City of Denton

Meeting Agenda

Public Utilities Board

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

Monday, May 18, 2026 | **9:00 AM** | **Council Work Session Room**

REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD

Citizens will be able to participate in the following way:

• eComment – The agenda was 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 Public Utilities Board immediately upon submission and recorded by the Secretary into the Minutes of the Meeting.

After determining that a quorum is present, the Public Utilities Board of the City of Denton, Texas will convene in a Regular Meeting on Monday, May 18, 2026 at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

This section of the agenda permits a person to make comments regarding public business on items as listed on the agenda. Each speaker will be allowed a maximum of four (4) minutes. Such person(s) shall have registered under the REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD detailed at the beginning of this agenda. Registration is required prior to the time this agenda item is read into the record.

2. CONSENT AGENDA

Each of the items on the Consent Agenda is recommended by the Staff and approval thereof will be strictly on the basis of the Staff recommendations. Approval of the Consent Agenda authorizes the City Manager or designee to implement each item in accordance with the Staff recommendations. The Public Utilities Board has received background information and has had an opportunity to raise questions regarding these items prior to consideration.

Listed below are bids, purchase orders, contracts, and other items to be approved for payment or other action under the Consent Agenda (Agenda Items A – E). This listing is provided on the Consent Agenda to allow Public Utilities Board 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. PUB26-074 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute Change

Order No. 4 to the contract between the City of Denton and Oscar Renda Contracting, Inc., for the construction and movement of public water/wastewater utilities in support of TxDOT's I-35 widening from the split to US-380 for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7968-004 - Change Order No. 4 in the not-to-exceed amount of $2,722,204.25, for a total contract award aggregated to $20,038,587.25).

Attachments: Exhibit 1 - Agenda Information Sheet

Exhibit 2 - Original Ordinance, Contract and Change Orders 1-3

Exhibit 3 - Ordinance and Change Order 4

B. PUB26-075 Consider recommending 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 Halff Associates, Inc., for the development of a Pecan Creek Storm Water Master Plan update for the Drainage Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8377-016 - Professional Services Agreement for assessment services awarded to Halff Associates, Inc., in the not-to-exceed amount of $1,057,370.00).

Attachments: Exhibit 1 - Agenda Information Sheet

Exhibit 2 - Ordinance and Contract

C. PUB26-076 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, ratifying Change Order No. 1 to the contract between the City of Denton and 4X Construction Group, LLC, for the Cell 6 Construction Project for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8907 - Change Order No. 1 in the not-to-exceed amount of $618,467.03, for a total contract award aggregated to $5,491,222.03).

Attachments: Exhibit 1 - Agenda Information Sheet

Exhibit 2 - Original Ordinance and Contract

Exhibit 3 - Ordinance and Change Order 1

D. PUB26-077 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Online Information Services, Inc., for fraud detection and credit risk assessment for the Customer Service Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 9001 - awarded to Online Information Services, Inc., in the five (5) year not-to-exceed amount of $320,000.00).

Attachments: Exhibit 1 - Agenda Information Sheet

Exhibit 2 - Pricing Evaluation

Exhibit 3 - Ordinance and Contract

E. PUB26-079 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a

contract with BRCT LLC, dba Black Rock Construction, for the construction of the Baker Offsite Sewer Project with the geographical limits as follows: Masch Branch Road from Hampton Road to Jim Crystal Road for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 8833 - awarded to BRCT LLC, dba Black Rock Construction, in the not-to-exceed amount of $2,719,616.55).

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

3. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB26-081 Consider approval of the April 27, 2026 minutes.

Attachments: 4.27.26 PUB Minutes

B. PUB26-068 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Alderink Enterprises, Inc. dba CI Pavement, Diamond M Construction & Land Services LLC, and Solid Foundations Concrete LLC, for construction services for parking lot repair, reconstruction, and maintenance at City facilities for the Facilities Management Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8983 - awarded to Alderink Enterprises, Inc. dba CI Pavement, Diamond M Construction & Land Services LLC, and Solid Foundations Concrete LLC, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $17,808,000.00).

Attachments: Exhibit 1 - Agenda Information Sheet
Exhibit 2 - Evaluation Sheet
Exhibit 3 - Presentation
Exhibit 4 - Ordinance and Contracts

C. PUB26-080 Receive a report, hold a discussion and give staff direction regarding the revision of the 2026 Meeting Schedule.

Attachments: 1. 2026 PUB Mtg Schedule - Revised
2. 2026 PUB Mtg Schedule - Original

D. PUB26-073 Management Reports
1. Oncor-REP Commercial Rates Comparison Memo
2. Future Agenda Items
3. New Business Action Items

Attachments: 1. Oncor-REP Commercial Rates Comparison Memo
2. Future Agenda Items
3. New Business Action Items

4. CONCLUDING ITEMS

A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the Public Utilities Board 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.

CERTIFICATE

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 May 12, 2026 in advance of the three (3) business day 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 TWO (2) BUSINESS DAYS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 940-349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATION CAN BE ARRANGED.

City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: May 18, 2026

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute Change Order No. 4 to the contract between the City of Denton and Oscar Renda Contracting, Inc., for the construction and movement of public water/wastewater utilities in support of TxDOT's I-35 widening from the split to US-380 for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7968-004 – Change Order No. 4 in the not-to-exceed amount of $2,722,204.25, for a total contract award aggregated to $20,038,587.25).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The Texas Department of Transportation's (TxDOT) widening of Interstate Highway 35 (I-35) from the I-35E/I-35W Split to Milam Road started in Q4 2023. The I-35 Utility Relocation (Split to US-380) project moved public utilities in support of TxDOT with the removal and installation of 10,200 linear feet of water and wastewater utilities from the split to US-380. To align with TxDOT's I-35 widening, the project was scheduled for 180 days. Since the project is a forced relocation of City of Denton utilities, there will be reimbursements from TxDOT to support this effort up to 100%.

The I-35 Utility Relocation Project (Split to US-380) had a total estimated cost of $18,064,385.85. This estimate included a $17,204,177 total base proposal amount and a contingency of $860,208.85. A five (5) percent 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.

Change Order Nos. 1 – 3 were approved utilizing available contingency to address design and scope adjustments for water and wastewater infrastructure. Change Orders No. 1 and 2 managed scope changes necessitated by unforeseen existing conditions; notably, material changes had to be made as a result. Change Order No. 3 was required to repair damages to a manhole inflicted by an unknown party during the course of construction.

