally contained with the policy, unless the City approves such exclusions in writing.

For construction projects that present a substantial completed operation exposure, the City may require the Contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions)).
- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because of bodily injury or death of any person and/or property damage arising out of or related to the work, maintenance or use of any motor vehicle by the Contractor, any

Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

- D. *Railroad Protective Liability.* If any of the Work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop Work until replacement insurance has been procured. There shall be no time credit for delays or days not worked pursuant to this section.

6.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 6 or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Such failure to provide bonds or insurance as required by the Contract Documents is a breach of the terms of the Contract and the City may terminate the Contractor in accordance with the provisions of the Contract Documents.

ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not City-delegated professional design services under this Contract, and neither City nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall identify and assign a competent superintendent, who is proficient in English, and who shall not be replaced without written

notice to City of the name of the replacement superintendent. If at any time the superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the superintendent with another satisfactory to City.

- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

7.03 *Labor; Working Hours*

- A. 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.
- B. 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.
- C. 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:
 - 1. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;
 - 2. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and
 - 3. 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.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work, and must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with

instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

7.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.06 and the General Requirements as it may be adjusted from time to time as provided below.
1. Contractor shall submit to the City for acceptance (to the extent indicated in Paragraph 2.06 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments must comply with any provisions of the General Requirements applicable thereto.
 2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment request for the duration of the Contract in accordance with the Construction Progress Schedule, General Requirements 01 32 16.
 3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 11. Adjustments in Contract Time may only be made by a Change Order.

7.06 *“Or Equals”*

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that City permit the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If City in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an “or equal” item. For the purposes of this Paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. the City determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to City.

- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the City or increase in Contract Time; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *City's Evaluation and Determination*: City will be allowed a reasonable time to evaluate each "or-equal" request. City may require Contractor to furnish additional data about the proposed "or-equal" item. City will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an "or-equal." City." City will advise Contractor in writing of its determination.
- D. *Effect of City's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The City's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If City determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that City consider the item a proposed substitution pursuant to Paragraph 7.07.

7.07 Substitutions

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that City permit the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related Work at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitution therefor. City will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 - 2. The requirements for review by City will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as City may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to City for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be substantially similar in substance to the item specified; and

- 3) be well-suited to the same use as the item specified.
- b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will adversely impact Contractor's achievement of Final Acceptance on or before the Contract Time;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and Damage Claims of other contractors affected by any resulting change.
- B. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each substitution request. City may require Contractor to furnish additional data about the proposed substitute item. City will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an acceptable substitution. City's approval determination will be evidenced by a Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Time. City will advise Contractor in writing of any denial determination.
- C. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitution. ***Contractor shall indemnify and hold harmless City and its officers, elected and appointed officials, employees, agents, consultants and subcontractors and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorney's fees) arising out of or relateds to the use of substituted materials or equipment.***
- D. *Reimbursement of City's Cost:* City will record City's costs in evaluating a substitution proposed or submitted by Contractor. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse City for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

- F. *City Substitution Reimbursement:* Cost savings attributable to acceptance of a substitution shall be paid to City by Contractor by an appropriate Change Order decreasing the Contract Price.
- G. *Effect of City's Determination:* If City approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The City's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.07.D, by timely submittal of a Change Order.

7.08 *Concerning Subcontractors and Suppliers*

- A. Contractor shall perform with its own organization, and with the assistance of workmen under its immediate superintendence, work of a value not less than 35% of the Contract Price, unless otherwise approved by the City.
- B. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.C. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- C. The City may require the use of specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work , and will provide such requirements in the Supplementary Conditions.
- D. Contractor shall provide to City as part of the Bid, the identity of all proposed Subcontractors and Suppliers. Such proposed Subcontractor or Supplier shall be deemed acceptable to City unless City raises a substantive, reasonable objection prior to execution of the Agreement.
- E. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- F. No acceptance by City of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of City to the completion of the Work in accordance with the Contract Documents, Contract Price and Contract Time.
- G. Contractor shall be solely responsible for scheduling and coordinating the tasks of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

- H. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of City. Contractor must comply with all applicable federal, state, and local laws, statutes, ordinances or regulations, including but not limited to immigration laws, workers compensation laws and wage laws, in the hiring of any Subcontractor or Supplier and shall ensure that each Subcontractor or Supplier has the same obligations.
- I. Contractor shall restrict all Subcontractors and Suppliers from communicating with City, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.09 Wage Rates

- A. *Duty to pay Prevailing Wage Rates:* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. The then current prevailing wage rates at the time of execution of the Agreement are included in these Contract Documents.
- B. *Penalty for Violation:* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code Section 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause:* On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being retained from successive progress payments pending a final determination of the violation.
- D. *Arbitration Required if Violation Not Resolved:* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph 7.09.C. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

- E. *Records to be Maintained:* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of Final Acceptance, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be available in Denton County, Texas at all reasonable hours for inspection by the City. The provisions of Paragraph 7.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments:* With each progress payment request or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates:* The Contractor shall post prevailing wage rates in a conspicuous place at the Site at all times.
- H. *Subcontractor Compliance:* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs 7.09.A through 7.09.G.

7.10 *Patent Fees and Royalties*

- A. Contractor shall pay all patent or license fees and royalties and pay all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any patent or license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay said fees or, royalties or costs to others.
- B. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.***

7.11 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Unless otherwise expressly provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. City shall provide reasonable assistance to Contractor, if necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work applicable at the time the Notice of Award is issued, except for permits provided by the City as specified in Paragraph 7.11.B. City shall pay the charges of utility service providers for connections for providing permanent service to the Work.