Change Order No. 4 addresses substantial shifts in construction sequencing for various water and wastewater utility lines. Following the discovery of unforeseen field conditions across multiple parcels, the project team determined that the original schedule was no longer viable. Consequently, work for these

specific locations was re-phased to later stages of the project. This adjustment triggered a ripple effect on upstream infrastructure, necessitating redesigning the methodology for several upstream lines to maintain system integrity, implementation of a revised design that required a complete reversal of the planned flow direction, an updated contractor strategy to accommodate these engineering refinements, an additional 208 days of on-site presence that includes labor, equipment rentals, and coordination of multiple equipment and labor mobilizations across both sides of the I-35 corridor.

Oscar Renda has fulfilled all contractual obligations and submitted the comprehensive closeout package. Simultaneously, City staff is coordinating with TxDOT to ensure all administrative requirements are met. This due diligence is critical to securing reimbursement at 100% for the City of Denton and mitigating any potential audit risks associated with the change order.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On June 7, 2022, City Council approved RFQ 7968 for a prequalified list of firms for utility relocation and construction services for various Capital Investment Projects (Ordinance 22-1145).

On August 15, 2023, City Council approved a contract with Oscar Renda Contracting, Inc., in the not-to-exceed amount of $18,064,385.85 (Ordinance 23-1490).

On August 9, 2024, Purchasing approved a Change Order 1 with Oscar Renda Contracting, Inc., in the not-to-exceed amount of $43,740.

On October 15, 2024, Purchasing approved a Change Order 2 with Oscar Renda Contracting, Inc., in the not-to-exceed amount of $16,716.

On July 16, 2025, Purchasing approved a Change Order 3 with Oscar Renda Contracting, Inc., in the not-to-exceed amount of $51,750.

RECOMMENDATION

Award Change Order No. 4 with Oscar Renda Contracting, Inc., for the construction and movement of public water/wastewater utilities in support of TxDOT's I-35 widening from the split to US-380 for the Capital Projects Department, in the not-to-exceed amount of $2,722,204.25, for a total contract amount of $20,038,587.25.

PRINCIPAL PLACE OF BUSINESS

Oscar Renda Contracting, Inc.
Grapevine, TX

SCHEDULE OF PROJECT

Construction started on October 16, 2023, with an estimated completion date of July 31, 2024. This change order changed the completion date to February 24, 2025. A Letter of Acceptance was issued to the contractor dated May 30, 2025. For the past twelve months following project completion, City staff have continued working with the contractor and the TxDOT Dallas District to review the change order, including all time impacts, which resulted in the added days and final change order price needed to fully close the project.

FISCAL INFORMATION

These services will be funded from Wastewater Collection account #640444541.1365.40100. Requisition #175051 has been entered into the Purchasing software system in the amount of $2,722,204.25. The total amended amount of this contract is $20,038,587.25.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Original Ordinance, Contract, and Change Orders 1-3
Exhibit 3: Ordinance and Change Order No. 4

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

For information concerning this acquisition, contact: Shawn Messick, 940-349-8390, or Seth Garcia, 940-349-8938.

Legal point of contact: Leah Bush at 940-349-8333.

ORDINANCE NO. 23-1490

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH OSCAR RENDA CONTRACTING, INC., FOR THE CONSTRUCTION AND MOVEMENT OF PUBLIC WATER/WASTEWATER UTILITIES IN SUPPORT OF THE TEXAS DEPARTMENT OF TRANSPORTATION'S I-35 WIDENING FROM THE I-35 SPLIT TO US-380 FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7968-004 – AWARDED TO OSCAR RENDA CONTRACTING, INC., IN THE NOT-TO-EXCEED AMOUNT OF $18,064,385.85).

WHEREAS, on June 7, 2022, the City Council approved a pre-qualified professional services list for utility relocation and construction services for various Capital Improvement Projects (Ordinance 22-1145), and the professional services provider (the "Provider") mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; 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 Oscar Renda Contracting, Inc., to provide construction services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Joe Holland and seconded by Brian Beck. This ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	✓			
Vicki Byrd, District 1:	✓			
Brian Beck, District 2:	✓			
Paul Meltzer, District 3:	✓			
Joe Holland, District 4:	✓			
Brandon Chase McGee, At Large Place 5:	✓			
Chris Watts, At Large Place 6:	✓			

PASSED AND APPROVED this the 15th day of August, 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

CITY OF DENTON
DENTON, TEXAS

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o, ou=City of Denton, email=marcella.lunn@cityofdenton.com, c=US
Date: 2023.07.26 16:24:27 -05'00'

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Docusign City Council Transmittal Coversheet

IFB	7968-004
File Name	IH-35 Utility Relocation (IH-35/W Split to US-380)
Purchasing Contact	Cori Power
City Council Target Date	AUGUST 15, 2023
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	23-1490

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SECTION 00 52 43

AGREEMENT – UNIT PRICE BID

THIS AGREEMENT, authorized on 08/15/2023 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 Oscar Renda Contracting, Inc., 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:

IH-35 Utility Relocation (IH-35/W Split to US-380)

IFB #7968-004

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 Seventeen Million Two Hundred Four Thousand One Hundred Seventy-Seven Dollars and 00/100 Cents ($17,204,177.00). At the sole option of the City, five (5) percent contingency in the amount of Eight Hundred Sixty Thousand Two Hundred Eight Dollars and 85/100 Cents ($860,208.85) may be used for a total not-to-exceed amount of Eighteen Million Sixty-Four Thousand Three Hundred Eighty-Five Dollars and 85/100 Cents ($18,064,385.85).

Article 4. CONTRACT TIME

4.1 Time is of the essence.

All time limits for Milestones, if any, and Final Acceptance as stated in the Contract Documents are of the essence to this Contract.

4.2 Final Acceptance.

The Work will be completed for Final Acceptance within *{180}* 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.

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4.3 Liquidated Damages:

A. Contractor recognizes that *time is of the essence* to achieve Milestones and Final Acceptance of the Work, and City will suffer financial and other losses if the Work is not completed within the times specified in the Contract Documents. The Contractor also recognizes the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work related to the Milestones or Final Acceptance is not completed on time. Accordingly, instead of requiring any such proof, Contractor agrees that liquidated damages for delay (but not as a penalty):

1. *Final Acceptance*: If Contractor neglects, refuse, or fails to complete the Work within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2, for completion and readiness for Final Payment, Contractor shall pay City Six Hundred Twenty-Five Dollars and 00/100 Cents ($625.00) for each day that expires after such time, until the date determined by City as stated in the City-issued Letter of Final Acceptance.

Article 5. CONTRACT DOCUMENTS

5.1 CONTENTS:

A. The Contract comprises the entire agreement between City and Contractor concerning the Work and consists of this Agreement and the items set forth below. The Contract Documents consist of all items below other than this Agreement.

1. Attachments to this Agreement:
   a. Proposal Form
      1) Bid Form
      2) Unit Price Proposal Form
      3) Vendor Compliance to State Law Non-Resident Offeror
      4) State and Federal documents (*project specific)*
   b. Current Prevailing Wage Rate Table
   c. Worker's Compensation Affidavit
   d. General Conditions.
   e. Supplementary Conditions.
2. The following located in File *7968-004* at: *https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1*
   a. Specifications described in the Table of Contents of the Project's Contract Documents.
   b. Drawings.
   c. Addenda.
   d. Documentation submitted by Contractor prior to Notice of Award.
3. The following which shall be issued after the Effective Date and delivered to the City within ten (10) days of the Effective Date and before beginning Work:
   a. Payment Bond
   b. Performance Bond
   c. Maintenance Bond
   d. Power of Attorney for the Bonds
   e. Form 1295 – Certificate of Interested Parties (email to purchasing)
   f. Insurance Certificate

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4. Specifications specifically made a part of the Contract Documents by attachment or, if not attached, as incorporated by reference and described in the Table of Contents of the Project's Contract Documents.
5. The following which may be delivered or issued after the Effective Date of the Agreement and, if issued, become an incorporated part of the Contract Documents:
   a. Notice to Proceed.
   b. Field Orders.
   c. Change Orders.
   d. Letter of Final Acceptance.

Article 6. INDEMNIFICATION

6.1 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH 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. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.

6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH 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. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.

Article 7. MISCELLANEOUS

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7.1 Capitalized Terms.

Unless otherwise provided herein, capitalized terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

7.2 Assignment of Contract.

This Agreement, including all of the Contract Documents may not be assigned by the Contractor without the advance express written consent of the City.

7.3 Successors and Assigns.

City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, in respect to all covenants, agreements and obligations contained in the Contract Documents.

7.4 Severability.

Any provision or part of the Contract Documents held to be unconstitutional, void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor.

7.5 Venue and Waiver of Sovereign Immunity.

This Agreement, including all of the Contract Documents is performable in the State of Texas. Venue shall be in the state district courts of Denton County, Texas. The City's sovereign immunity is waived only to the extent set forth and in accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code or as otherwise specifically waived by law. The City does not waive its sovereign immunity to suit in federal court.

7.6 Authority to Sign.

Contractor hereby certifies that the person signing the Agreement on its behalf is the duly authorized signatory of the Contractor.

7.7 Prohibition on Contracts with Companies Boycotting Israel.

Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. By signing this contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

7.8 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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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.

7.9 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.

7.10 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.

7.11 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

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7.12 Immigration Nationality Act.

Contractor 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, Contractor shall provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Contractor 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 Contractor employee who is not legally eligible to perform such services. **CONTRACTOR SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CONTRACTOR, CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right to immediately terminate this Agreement for violations of this provision by Contractor.

7.13 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.

7.14 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

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IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective as of the date subscribed by the City's City Manager or his designee ("Effective Date").

CITY OF DENTON

BY: Sara Hensley
5236DB296270423...

TITLE: City Manager

DATE: 08/15/2023

CONTRACTOR
OSCAR RENDA CONSTRACTING, INC.

BY: Jon Dorma
EE0EAB4F4BE04B2...
AUTHORIZED AGENT

Jon Dorma
NAME

VP of Precinstruction
TITLE

817-293-4263
PHONE NUMBER

jdorma@southlandholdings.com
EMAIL ADDRESS

2023-1050960
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

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

Trevor Crain
7B46EEAB1ABC4F2...
SIGNATURE

Trevor Crain
PRINTED NAME

Director of Capital Projects
TITLE

Capital Projects
DEPARTMENT

ATTEST:
JESUS SALAZAR, CITY SECRETARY

Jesus Salazar
2437C77B897541D...

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

Marcella Lunn
4B070831B4AA438...

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SECTION 00 41 00
BID FORM

TO: *Cori Power*
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: *IH-35 Utility Relocations (IH-35E/W Split to US-380)*

1 Enter Into Agreement

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with City in the form included in the Bidding Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2 BIDDER Acknowledgements and Certification

2.1 In submitting this Bid, Bidder accepts all of the terms and conditions of the INVITATION TO BIDDERS and INSTRUCTIONS TO BIDDERS, including without limitation those dealing with the disposition of Bid Bond.

2.2 Bidder is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.

2.3 Bidder certifies that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.

2.4 Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.

2.5 Bidder has not solicited or induced any individual or entity to refrain from bidding.

2.6 Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:

a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.

b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of City (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.

c. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish Bid prices at artificial, non-competitive levels.

d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

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2.7 The Bidder acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 18-757.

3 Time of Completion

3.1 The Work will be complete for Final Acceptance within 180 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.2 Bidder accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable) and Final Acceptance within the times specified in the Agreement.

4 Attached to this Bid

The following documents are attached to and made a part of this Bid:

a. Section 00 35 13 – Conflict of Interest Affidavit
b. Section 00 41 00 – Bid Form
c. **Section 00 42 43 – Unit Price Bid Form – Electronic Copy (either included in the Bid, or submitted via IonWave)**
d. Section 00 42 13 – Required Bid Bond, issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions
e. Section 00 43 36 – Proposed Subcontractors Form
f. ~~Section 00 43 37 – Vendor Compliance to State Law Non-Resident Bidder~~
g. ~~Section 00 45 13 – Bidders Minimum Qualification Statement~~
h. Section 00 45 26 – Contractor Compliance with Workers Compensation Law
i. Section 00 45 43 – Corporate Resolution of Authorized Signatories
j. Any additional documents that may be required by Section 00 21 13 – Instructions to Bidders

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5 Total Bid Amount

5.1 Bidder will complete the Work in accordance with the Contract Documents for the following bid amount. In the space provided below, please enter the total bid amount for this project. Only this figure will be read publicly by the City at the bid opening.