- B. *City obtained permits and licenses.* City will obtain and pay for those permits and licenses identified as City's responsibility in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to comply with and carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency, relating to the changes. The City will not reimburse the Contractor for any cost associated with the requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
 2. U.S. Army Corps of Engineers Permits
 3. Texas Commission on Environmental Quality Permits
 4. Railroad Company Permits
 5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

7.12 *Taxes*

- A. On issuance of a Notice of Award by the City, an organization which qualifying for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to hisits Supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas tax permits and information may be obtained from:
1. Comptroller of Public Accounts
Sales Tax Division
Capitol Station
Austin, TX 78711; or
 2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

7.13 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, City shall not be responsible for monitoring Contractor's compliance with any Laws and Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall be liable for all resulting claims, costs losses, and damages, and shall indemnify and hold harmless City, and its officers, elected

and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

- C. Changes in Laws and Regulations not known at the time of the City's issuance of a Notice of Award having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

7.14 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. Contractor shall include accurate locations for buried and imbedded items. These record documents, together with all approved Samples, will be available to City for reference. Upon completion of the Work, Contractor shall deliver these record documents to City prior to Final Inspection.

7.15 *Safety and Protection*

- A. As between City and Contractor, Contractor shall be responsible for the safety of persons and property in the performance of the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. Contractor shall inform the City in writing of Contractor's designated safety representative at the Site.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.1515.C.2 or 7.1515.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of and remedied by Contractor at its expense.
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss;

and shall implement, erect and maintain all necessary safeguards for such safety and protection.

- F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- H. Contractor shall inform City in advance in writing of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed and City has issued a Letter of Final Acceptance.
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

7.17 *Emergencies and/or Rectification*

- A. In the event of threatened or actual emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to immediately act to prevent damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If City determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take proper action within 24 hours to fulfill this written request or fails to show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire cost for such remedial action, plus 25% from any funds due or to become due the Contractor on the Project.

7.18 Submittals

- A. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.03).
1. Contractor shall submit the Submittals in accordance with Section 01 33 00 of the General Requirements.
 2. Data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 7.18.C.
 3. Submittals reviewed and accepted by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
 4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
 5. For-Information-Only submittals upon which the City is not expected to conduct a review or take responsive action may be so identified in the Contract Documents.
 6. Contractor shall submit the required number of Samples specified in the Specifications.
 7. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data as City may require to enable City to review the Submittal for the limited purposes set forth in Paragraph 7.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole risk, expense and responsibility of Contractor.
- C. City's Review
1. City will provide timely review of Submittals in accordance with the accepted Schedule of Submittals. City's review and acceptance will be to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents), or to safety precautions or programs incident thereto.
 3. City's review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 of the General

Requirements, and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

5. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.
6. City's review and acceptance of a Submittal, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Time or Contract Price, unless such changes are included in a Change Order.
7. Neither City's receipt, review, or acceptance of a Submittal will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in accepted Submittals, subject to the provisions of Section 01 33 00 of the General Requirements.

7.19 *Continuing the Work*

- A. Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

7.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Contractor's warranty and guarantee under this Paragraph 7.20:
 1. Observations by Engineer or City;
 2. Recommendation by Engineer or payment by City of any progress or final payment;
 3. The issuance of a letter or certificate of Final Acceptance by City or any payment related thereto by City;
 4. Use or occupancy of the Work or any part thereof by City;
 5. Any review and acceptance of a Submittal by City;

6. Any inspection, test, or acceptance by others; or
 7. Any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.

7.21 *Indemnification*

- A. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM , FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL OR BODILY INJURY OR DEATH, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THESE CONTRACT DOCUMENTS. 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, OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR COSTS, EXPENSES AND LEGAL FEES INCURRED IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**
- B. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM FROM AND AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF PROPERTY OF THE CITY, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. 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 OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**

7.22 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Submittal related to the requirements indicated in Paragraph 7.22.B is prepared by Contractor, a Subcontractor, or others for submittal to City, then such Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to City.
- D. City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under the conditions indicated in Paragraph 7.22.B, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, City's review, acceptance, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to the conditions indicated in Paragraph 7.22.B, will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.22;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

7.23 *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 during the term of the Contract and for 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 made available, in Denton County, Texas within ten (10) Business Days of City's 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 Denton County, Texas. Except as otherwise provided herein, the cost of the audit will be borne by the City

unless the audit reveals an overpayment of 1% or greater. If the City is undertaking an audit or inspection pursuant to Paragraph 7.09 or if an overpayment of 1% or greater occurs, the City's reasonable cost of the audit, including any travel costs, must be paid by the Contractor within five (5) Business Days of receipt of City's invoice for such costs.

- 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.

7.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. Contractor shall comply with the requirements of *Title VI, Civil Rights Act of 1964 as amended* and the regulations promulgated thereunder, as may be further defined in the Supplementary Conditions, for any project receiving Federal assistance.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work, if such other work is not noted in the Contract Documents.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and City, if City is performing other work with City's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with

Contractor's Work except for latent defects and deficiencies in such other work that could not have been discovered through a proper inspection.

- F. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with City, or that is performed without having been arranged by City. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.D.3.

8.02 *Coordination*

- A. If City intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with City's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

8.03 *Legal Relationships*

- A. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. When City is performing other work at or adjacent to the Site with City's employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work.
- B. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any Damage Claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, City, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, defend and hold harmless City and Engineer, and the officers, elected and appointed officials, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – CITY’S RESPONSIBILITIES**9.01** *Communications to Contractor*

- A. Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

9.02 *Furnish Data*

- A. City shall promptly furnish the data required of City under the Contract Documents.

9.03 *Pay When Due*

- A. City shall make payments to Contractor when they are due in accordance with and subject to the provisions of Article 14.

9.04 *Lands and Easements; Reports, Tests, and Drawings*

- A. City’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Article 5 refers to City’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

9.05 *Change Orders*

- A. City’s responsibilities with respect to Change Orders are set forth in Article 11.

9.06 *Inspections, Tests, and Approvals*

- A. City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.02.DD.