5.2 It is understood and agreed by the Bidder in signing this proposal that the total bid amount entered below is subject to verification and/or modification by multiplying the unit bid prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Total Bid Amount: $ 17,204,177.00

6 Bid Submittal

This Bid is submitted on July 12, 2023 by the entity named below.

Respectfully submitted,

By: _____
(Signature)

Jon Dorma
(Printed Name)

Title: *Vice President of Preconstruction Services*

Company: *Oscar Renda Contracting Inc.*

Address: *1100 Kubota Dr.*
Grapevine, TX 76051

State of Incorporation: *Texas*

Email: *jdorma@southlandholdings.com*

Phone: *817-293-4263*

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	JMD
Addenda No. 2:	
Addenda No. 3:	
Addenda No. 4:	
Addenda No. 5:	

END OF SECTION

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SECTION 00 42 43 - UNIT PRICE BID FORM

City of Denton Capital Projects
901-B Texas Street
Denton, TX 76209
Attn: Cori Power/Purchasing Dept.

From: Oscar Renda Contracting Inc.
1100 Kubota Dr.
Grapevine, TX 76051
Jon Dorma
817-293-4263
jdorma@southlandholdings.com

PROJ.: IH-35 Utility Relocations (IH-35E/W Split to US-380)
IFB: 7968-004

BIDDERS APPLICATION - UNIT PRICE BID

Item No.	COD Specification	Description Number	Description of work	BID QTY	UOM	Unit Price	Extended Price
			UNIT 1 - WATER IMPROVEMENTS				
1	01 58 13	0158.001	Temporary Project Sign	10	EA	$ 1,600.00	$ 16,000.00
2	01 70 00	0170.001	Mobilization	1	EA	$ 1,700,000.00	$ 1,700,000.00
3	32 01 29	3201.013	Concrete Paving Repair for Utility Trench*	2392	SY	$ 300.00	$ 717,600.00
4	32 01 17	3201.007	Flexible Paving Repair for Utility Trench*	555	SY	$ 150.00	$ 83,250.00
5	32 12 16	3216.005	4" Concrete Sidewalk*	498	SY	$ 280.00	$ 139,440.00
6	32 93 00	3293.015	Topsoil	391	SY	$ 152.00	$ 59,432.00
7	32 93 00	3293.016	Seeding	7319	SY	$ 2.00	$ 14,638.00
8	32 93 00	3293.017	Sodding	392	SY	$ 13.00	$ 5,096.00
9	33 01 50	3301.085	Manhole Adjustment, Minor	1	EA	$ 20,171.00	$ 20,171.00
10	33 01 50	3301.060	Manhole Adjustment, Major with Frame and Cover	2	EA	$ 43,048.00	$ 86,096.00
11	33 01 50	3301.064	Fire Hydrant Adjustment	1	EA	$ 11,484.00	$ 11,484.00
12	33 05 05	3305.021	Trench Safety	6370	LF	$ 5.00	$ 31,850.00
13	33 05 07	3305.022	18" Casing by Open Cut*	20	LF	$ 555.00	$ 11,100.00
14	33 05 07	3305.028	18" Casing by Other Than Open Cut*	933	LF	$ 830.00	$ 774,390.00
15	33 05 07	3305.029	24" Casing by Other Than Open Cut*	1043	LF	$ 1,150.00	$ 1,199,450.00
16	33 05 07	3305.030	30" Casing by by Other Than Open Cut	160	LF	$ 1,460.00	$ 233,600.00
17	33 05 15, 33 14 10	3305.098	8" DIP Water Carrier Pipe	953	LF	$ 548.00	$ 522,244.00
18	33 05 15, 33 14 10	3305.099	12" DIP Water Carrier Pipe	1043	LF	$ 674.00	$ 702,982.00
19	SEE ALTERNATE 1 BELOW - provide bid for only ONE (19 OR 19a)			160	LF		$ -
20	SEE ALTERNATE 2 BELOW - provide bid for only ONE (20 OR 20a)			505	LF		$ -
21	33 14 11	3314.142	6" PVC Water Pressure Pipe	15	LF	$ 642.00	$ 9,630.00
22	33 14 11	3314.142	8" PVC Water Pressure Pipe	4168	LF	$ 186.00	$ 775,248.00
23	33 14 11	3314.146	12" PVC Water Pressure Pipe	1662	LF	$ 324.00	$ 538,488.00
24	33 14 17	3314.310	1" Water Service*	5	EA	$ 5,354.00	$ 26,770.00
25	33 14 17	3314.318	2" Water Service	9	EA	$ 8,916.00	$ 80,244.00
26	33 14 18	3314.323	4" Water Meter, Vault and Appurtenances	1	EA	$ 94,490.00	$ 94,490.00
27	33 14 20	3314.327	6" Gate Valve*	1	EA	$ 3,786.00	$ 3,786.00
28	33 14 20	3314.328	8" Gate Valve*	15	EA	$ 5,196.00	$ 77,940.00
29	33 14 20	3314.329	12" Gate Valve*	7	EA	$ 9,084.00	$ 63,588.00
30	33 14 20	3314.330	16" Gate Valve	3	EA	$ 26,928.00	$ 80,784.00
31	33 14 25	3314.345	8" x 8" Tapping Sleeve and Valve (City Performed)	2	EA	$ 8,552.00	$ 17,104.00
32	33 14 25	3314.347	12" x 8" Tapping Sleeve and Valve (City Performed)	1	EA	$ 12,700.00	$ 12,700.00
33	33 14 25	3314.348	12" x 12" Tapping Sleeve and Valve (City Performed)	1	EA	$ 20,362.00	$ 20,362.00
34	33 14 25	3314.354	20" x 12" Tapping Sleeve and Valve (City Performed)	1	EA	$ 48,462.00	$ 48,462.00
35	33 14 25	3314.392	8" Water Main Connection with Shutdown	8	EA	$ 5,068.00	$ 40,544.00
36	33 14 25	3314.393	12" Water Main Connection with Shutdown	6	EA	$ 5,454.00	$ 32,724.00
37	33 14 25	3314.394	16" Water Main Connection with Shutdown	2	EA	$ 6,820.00	$ 13,640.00
38	34 71 13	3471.001	Fire Hydrant Assembly*	10	EA	$ 11,126.00	$ 111,260.00
39	34 71 13	3471.001	Traffic Control	8	MO	$ 3,630.00	$ 29,040.00
40	02 41 14	0241.029	Remove 6" Utility Line	1913	LF	$ 26.00	$ 49,738.00
41	02 41 14	0241.030	Remove 8" Utility Line	8880	LF	$ 26.00	$ 230,880.00
42	02 41 14	0241.032	Remove 12" Utility Line	1230	LF	$ 26.00	$ 31,980.00
43	02 41 14	0241.035	Remove 16" Utility Line	186	LF	$ 26.00	$ 4,836.00
44	02 41 14	0241.037	Remove 20" Utility Line	406	LF	$ 26.00	$ 10,556.00
45	02 41 14	0241.010	Grout Fill 6" Utility Line	54	LF	$ 9.00	$ 486.00
46	02 41 14	0241.011	Grout Fill 8" Utility Line	244	LF	$ 9.00	$ 2,196.00
47	02 41 14	0241.012	Grout Fill 10" Utility Line	213	LF	$ 13.00	$ 2,769.00
48	02 41 14	0241.013	Grout Fill 12" Utility Line	690	LF	$ 15.00	$ 10,350.00
49	02 41 14	0241.016	Grout Fill 16" Utility Line	2102	LF	$ 17.00	$ 35,734.00
50	02 41 14	0241.056	Remove 6" Water Valve	2	EA	$ 302.00	$ 604.00
51	02 41 14	0241.057	Remove 8" Water Valve	8	EA	$ 302.00	$ 2,416.00
52	02 41 14	0241.059	Remove 12" Water Valve	7	EA	$ 302.00	$ 2,114.00
53	02 41 14	0241.063	Remove 20" Water Valve	1	EA	$ 605.00	$ 605.00
54	02 41 14	0241.094	Remove Fire Hydrant	16	EA	$ 605.00	$ 9,680.00
55	02 41 14	0241.095	Remove Small Water Meter	14	EA	$ 605.00	$ 8,470.00
56	02 41 14	0241.096	Remove Concrete Water Vault	2	EA	$ 605.00	$ 1,210.00
ALTERNATE 1 - PROVIDE PRICING FOR ONLY ONE							
19	33 05 07	3305.100	16" DIP Water Carrier Pipe*	160	LF	$ 814.00	$ 130,240.00
19a	33 05 15, 33 14 14	3305.110	20" HDPE Water Carrier Pipe	160	LF		$ -
ALTERNATE 1 - PROVIDE PRICING FOR ONLY ONE							
20	33 05 07	3314.014	16" DIP Water Pipe*	505	LF	$ 778.00	$ 392,890.00
20a	33 05 15, 33 14 14	3314.222	20" HDPE Pressure Pipe, Water	505	LF		$ -
						TOTAL BID AMOUNT (Unit I):	**$ 9,333,381.00**

Item No.	COD Specification	Description Number	Description of work	BID QTY	UOM	Unit Price	Extended Price
Unit II - WASTEWATER IMPROVEMENTS							
57	32 01 29	3201.013	Concrete Paving Repair for Utility Trench*	1305	SY	$ 430.00	$ 561,150.00
58	32 01 17	3201.007	Flexible Paving Repair for Utility Trench*	777	SY	$ 120.00	$ 93,240.00
59	32 12 16	3216.005	4" Concrete Sidewalk*	74	SY	$ 280.00	$ 20,720.00
60	32 93 00	3293.015	Topsoil	230	SY	$ 152.00	$ 34,960.00
61	32 93 00	3293.016	Seeding	2484	SY	$ 2.00	$ 4,968.00
62	32 93 00	3293.017	Sodding	2558	SY	$ 13.00	$ 33,254.00
63	33 05 05	3305.021	Trench Safety	3711	LF	$ 5.00	$ 18,555.00
64	33 05 07	3305.028	18" Casing by Other Than Open Cut*	177	LF	$ 702.00	$ 124,254.00
65	33 05 07	3305.029	24" Casing by by Other Than Open Cut*	1099	LF	$ 1,110.00	$ 1,219,890.00
66	33 05 07	3305.031	48" Casing or TLP by by Other Than Open Cut*	675	LF	$ 2,735.00	$ 1,846,125.00
67	33 05 15, 33 14 11, 33 31 14	3305.046	8" PVC Sanitary Sewer Carrier Pipe	177	LF	$ 476.00	$ 84,252.00
68	33 05 15, 33 14 11, 33 31 14	3305.047	10" PVC Sanitary Sewer Carrier Pipe	533	LF	$ 518.00	$ 276,094.00
69	33 05 15, 33 31 14	3305.049	15" PVC Sanitary Sewer Carrier Pipe	566	LF	$ 680.00	$ 384,880.00
70	33 05 15, 33 31 14	3305.051	21" PVC Sanitary Sewer Carrier Pipe	675	LF	$ 925.00	$ 624,375.00
71	33 05 76	3305.126	4' Concrete Manhole	25	EA	$ 27,150.00	$ 678,750.00
72	33 05 61, 33 05 62	3305.127	4' Drop Concrete Manhole	2	EA	$ 31,900.00	$ 63,800.00
73	33 05 76	3305.128	5' Concrete Manhole	4	EA	$ 44,375.00	$ 177,500.00
74	33 05 61, 33 05 62	3305.129	5' Drop Concrete Manhole	3	EA	$ 36,890.00	$ 110,670.00
75	33 05 61, 33 05 62	3305.132	4' Extra Depth Concrete Manhole	55	VF	$ 1,850.00	$ 101,935.00
76	33 05 61, 33 05 62	3305.133	5' Extra Depth Concrete Manhole	64	VF	$ 2,190.00	$ 140,160.00
77	33 31 14	3331.045	8" PVC Gravity Sewer Pipe	275	LF	$ 198.00	$ 54,450.00
78	32 31 14	3331.049	10" PVC Gravity Sewer Pipe	1481	LF	$ 218.00	$ 322,858.00
79	33 31 14	3331.057	15" PVC Gravity Sewer Pipe	446	LF	$ 345.00	$ 153,870.00
80	33 31 14	3331.065	21" PVC Gravity Sewer Pipe	110	LF	$ 510.00	$ 56,100.00
81	33 31 14	3331.073	8" PVC Gravity Sewer Pressure Pipe	1348	LF	$ 198.00	$ 266,904.00
82	33 31 14	3331.077	10" PVC Gravity Sewer Pressure Pipe	51	LF	$ 218.00	$ 11,118.00
83	33 31 14	3331.089	6" Sewer Service	10	EA	$ 7,242.00	$ 72,420.00
84	02 41 14	0241.029	Remove 6" Utility Line	94	LF	$ 26.00	$ 2,444.00
85	02 41 14	0241.030	Remove 8" Utility Line	1883	LF	$ 26.00	$ 48,958.00
86	02 41 14	0241.031	Remove 10" Utility Line	4026	EA	$ 26.00	$ 104,676.00
87	02 41 14	0241.032	Remove 12" Utility Line	134	EA	$ 26.00	$ 3,484.00
88	02 41 14	0241.034	Remove 15" Utility Line	755	EA	$ 26.00	$ 19,630.00
89	02 41 14	0241.012	Grout Fill 10" Utility Line	927	EA	$ 12.00	$ 11,124.00
90	02 41 14	0241.015	Grout Fill 15" Utility Line	2185	EA	$ 24.00	$ 52,440.00
91	02 41 14	0241.047	Abandon 4' Utility Manhole	2	EA	$ 12,832.00	$ 25,664.00
92	02 41 14	0241.050	Remove 4' Utility Manhole	27	EA	$ 2,412.00	$ 65,124.00
						TOTAL BID AMOUNT (Unit II):	**$ 7,870,796.00**
						TOTAL PROJECT BID AMOUNT (Units I & II):	**$ 17,204,177.00**