9.07 *Limitations on City’s Responsibilities*

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

9.08 *Undisclosed Hazardous Environmental Condition*

- A. City’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.09 *Compliance with Safety Program*

- A. While at the Site, City’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which City has been informed in advance in writing pursuant to Paragraph 7.15.

ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION**10.01** *City’s Project Manager or Duly Authorized Representative*

- A. City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City’s Project Manager or duly appointed representative during construction are set forth in the Contract Documents.
- B. City’s Project Manager for these Contract Documents is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19 of the General Requirements.

10.02 *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City’s efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City’s visits and observations are subject to all the limitations on City’s responsibility set forth in Paragraph 99.07. Particularly, but without limitation, during or as a result of City’s visits or observations of Contractor’s Work, City will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Determinations for Work Performed*

- A. As applicable, Contractor will determine the actual quantities and classifications of Work performed.. City’s Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City’s written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

10.04 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. City will be the interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City’s written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 11.07.

ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK**11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including in the Contract Price or Contract Time, but such amendment will be made by Change Order only.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one of the following ways:
 - 1. A Field Order; or
 - 2. City's review of a Submittal (subject to the provisions of Paragraph 7.18.C); or
 - 3. City's written interpretation or clarification.

11.02 *Execution of Change Orders*

- A. City and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed..
 - 2. Changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.04, (b) required because of City's acceptance of defective Work under Paragraph 13.05 or City's correction of defective Work under Paragraph 13.08, or (c) as otherwise agreed to by the parties.

11.03 *Field Orders*

- A. City may authorize minor variations and deviations in changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on both the City and Contractor, which shall perform the Work involved promptly.

11.04 *Authorized Changes in the Work – Extra Work*

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra Work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by City.

11.05 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract

Documents, as amended, modified, or supplemented as allowed herein, except in certain cases of an emergency as provided in Paragraph 7.17.A.

11.06 *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment for such Extra Work, and the City requires its performance, the Contractor shall proceed with the Extra Work after making written request for a Change Order and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 11.07.
- B. The Contractor shall furnish the City such records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual work performed.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be the full, complete and final payment for all charges, fees and costs Contractor incurs as a result of or relating to the Extra Work, whether said charges, fees or costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any charges, fees or costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the Extra Work.

11.07 *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
 - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
 - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City no later than 45 days after the start of the event giving rise thereto (unless the City notifies Contractor in writing that City will allow additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
 - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.08.
 - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 11.09.
 - 5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.

6. The City shall submit any response to the Contractor within 30 days after receipt of the Contractor's last submittal (unless in connection with the Contract Claim (unless Contractor allows the City additional time to submit a response).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor unless action by City's Council is required, take one of the following actions in writing:
1. deny the Contract Claim in whole or in part;
 2. approve the Contract Claim; or
 3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under this Paragraph 11.07 will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 11.07.
- F. If the City fails to take any action pursuant to this Paragraph 11.07, the Contract Claim is considered to have been denied by the City.

11.08 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. The value of any Work covered by a Change Order will be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.08.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum or unit price, then on the basis of the Cost of the Work (determined as provided in Paragraph 12.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.08.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3, the Contractor's fee will be 15 percent except for:
 - 1) rental fees for Contractor's own equipment; and
 - 2) bonds and insurance;
- b. For costs incurred under Paragraph 12.01.B.4, the Contractor's fee will be 5 percent;
 - 1) Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.08.C.2.a and 11.08.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, in no case shall the cumulative total of fees paid be in excess of 25% of the Cost of the Work;
- c. No fee will be payable on the basis of costs itemized under Paragraphs 12.01.B.5, 12.01.B.6, and 12.01.C;
- d. The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

11.09 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed under a Change Order for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.
- C. Delay, disruption, and interference in the Work, and any related changes in Contract Time, are addressed in and governed by Paragraph 4.03.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.

ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT**12.01 Cost of the Work**

- A. *Purposes for Determination of Cost of the Work:* The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 12.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* The term, “Cost of the Work” means the sum of all costs, except those excluded in Paragraph 12.01.C, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall be in amounts no higher than those calculated based on the prevailing wage rates contained in the Contract Documents, shall not include any of the costs itemized in Paragraph 12.01.C, and may include as applicable, but not be limited to the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs shall include, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours on Business Days, during Weekend Working Hours, or on a state or federal holiday observed by the City, shall be included in the above to the extent authorized by City.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith.
 3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved in writing by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. and the Contract Documents. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City. Contractor shall deliver such bids to City, which will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 12.01 and Paragraph 11.08.C.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work and specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically included in the Contract.
6. Supplemental costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and temporary office or facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations, excluding those taxes for which an exemption is available as described in Paragraph 7.12.
 - d. Deposits lost for causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of CityCity. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - f. The cost of utilities, fuel, and sanitary facilities at the Site.
 - g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - h. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically covered in the Contract. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the acts, omissions, negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind.
- D. *Contractor's Fee*
1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Agreement will be determined as set forth in the Contract.
 - b. for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as set forth in Paragraph 11.08.C.
 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.08.C.2.
- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 12, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices, and submit in a form acceptable to City an itemized cost breakdown together with supporting data. Subject to prior written notice, City will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by City. Contractor will be responsible for ensuring that pertinent Subcontractors will afford such access to City, and preserve such documents, to the same extent as is required of Contractor.

12.02 Allowances

- A. *Specified Allowance*: It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to City.
- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances, have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

12.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 10.03.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to Unit Price Work listed and the cost of incidental work included as part of the unit price.
- D. Adjustments in Contract Price
 - 1. City may make an adjustment in the Contract Price in accordance with Paragraph 11.08 if:
 - a. the quantity of the item of Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. there is no corresponding adjustment with respect to any other item of Work.
 - 2. Adjusted unit prices will apply to all units of that item.

- E. Increased or Decreased Quantities: The City reserves the right to order Extra Work in accordance with Paragraph 11.04.
1. If the changes in quantities or the alterations do not significantly change the character of the Work under the Contract Documents, the altered Work will be paid for at the Contract unit price.
 2. If the changes in quantities or alterations materially and significantly change the character of the Work, the Contract will be amended by a Change Order.
 3. If no unit prices exist, this any increase or decrease in quantities will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 11.
 4. A significant change in the character of Work occurs when:
 - a. the character of work for any Item as altered differs materially or significantly in kind or nature from that in the Contract; or
 - b. a Major Item of work varies by more than 25% from the original Contract quantity.
 5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
 6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

12.04 *Plans Quantity Measurement for Unclassified Excavation or Embankment*

- A. Plans quantities may or may not represent the exact quantity of Work performed or material moved, handled, or placed during the term of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised in accordance with the Contract.
- B. If the total actual quantity measured for an individual item varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized Work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 11.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount identified in the approved change, and the 25% variance provisions of Paragraph 12.04.B will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.

- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Access to Work*

- A. City and its Engineer, consultants, representatives, employees, and independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

13.02 *Tests and Inspections*

- A. Contractor shall give City timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. If the Contract Documents or any Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection, testing or approval, except that those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall will be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections, tests, re-tests, and approvals required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to City;
 - 2. to attain City's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to City.

- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
 - 1. City will coordinate such Testing to the extent possible, with Contractor;

2. Should any Testing under this Section 13.03.D result in a “fail”, “did not pass” or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor’s cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
 3. Any amounts owed for any retest under this Section 13.02.D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
 4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If the Contract Documents require the Work (or part thereof) to be approved by City or another designated individual or entity, then Contractor shall assume full responsibility for seeking and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without the written approval of City, Contractor shall, if requested by City, uncover such Work for observation. Such uncovering and the recovering of such Work will be at Contractor’s expense.

13.03 *Defective Work*

- A. *Contractor’s Obligation:* It is Contractor’s obligation to assure that the Work is not defective.
- B. *City’s Authority:* City has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Written notice of all defective Work of which City has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if City has rejected the defective Work, shall remove the defective Work from the Project and replace it with Work that is not defective. Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair City’s warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Contractor or City by governmental authorities because the Work is defective, and the costs of repair, replacement or reconstruction of work of others resulting from defective Work.

13.04 *Rejecting Defective Work*

- A. City will have authority to reject Work which City believes to be defective or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing

of the Work as provided in this Article 13, whether or not the Work is fabricated, installed, or completed.

13.05 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted.

13.06 *Uncovering Work*

- A. City has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the Contract Documents or specific instructions of City and if requested by City, Contractor shall uncover such Work for City's observation, inspection or testing and then replace the covering, all at Contractor's expense.
- C. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, then Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). City shall be entitled to accept defective Work in accordance with Paragraph 13.05 and in such case Contractor shall still be responsible for all costs associated with exposing, observing, and testing defective Work.
 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

13.07 *City May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or Contractor fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or any employee or agent of, any of them.

13.08 *City May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace defective Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then City may, after providing 7 days' advance written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, and City's other contractors access to the Site to enable City to exercise the rights and remedies under this Paragraph 13.08.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court, or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.08 will be the responsibility of and will be charged against Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.08.

ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD**14.01** *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.03 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 12.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
 1. Contractor is responsible for providing all information as required to become a vendor of the City.
 2. At least 20 days before the date established in the General Requirements for each progress payment (but not more often than once a month), Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) bill of sale, invoice, or purchase order payments, copies of cancelled checks or other documentation establishing full payment by Contractor for the materials and equipment; (b) at City's request, documentation warranting that City has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received on account of the Work by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.

C. Review of Applications

1. City will, after receipt of each Application for Payment, either indicate in writing it will proceed to process the Application for Payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that based City's actual knowledge:
 - a. the Work has progressed to the point indicated; and
 - b. the quality and/or quantity of the Work is generally in accordance with the Contract Documents (subject to any subsequent evaluations of the Work, an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests or inspections called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraphs 10.05 and 12.03, and any other qualifications stated).
3. Processing any such payment will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
 - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
 - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process or pay the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and

may revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:

- a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
- b. there are discrepancies in quantities contained in previous applications for payment;
- c. the Contract Price has been reduced by Change Orders;
- d. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
- e. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- f. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Retainage:

1. For all contracts, retainage shall be five percent (5%).

E. *Liquidated Damages*: For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be paid by the Contractor to the City, not as a penalty, but as liquidated damages suffered by the City. If feasible, the parties may agree to have the liquidated damages deducted from any amounts owned to Contractor by City instead of being paid directly to City by Contractor.

F. *Payment*: Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

G. Reduction in Payment

1. City may refuse to make payment of the of the amount requested because:
 - a. Claims have been made against City based on Contractor's performance or furnishing of the Work, or City has incurred costs, losses, or damages resulting from Contractor's performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. City has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;

- g. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones or Final Acceptance of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
 - l. Other items entitle City to a set-off against the payment amount requested; or
 - m. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, within a reasonable time after Contractor remedies the reasons for such action to the satisfaction of City and City has confirmed such action.

14.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

14.03 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to of any such part of the Work which City determines to be ready for its intended use. In addition, City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete, subject to the following conditions:
 1. At any time, Contractor may notify City that Contractor considers any such part of the Work ready for its intended use.
 2. Within a reasonable time after notification as enumerated in Paragraph 14.03, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
 3. Partial Utilization by City will not constitute Final Acceptance by City.

14.04 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
 - 1. City will promptly schedule a Final Inspection with Contractor.
 - 2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

14.05 *Final Acceptance*

- A. Upon completion by Contractor to City's satisfaction, of any and all Work in accordance with the Contract Documents, including any corrections or additional Work identified in the Final Inspection and delivery of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurances, certificates of inspection, annotated record documents and other required documents in accordance with the Contract Documents, City will issue to Contractor a letter of Final Acceptance.