*All materials shall use domestically manufactured products that are composed predominately of steel and/or iron to incorporate into the permanent installation of the utility facility – in compliance with the Buy America provisions of 23 CFR 635.410 as amended.

END BID ITEMS

IH-35 Utility Relocations (IH-35E/W Split to US-380) **Oscar Renda Contracting Inc.**

IFB: 7968-004

DocuSign Envelope ID: D2FADBB0-6CE1-40B2-863C-E19837FB245E

"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).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $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.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $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

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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 **	

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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.

==========

** 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).

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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:

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* 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"

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"General Decision Number: TX20230018 04/14/2023

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).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $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.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $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

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0	01/06/2023
1	04/14/2023

* PLUM0100-002 11/01/2022

	Rates	Fringes
Plumbers and Pipefitters	$ 35.73	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.

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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)).

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A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current

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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
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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.

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U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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END OF GENERAL DECISIO"

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SECTION 00 45 26

CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW

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 *IH-35 Utility Relocations (from IH-35E/W Split to US-380)*. 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:

Oscar Renda Contracting Inc.
Company

By: *Jon Dorma*
(Please Print)

1100 Kubota Dr.
Address

Signature: _____

Grapevine, TX 76051
City/State/Zip

Title: *Vice President of Preconstruction Services*
(Please Print)

THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared *Jon Dorma*, 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 *Vice President of Preconstruction Services* for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 11th day of July, 2023

JANIE RODRIGUEZ
Notary Public, State of Texas
Comm. Expires 04-26-2026
Notary ID 125619669

_____
Notary Public in and for the State of Texas

END OF SECTION

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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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.

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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.

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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

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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 toto support scheduled performance of related construction activities.

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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

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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.

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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.

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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.

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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 CityCity, 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.

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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.

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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

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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

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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.

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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.

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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

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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.

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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.

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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.

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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

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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 underwrittenmay 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.

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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

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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

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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

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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.

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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

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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.

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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.

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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.

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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.

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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

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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;

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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.

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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

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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;

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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.**

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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

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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

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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.

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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.

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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.

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ARTICLE 11 – CHANGES ININ THE WORK; CLAIMS; EXTRA WORK

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended toto 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

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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.

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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. TheThe 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:

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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.

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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.

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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:

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1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, 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.

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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.

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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, thisany 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.

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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;

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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

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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.

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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 CityCity, 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.

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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 hashas 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

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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 1313.08, 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;

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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.

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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

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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

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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

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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

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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.

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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 hisits 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

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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.

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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

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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.

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SECTION 00 73 00
SUPPLEMENTARY CONDITIONS
TO
GENERAL CONDITIONS

Supplementary Conditions

These Supplementary Conditions modify and supplement Section 00 72 00 - General Conditions, and other provisions of the Contract Documents as indicated below. All provisions of the General Conditions that are modified or supplemented remain in full force and effect as so modified or supplemented. All provisions of the General Conditions which are not so modified or supplemented remain in full force and effect.

Defined Terms

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meaning assigned to them in the General Conditions, unless specifically noted herein.

Modifications and Supplements

The following are instructions that modify or supplement specific paragraphs in the General Conditions and other Contract Documents.

SC-5.01A

Easement limits shown on the Drawing are approximate and were provided to establish a basis for bidding. Upon receiving the final easements descriptions, Contractor shall compare them to the lines shown on the Contract Drawings.

SC-5.01A.1., "Availability of Lands"

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of **June 2023.**

Outstanding Right-Of-Way, and/or Easements to Be Acquired

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Denton CAD No.	TxDOT Parcel No.	Property Owner	Target Date of Poession
CSJ-090			
126931	124	UNT	Sept 23'
132006	2	TXDOT	In Possession
36534	2a	TXDOT	In Possession
132008	2b	TXDOT	In Possession
107996	5	STRUGA PARTNERS LTD	July 23'
108000	6	STUGA PARTNERS	July 23'
108002	9	2701 W OAK STREET LLC	In Possession
126918	10	DENTON COUNTY	In Possession
36546	11	BEN E KEITH	Sept 23'
36551	12	BEN E KEITH	Sept 23'
171183	16	BEN E KEITH	Sept 23'
39258	17	BEN E KEITH CO	Sept 23'
209152	19.1	TEXAS BLUE HORSESHOE	In Possession
755868	19.2	PS LPT Properties Investors	Sept 23'
987772	19.3	V Land Denton, LLC	In Possession
165500	20	ERI-HQ LP	Sept 23'
194819	24	RETAIL BLDG INC	In Possession
188305	25	GOLDEN ARCH LTD	Sept 23'
167552	26	CB PORTOLIO OWNER LLC	In Possession
167551	27	VICTRON STORES LP	Sept 23'

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

If Contractor considers the final easements provided to differ materially from the representations on the Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work, notify City in writing associated with the differing easement line locations.