14.06 *Final Payment*

- A. Application for Payment
 - 1. Upon receipt of a letter of Final Acceptance from City, Contractor may make application for Final Payment following the procedures for requesting payments in accordance with the Contract Documents.
 - 2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 6.03;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any Liens or other title defects or will so pass upon final payment.
 - d. a list of all Contract Claims or Damage Claims against City that Contractor believes are unsettled; and
 - e. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- B. Payment Becomes Due: The final payment requested by Contractor, less previous payments made and less any sum to which City is entitled, including but not limited to liquidated damages, will become due and payable:
 - 1. After City's acceptance of the Application for Payment and accompanying documentation; and

2. After all Damage Claims have been resolved:
 - a. directly by the Contractor; or
 - b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.

The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract that continue thereafter.

14.07 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.01.D, and if bonds have been furnished as required in Paragraph 6.02, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.
- B. *Partial Retainage Release.* If the Contract provides for separate establishment and maintenance periods and/or test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

14.08 *Waiver of Claims*

- A. The acceptance of final payment will constitute a waiver and release by Contractor of all claims, rights, causes of action, or liabilities, including Contract Claims, against City arising out of, related to or under the Contract or for any act, omission or neglect of City.

14.09 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the Contract Documents) any Work has been found to be defective, or Contractor's repair of any damages to the Site, adjacent areas, or areas made available for Contractor's use by City has been found to be defective, then after receipt of City's written notice of defect, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
 1. correct the defective repairs to the Site or such adjacent areas, or areas made available for Contractor's use by City;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by City, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected, repaired or removed and replaced under this Paragraph 14.09, the correction period hereunder with respect to such Work may be extended for an additional period of one year after the end of the initial correction period.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this Paragraph 14.09 are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *City May Suspend Work*

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor. City may fix the date on which Work will be resumed in such notice, and Contractor shall resume the Work on the date so fixed. During a temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way; Contractor shall take every precaution to prevent damage or deterioration of the work performed; and Contractor shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the

equipment and no profit or overhead will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

15.02 *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Project Schedule established under Paragraph 2.06 as adjusted from time to time pursuant to Paragraph 7.05);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract; or
 3. Contractor's disregard of Laws and Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of City; or
 5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
 6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
 7. Substantial indication that the Contractor has become insolvent or bankrupt, or otherwise financially unable to perform the Work satisfactorily; or
 8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. The conference shall be held not later than 15 days after receipt of notice. by both Contractor and surety.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of the conference to address Contractor's failure to perform the Work.
 2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
 - a. If City completes the Work, City may exclude Contractor and Surety from the Site and take possession of the Work, and all materials and equipment stored at the Site

or for which City has paid Contractor, but which are stored elsewhere, and the Work as City may deem expedient.

3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by City, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph 15.02, City shall not be required to obtain the lowest price for the Work performed.
 4. Neither City, nor any of its respective consultants, agents, officers, elected or appointed officials, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
 5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim, counterclaim or offset on account of the method used by City in completing the Contract.
 6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise under the Contract or prescribed by law.
- C. Notwithstanding Paragraph 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or Surety. Any retention or payment of money due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.02, the termination procedures of that bond shall not supersede the provisions of this Article 15.

15.03 *City May Terminate for Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract, in whole or in part. Any termination shall be affected by giving notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Notice shall be deemed validly given if given in accordance with Paragraph 17.01.A.

- B. After a notice of termination, has been given, and except as otherwise directed by the City, the Contractor shall:
1. stop work under the Contract on the date and to the extent specified in the notice of termination;
 2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
 3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
 4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
 - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
 - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
 5. complete performance of such Work as shall not have been terminated by the notice of termination; and
 6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the City has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of in accordance with the Contract, exclusive of items the disposition of which has been directed or authorized by City.
- D. Not later than 15 days after Contractor's submission of the certified list to City pursuant to Paragraph 15.03.C, the City shall accept title to such items, subject to verification of the list by the City upon removal of the items or, If the items are stored, then City shall have 45 days after submission of the list, to verify the list submitted and accept title to such items. Any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination has been given, the Contractor shall submit his termination claim to the City in the form and with the certification prescribed by the City. Unless an extension request is made in writing within such 60-day period by the Contractor, and granted by the City, any and all such claims of Contractor that are not submitted to City within such 60-day period shall be conclusively deemed waived.
- F. Should a termination claim be timely submitted to the City, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead

- and profit on such Work calculated and determined in accordance with the Contract Documents;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses calculated and determined in accordance with the Contract Documents; and
 3. reasonable expenses directly attributable to reasonable and necessary wind-down and termination activities, without any overhead or profit.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information submitted and available to it, the amount, if any, due to the Contractor by reason of the termination and City shall pay to the Contractor the amounts so determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, related to or resulting from such termination.

ARTICLE 16 – RESOLUTION OF DISPUTES

16.01 *Methods and Procedures*

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 11.07 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 11.07.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 calendar days of filing of the request.
- C. The parties shall agree on a mediator; however, if they cannot agree within 14 calendar days then the Denton County Alternative Dispute Resolution Program (“DCAP”) shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party, or the mediator, states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. All costs of mediation shall be borne equally by the parties.
- D. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.
- E. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

- F. If the Contract Claim is not resolved by mediation, City's action under Paragraph 11.07.C or a denial pursuant to Paragraphs 11.07.C.3 or 11.07.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction as set forth within the Contract Documents.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice, it will be deemed to have been validly given if delivered:
1. in person, by a commercial courier service or otherwise, if to City, to the duly authorized representative of City identified in the Contract Documents or to City's Project Manager or, if to Contractor, to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient.