SC-5.01A.2, "Availability of Lands"

Utilities or obstructions to be removed, adjusted, and/or relocated

The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of **June 2023.**

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
NONE		

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

SC-5.03A., "Subsurface and Physical Conditions"

The following are reports of explorations and tests of subsurface conditions at the site of the Work:

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A **Geotechnical Engineering Study** Report No. **103-21-384**, dated **September 29, 2021**, prepared by **CMJ Engineering, Inc**. a sub-consultant of **Kimley-Horn**, a consultant of the City, providing additional information on **Geotechnical Engineering Study.**

The following are drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of the Work: **NONE**

SC-5.05 A., "Underground Facilities

The following are additional resources for identification of Underground Facilities which are at or contiguous to the site of the Work, and which are not necessarily shown in the Drawings: **NONE**

SC-5.06A., "Hazardous Environmental Conditions at Site"

The following are reports and drawings of existing hazardous environmental conditions known to the City: **NONE**

SC-6.02, "Performance, Payment, and Maintenance Bonds"

The "Contract Price" for Performance, Payment, and Maintenance Bonds will be the same as indicated in Article 3 as listed in the Agreement.

SC-6.03A., "Certificates of Insurance"

The entities listed below are "additional insureds as their interest may appear" including their respective officers, directors, agents and employees.

(1) City
(2) Consultant: **Kimley-Horn and Associates, Inc.**
(3) Other: **NONE**

SC-6.04A., "Contractor's Insurance"

The limits of liability for the insurance required by Paragraph GC-6.04 shall provide the following coverages for not less than the following amounts or greater where required by laws and regulations:

6.04A. Workers' Compensation, under Paragraph GC-6.04A.

Statutory limits
Employer's liability
$100,000 each accident/occurrence
$100,000 Disease - each employee
$500,000 Disease - policy limit

SC-6.04B., "Contractor's Insurance"

6.04B. Commercial General Liability, under Paragraph GC-6.04B. Contractor's Liability Insurance under Paragraph GC-6.04B., which shall be on a per project basis covering the Contractor with minimum limits of:

$1,000,000 each occurrence
$2,000,000 aggregate limit

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The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site.

The Commercial General Liability Insurance policies shall provide "X", "C", and "U" coverage's. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

SC 6.04C., "Contractor's Insurance"

6.04C. Automobile Liability, under Paragraph GC-6.04C. Contractor's Liability Insurance under Paragraph GC-6.04C., which shall be in an amount not less than the following amounts:

(1) **Automobile Liability** - a commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

$1,000,000 each accident on a combined single limit basis.

SC 6.04D., "Contractor's Insurance"

6.04D. Environmental Impairment/Pollution

Environmental Impairment/Pollution Insurance to include coverage for the handling, receiving, dispensing, removal, storage, testing, transportation, disposal, discharge, dispersal release or escape of any hazardous material into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including ground water, with a minimum combined bodily injury (including death) and property damage limit of *$2,000,000* per occurrence to be obtained upon substantial completion and acceptance of facility by the City.

SC-6.04E., "Contractor's Insurance"

The Contractor's construction activities will require its employees, agents, subcontractors, equipment, and material deliveries to cross railroad properties and tracks, or perform work within 25 feet of the center line of tracks **NONE**.

The Contractor shall conduct its operations on railroad properties in such a manner as not to interfere with, hinder, or obstruct the railroad company in any manner whatsoever in the use or operation of its/their trains or other property. Such operations on railroad properties may require that Contractor to execute a "Right of Entry Agreement" with the particular railroad company or companies involved, and to this end the Contractor should satisfy itself as to the requirements of each railroad company and be prepared to execute the right-of-entry (if any) required by a railroad company. The requirements specified herein likewise relate to the Contractor's use of private and/or construction access roads crossing said railroad company's properties.

The Contractual Liability coverage required by Paragraph 5.04D of the General Conditions shall provide coverage for not less than the following amounts, issued by companies satisfactory to the City and to the Railroad Company for a term that continues for so long as the Contractor's operations and work cross, occupy, or touch railroad property:

(1) General Aggregate: *$Confirm Limits with Railroad*

(2) Each Occurrence: *$Confirm Limits with Railroad*

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____ *Required for this Contract* __X__ *Not required for this Contract*

With respect to the above outlined insurance requirements, the following shall govern:

1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.

2. Where more than one railroad company is operating on the same right-of-way or where several railroad companies are involved and operated on their own separate rights-of-way, the Contractor may be required to provide separate insurance policies in the name of each railroad company.

3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a railroad company's right-of-way at a location entirely separate from the grade separation or at-grade crossing, insurance coverage for this work must be included in the policy covering the grade separation.

4. If no grade separation is involved but other work is proposed on a railroad company's right-of-way, all such other work may be covered in a single policy for that railroad, even though the work may be at two or more separate locations.

No work or activities on a railroad company's property to be performed by the Contractor shall be commenced until the Contractor has furnished the City with an original policy or policies of the insurance for each railroad company named, as required above. All such insurance must be approved by the City and each affected Railroad Company prior to the Contractor's beginning work.

The insurance specified above must be carried until all Work to be performed on the railroad right-of-way has been completed and the grade crossing, if any, is no longer used by the Contractor. In addition, insurance must be carried during all maintenance and/or repair work performed in the railroad right-of-way. Such insurance must name the railroad company as the insured, together with any tenant or lessee of the railroad company operating over tracks involved in the Project.

SC-7.08C., "Concerning Subcontractors and Suppliers"

The following subcontractors shall be required to be utilized by the Contractor for specific portions of the Work as indicated below:

Required Subcontractors

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
NONE	

SC-7.11., "Permits and Utilities"

SC-7.11A., "Contractor obtained permits and licenses"

The following are known permits and/or licenses required by the Contract to be acquired by the Contractor:

NONE

SC-7.11B. "City obtained permits and licenses"

The following are known permits and/or licenses required by the Contract to be acquired by the City:

1. **TxDOT Utility Installation Request (UIR)**

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SC-7.11C. "Outstanding permits and licenses"

The following is a list of known outstanding permits and/or licenses to be acquired, if any as of **June 2023.**

Outstanding Permits and/or Licenses to Be Acquired

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
TxDOT	UIR	June 2023

SC-7.24B., "Title VI, Civil Rights Act of 1964 as amended"

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontactor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by City or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the City, or the Texas Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, City shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

    a. withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
    b. cancellation, termination or suspension of the Contract, in whole or in part.