17.02 *Computation of Time*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a state or federal holiday observed by the City, the next Business Day shall become the last day of the period.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, in equity, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph 17.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Limitation of Damages*

- A. With respect to any and all claims, disputes subject to final resolution, and other matters at issue, neither City, nor any of its officers, directors, elected or appointed officials, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project. Further, the Contractor may only claim and the City may only be liable for those damages that are set forth in Subchapter I, Chapter 271 of the Texas

Local Government Code and the City shall not be liable for any consequential damages, exemplary damages or damages for unabsorbed home office overhead.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- B. The City has not waived its sovereign immunity except as expressly set forth in Subchapter I, Chapter 271 of the Texas Local Government Code or as expressly waived by other statute.

17.06 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and Final Acceptance of the Work or termination of the Contract or of the services of Contractor.

17.07 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

17.08 *Successors and Assigns*

- A. City and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

17.09 *Governing Law*

- A. The Contract shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

17.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

1 Proposal Requirements – The Advertisement or Invitation to Offerors, Instructions to Offerors,
2 Offeror’s Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any
3 attachments.

4
5 Substantial Completion – The completion of the Work necessary for the project to function as it
6 was intended pursuant to the Contract Documents and as specified below, to the reasonable
7 satisfaction of the City. The date of Substantial Completion shall be memorialized by written
8 notice given by the City to the Contractor.
9

10 **SC-5.01A**

11
12 Easement limits shown on the Drawing are approximate and were provided to establish a basis for
13 proposals. Upon receiving the final easements descriptions, Contractor shall compare them to the lines
14 shown on the Contract Drawings.

15
16 **SC-5.01A.1., “Availability of Lands”**

17
18 The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of
19 *September 2, 2022*:

20
21 **Outstanding Right-Of-Way, and/or Easements to Be Acquired**

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
------------------	-------	------------------------------

None

22 The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed,
23 and do not bind the City.

24
25 If Contractor considers the final easements provided to differ materially from the representations on the
26 Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work,
27 notify City in writing associated with the differing easement line locations.

28
29 **SC-5.01A.2, “Availability of Lands”**

30
31 **Utilities or obstructions to be removed, adjusted, and/or relocated**

32
33 The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated
34 as of *September 2, 2022*.

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
-------------------	----------------------	------------------------------

None

36 The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed,
37 and do not bind the City.

38
39 **SC-5.03A., “Subsurface and Physical Conditions”**

40
41

1 This information is provided as a reference only. It is the contractor's responsibility to verify existing
2 conditions. As of September 2, 2022, the following drawings and reports were developed to summarize
3 physical conditions in or relating to existing surface and subsurface structures (except Underground
4 Facilities) which are at or contiguous to the site of the Work:

5 [N/A](#)

6
7 **SC-5.06A., "Hazardous Environmental Conditions at Site"**

8
9 This information is provided as a reference only. It is the Contractor's responsibility to verify existing
10 conditions. The following are reports and drawings of existing hazardous environmental conditions known
11 to the City:

12 [N/A](#)

13 **SC-6.02, "Performance, Payment, and Maintenance Bonds"**

14
15 **The "Contract Price" for Performance, Payment, and Maintenance Bonds will be the same as**
16 **indicated in Article 3 as listed in the Agreement.**

17
18 **SC-6.03A., "Certificates of Insurance"**

19
20 The entities listed below are "additional insureds as their interest may appear" including their respective
21 officers, directors, agents and employees.

- 22
23 (1) City
24 (2) Consultant: *HDR Engineering, Inc.*

25
26 **SC-6.04A., "Contractor's Insurance"**

27
28 The limits of liability for the insurance required by Paragraph GC-6.04 shall provide the following
29 coverages for not less than the following amounts or greater where required by laws and regulations:

30
31 **6.04A. Workers' Compensation, under Paragraph GC-6.04A.**

32
33 *Statutory limits*
34 *Employer's liability*
35 *\$100,000 each accident/occurrence*
36 *\$100,000 Disease - each employee*
37 *\$500,000 Disease - policy limit*

38
39 **SC-6.04B., "Contractor's Insurance"**

40
41 **6.04B. Commercial General Liability, under Paragraph GC-6.04B. Contractor's Liability Insurance**
42 **under Paragraph GC-6.04B., which shall be on a per project basis covering the Contractor with**
43 **minimum limits of:**

44
45 *\$1,000,000 each occurrence*
46 *\$2,000,000 aggregate limit*

47
48 The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the
49 General Aggregate Limits apply separately to each job site.

50
51 The Commercial General Liability Insurance policies shall provide "X", "C", and "U" coverage's.
52 Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

53
54 **SC 6.04C., "Contractor's Insurance"**

1 **6.04C.** Automobile Liability, under Paragraph GC-6.04C. Contractor's Liability Insurance under
2 Paragraph GC-6.04C., which shall be in an amount not less than the following amounts:
3

4 (1) **Automobile Liability** - a commercial business policy shall provide coverage on "Any Auto",
5 defined as autos owned, hired and non-owned.
6

7 *\$1,000,000* each accident on a combined single limit basis. Split limits are acceptable if limits are at
8 least:
9

10 *\$250,000 Bodily Injury per person /*
11 *\$500,000 Bodily Injury per accident /*
12 *\$100,000 Property Damage*
13

14 **SC 6.04D., "Contractor's Insurance"**

15 **6.04D.** Environmental Impairment/Pollution
16

17 Environmental Impairment/Pollution Insurance to include coverage for the handling, receiving, dispensing,
18 removal, storage, testing, transportation, disposal, discharge, dispersal release or escape of any hazardous
19 material into or upon land, or any structure on land, the atmosphere or any watercourse or body of water,
20 including ground water, with a minimum combined bodily injury (including death) and property damage
21 limit of *\$2,000,000* per occurrence to be obtained upon substantial completion and acceptance of facility by
22 the City.
23

24 **SC-6.04E., "Contractor's Insurance"**
25

26 The Contractor's construction activities will require its employees, agents, subcontractors, equipment, and
27 material deliveries to cross railroad properties and tracks, or perform work within 25 feet of the center line
28 of tracks *None*.
29

30 The Contractor shall conduct its operations on railroad properties in such a manner as not to interfere with,
31 hinder, or obstruct the railroad company in any manner whatsoever in the use or operation of its/their trains
32 or other property. Such operations on railroad properties may require that Contractor to execute a "Right of
33 Entry Agreement" with the particular railroad company or companies involved, and to this end the
34 Contractor should satisfy itself as to the requirements of each railroad company and be prepared to execute
35 the right-of-entry (if any) required by a railroad company. The requirements specified herein likewise relate
36 to the Contractor's use of private and/or construction access roads crossing said railroad company's
37 properties.
38

39 The Contractual Liability coverage required by Paragraph 5.04D of the General Conditions shall provide
40 coverage for not less than the following amounts, issued by companies satisfactory to the City and to the
41 Railroad Company for a term that continues for so long as the Contractor's operations and work cross,
42 occupy, or touch railroad property:
43

44 (1) General Aggregate: *N/A*

45 (2) Each Occurrence: *N/A*

46 *Required for this Contract* *Not required for this Contract*
47 *Required for this Contract* *Not required for this Contract*
48 *Required for this Contract* *Not required for this Contract*
49

50 With respect to the above outlined insurance requirements, the following shall govern:
51

52 1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in
53 the name of the railroad company. However, if more than one grade separation or at-grade

1 crossing is affected by the Project at entirely separate locations on the line or lines of the same
2 railroad company, separate coverage may be required, each in the amount stated above.

3

4 2. Where more than one railroad company is operating on the same right-of-way or where several
5 railroad companies are involved and operated on their own separate rights-of-way, the Contractor
6 may be required to provide separate insurance policies in the name of each railroad company.

7

8 3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a
9 railroad company's right-of-way at a location entirely separate from the grade separation or at-
10 grade crossing, insurance coverage for this work must be included in the policy covering the grade
11 separation.

12

13 4. If no grade separation is involved but other work is proposed on a railroad company's right-of-
14 way, all such other work may be covered in a single policy for that railroad, even though the work
15 may be at two or more separate locations.

16

17 No work or activities on a railroad company's property to be performed by the Contractor shall be
18 commenced until the Contractor has furnished the City with an original policy or policies of the insurance
19 for each railroad company named, as required above. All such insurance must be approved by the City and
20 each affected Railroad Company prior to the Contractor's beginning work.

21

22 The insurance specified above must be carried until all Work to be performed on the railroad right-of-way
23 has been completed and the grade crossing, if any, is no longer used by the Contractor. In addition,
24 insurance must be carried during all maintenance and/or repair work performed in the railroad right-of-way.
25 Such insurance must name the railroad company as the insured, together with any tenant or lessee of the
26 railroad company operating over tracks involved in the Project.

27

28 **SC-7.08C., "Concerning Subcontractors and Suppliers"**

29

30 The following subcontractors shall be required to be utilized by the Contractor for specific portions of the
31 Work as indicated below:

32

33 **Required Subcontractors**

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
----------------------------	-------------------------------------

34 None

35

36 **SC-7.11., "Permits and Utilities"**

37

38 **SC-7.11A., "Contractor obtained permits and licenses"**

39 The following are known permits and/or licenses required by the Contract to be acquired by the Contractor:

40

None

41

42 **SC-7.11B. "City obtained permits and licenses"**

43 The following are known permits and/or licenses required by the Contract to be acquired by the City: *None*

44

45 **SC-7.11C. "Outstanding permits and licenses"**

46

47 The following is a list of known outstanding permits and/or licenses to be acquired, if any as of *September*
48 *2, 2022*:

49

Outstanding Permits and/or Licenses to Be Acquired

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
-------	--------------------------------	---------------------------

None

1
2
3
4
5
6
7
8
9
10

SC-7.24B., “Title VI, Civil Rights Act of 1964 as amended” – OMITTED since no Federal Assistance is Anticipated

SC-8.02., “Coordination”

The individuals or entities listed below have contracts with the City for the performance of other work at the Site:

Vendor	Scope of Work	Coordination Authority

11
12
13
14
15
16
17
18
19
20

SC-9.01, “Communications to Contractor”

None

SC-10.01B., “City’s Project Manager”

The City’s Project Manager for this Contract is Giovanni Piñeiro-Villalba or his/her successor pursuant to **written notification from the City Engineer.**

SC-13.02B., “Tests and Inspections”

All testing required will be completed by the contractor

21
22
23
24
25
26

SC-14.01G, “Reduction in Payment”

Add Paragraph 14.01G.3:

3. *City may reduce payments to the Contractor, if the number of Days that have passed after the date listed on the Notice to Proceed exceeds the Contract Time for Substantial Completion.*

27
28
29
30
31

SC-16.01C.1, “Methods and Procedures”

None

32
33
34
35
36

SC – 17.01, “Documents”

Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

37
38
39
40
41

SC – 18.01, “Texas State Law Provisions”

SC – 18.01A. “Prohibition on Contracts with Companies Boycotting Israel”

42
43
44

1 Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code,
2 City is prohibited from entering into a contract with a company for goods or services unless the
3 contract contains a written verification from the company that it: (1) does not boycott Israel; and
4 (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and
5 “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas
6 Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature
7 provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will
8 not boycott Israel during the term of the agreement.*** Failure to meet or maintain the
9 requirements under this provision will be considered a material breach.

10
11 **SC – 18.01B. “Prohibition on Contracts with Companies Boycotting Certain Energy
12 Companies”**

13
14 Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code,
15 City is prohibited from entering into a contract with a company for goods or services unless the
16 contract contains written verification from the company that it (1) does not boycott energy
17 companies; and (2) will not boycott energy companies during the term of the contract. The terms
18 “boycott energy company” and “company” shall have the meanings ascribed to those terms in
19 Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor
20 certifies that Contractor’s signature provides written verification to the City that Contractor:
21 (1) does not boycott energy companies; and (2) will not boycott energy companies during the
22 term of the agreement.*** Failure to meet or maintain the requirements under this provision will be
23 considered a material breach.

24
25 **SC – 18.01C. “Prohibition on Contracts with Companies Boycotting Certain Firearm
26 Entities and Firearm Trade Associations”**

27
28 Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code,
29 City is prohibited from entering into a contract with a company for goods or services unless the
30 contract contains written verification from the company that it (1) does not have a practice,
31 policy, guidance, or directive that discriminates against a firearm entity or firearm trade
32 association; and (2) will not discriminate during the term of the contract against a firearm entity
33 or firearm trade association. The terms “discriminate against a firearm entity or firearm trade
34 association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to
35 those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement,
36 Contractor certifies that Contractor’s signature provides written verification to the City that
37 Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates
38 against a firearm entity or firearm trade association; and (2) will not discriminate during the
39 term of the contract against a firearm entity or firearm trade association.*** Failure to meet or
40 maintain the requirements under this provision will be considered a material breach.

41
42 **SC – 18.01D. “Prohibition On Contracts With Companies Doing Business with Iran, Sudan,
43 or a Foreign Terrorist Organization”**

1 Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with
 2 companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this***
 3 ***agreement, Contractor certifies that Contractor's signature provides written verification to the***
 4 ***City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this***
 5 ***agreement and will not become ineligible to receive payments under this agreement by doing***
 6 ***business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the
 7 requirements under this provision will be considered a material breach.

8
 9 **SC – 18.01E. “Termination Right for Contracts with Companies Doing Business with**
 10 **Certain Foreign-Owned Companies”**

11
 12 The City of Denton may terminate this Contract immediately without any further liability if the
 13 City of Denton determines, in its sole judgment, that this Contract meets the requirements under
 14 Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or
 15 other ownership interest of the company is held or controlled by individuals who are citizens of
 16 China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the
 17 Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is
 18 headquartered in China, Iran, North Korea, Russia, or other designated country.

19
 20
 21
 22
 23
END OF SECTION

Revision Log		
DATE	NAME	SUMMARY OF CHANGE

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.

Eurovia Atlantic Coast, LLC dba Sunmount Paving Company

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:

John Rauer

4/3/2023

Signature of Vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

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

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

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

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

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

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

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

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

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

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

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

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

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

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

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

Certificate Of Completion

Envelope Id: A3B7C2210A7E41F5AF2E07CD0DE8EAA9
 Subject: Please DocuSign: City Council Contract 8110
 Source Envelope:
 Document Pages: 104
 Certificate Pages: 6
 AutoNav: Enabled
 Envelopeld Stamping: Enabled
 Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent
 Envelope Originator:
 Erica Garcia
 901B Texas Street
 Denton, TX 76209
 erica.garcia@cityofdenton.com
 IP Address: 198.49.140.10

Record Tracking

Status: Original
 3/24/2023 1:06:03 PM
 Holder: Erica Garcia
 erica.garcia@cityofdenton.com

Location: DocuSign

Signer Events

Erica Garcia
 erica.garcia@cityofdenton.com
 Buyer
 City of Denton
 Security Level: Email, Account Authentication (None)

Signature

Completed
 Using IP Address: 198.49.140.10

Timestamp

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 Viewed: 3/24/2023 2:08:20 PM
 Signed: 3/24/2023 2:10:19 PM

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)


 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.104

Sent: 3/24/2023 2:10:22 PM
 Viewed: 3/28/2023 9:19:43 AM
 Signed: 3/28/2023 9:21:19 AM

Electronic Record and Signature Disclosure:
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Marcella Lunn
 marcella.lunn@cityofdenton.com
 Mack Reinwand City Attorney
 City of Denton
 Security Level: Email, Account Authentication (None)


 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Sent: 3/28/2023 9:21:23 AM
 Viewed: 3/31/2023 2:27:45 PM
 Signed: 3/31/2023 2:31:37 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

John Rauer
 john.rauer@eurovia.us
 Division Manager
 Security Level: Email, Account Authentication (None)

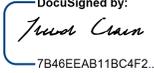

 Signature Adoption: Pre-selected Style
 Using IP Address: 97.71.143.50

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 Signed: 4/3/2023 7:28:24 AM

Electronic Record and Signature Disclosure:
 Accepted: 4/3/2023 6:55:38 AM
 ID: 6e8de340-b134-4057-b3ea-f508973e2547

Signer Events	Signature	Timestamp
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Trevor Crain
 Trevor.Crain@cityofdenton.com
 Director of Capital Projects
 City of Denton
 Security Level: Email, Account Authentication
 (None)

DocuSigned by:

 7B46EEAB11BC4F2...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Sent: 4/3/2023 7:28:27 AM
 Viewed: 4/3/2023 8:24:14 AM
 Signed: 4/3/2023 8:25:14 AM

Electronic Record and Signature Disclosure:
 Accepted: 4/3/2023 8:24:14 AM
 ID: c1ffa6f6-c888-478c-9071-e1e754c9b4f6

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication
 (None)

Sent: 4/3/2023 8:25:19 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Erica Garcia
 erica.garcia@cityofdenton.com
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Rosa Rios
 rosa.rios@cityofdenton.com
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
 Accepted: 3/22/2023 4:54:23 PM
 ID: 0d5a6bde-68bc-4154-a19f-463ee1264a12

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication
 (None)

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Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

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)

COPIED

Sent: 4/3/2023 8:25:19 AM
Viewed: 4/3/2023 9:06:15 AM

Electronic Record and Signature Disclosure:
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

Taylor Holt
taylor.holt@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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:	<ul style="list-style-type: none"> •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
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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.