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6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as City or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request City to enter into such litigation to protect the interests of City, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Additional Title VI requirements can be found in the Appendix.

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**
Texas Department of Transportation	*Highway and Frontage Road Construction*	*Contractor/City*
Various Franchise Utility Companies	*Utility Construction*	*Contractor/City*
Kimley-Horn and Associates, Inc.	*IH-35 Construction Phase Services/Design*	*Contractor/City*

SC-9.01, "Communications to Contractor"

1. All materials shall use domestically manufactured products that are composed predominately of steel and/or iron to incorporate into the permanent installation of the utility facility in compliance with the Buy America provisions of 23 CFR 635.410 as amended.
2. Denton Water Field Operations (Coordinate 48-hours in advance of performed shutdown and tie-in).
3. Atmos: Omar Campos: Anibal.Campos@atmosenergy.com (Contact 48 hours in advance of excavation operations occurring within 50' of existing 8" gas pipeline).
4. Denton Municipal Electric: Doug Breon: Doug.Breon@cityofDenton.com (Coordinate 48 hours in advance of excavation operations occurring 20' of existing 4" electric lines).

SC-10.01B., "City's Project Manager"

The City's Project Manager for this Contract is Cole Tankersley, or his/her successor pursuant to **written notification from the City Engineer.**

SC-13.02B., "Tests and Inspections"

NONE

SC-14.01G, "Reduction in Payment"

Add Paragraph 14.01G.3:

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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.*

SC-16.01C.1, "Methods and Procedures"

NONE

SC – 17.01, "Documents"

Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

SC – 18.01, "Texas State Law Provisions"

SC – 18.01A. "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.

SC – 18.01B. "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.

SC – 18.01C. "Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations"

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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.

SC – 18.01D. "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.

SC – 18.01E. "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.

SC-19.01 – "BUY AMERICA" REQUIREMENTS"

NOTICE TO CONTRACTORS and SUPPLIERS:

The project requires certification from the contractor's suppliers that all manufacturing processes for steel and iron materials or for the application of coatings (epoxy, galvanizing, painting or any other coating that protects or enhances the value of the steel or iron metal) to these materials occurred in the United States of America. For the purpose of the certifications, manufacturing processes are defined as all processes required to change the raw ore or scrap metal into the finished in-place steel or iron product. The successful contractor will be required to complete the Texas Department of Transportation Material Statement Certification Form 1818 with for each appropriate shop drawing submittal. TxDOT Form 1818 is included in the APPENDIX of this project manual.

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1
2

END OF SECTION

Revision Log		
DATE	NAME	SUMMARY OF CHANGE
06/05/2022	SC-17.01	Added the TxDOT BUY AMERICA requirements.

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1 **SECTION 00 35 13**

2 CONFLICT OF INTEREST AFFIDAVIT

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.**

Oscar Renda Contracting Inc.

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

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

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

n/a

Name of Officer

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

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

[ ] Yes [x] No

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

[ ] Yes [x] No

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

[ ] Yes [x] No

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

4 [x] **I have no Conflict of Interest to disclose.**

5

Signature of vendor doing business with the governmental entity — Date: *7/12/2023*

3 **END OF SECTION**

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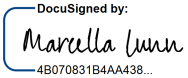
Certificate Of Completion

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Subject: Please DocuSign: City Council Contract 7968-004 IH-35 Utility Relocation (IH-35/W Split to US-380)
Source Envelope:
Document Pages: 105
Signatures: 5
Certificate Pages: 6
Initials: 1
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901B Texas Street
Denton, TX 76209
cori.power@cityofdenton.com
IP Address: 198.49.140.104

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Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/18/2023 9:03:16 PM Viewed: 7/19/2023 9:15:32 AM Signed: 7/19/2023 9:16:18 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: 7/19/2023 9:16:21 AM Viewed: 7/21/2023 3:28:58 PM Signed: 7/21/2023 3:38:25 PM
Jon Dorma jdorma@southlandholdings.com VP of Precinstruction Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 7/22/2023 9:20:13 AM ID: 2c4d4be6-17e3-434e-b02f-5c91b22db5f1	 Signature Adoption: Pre-selected Style Using IP Address: 107.120.35.61 Signed using mobile	Sent: 7/21/2023 3:38:28 PM Viewed: 7/22/2023 9:20:13 AM Signed: 7/22/2023 9:27:34 AM

Signer Events	Signature	Timestamp
Trevor Crain Trevor.Crain@cityofdenton.com Director of Capital Projects City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 7/24/2023 7:57:40 AM ID: 827e9efb-c634-4a7e-8b2a-d8ff66f65784	DocuSigned by: Trevor Crain 7B46EEAB11BC4F2... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/22/2023 9:27:37 AM Viewed: 7/24/2023 7:57:40 AM Signed: 7/24/2023 7:58:39 AM
Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	**Completed** Using IP Address: 198.49.140.104	Sent: 7/24/2023 7:58:44 AM Viewed: 7/25/2023 6:20:17 PM Signed: 7/25/2023 6:20:30 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	**Completed** Using IP Address: 198.49.140.104	Sent: 7/24/2023 7:58:43 AM Viewed: 8/16/2023 8:14:11 AM Signed: 8/16/2023 8:14:23 AM
Sara Hensley sara.hensley@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DocuSigned by: Sara Hensley 5236DB296270423... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 8/16/2023 8:14:28 AM Viewed: 8/16/2023 8:14:53 AM Signed: 8/16/2023 8:15:16 AM
Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 8/16/2023 8:46:31 AM ID: 5eb8bbb5-7da4-45da-bd35-95fc7d4fb2b2	DocuSigned by: Jesus Salazar 2437C77B897541D... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 8/16/2023 8:15:20 AM Viewed: 8/16/2023 8:46:31 AM Signed: 8/16/2023 8:47:40 AM

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 7/18/2023 9:03:17 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 7/24/2023 7:58:42 AM Viewed: 7/24/2023 8:48:27 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 8/16/2023 8:47:43 AM
Cole Tankersley Cole.Tankersley@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 8/15/2023 5:05:42 PM ID: f9d1e4a7-3a46-4c3a-9b5a-ead6bc29093a	COPIED	Sent: 8/16/2023 8:47:44 AM Viewed: 8/16/2023 8:59:44 AM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/18/2023 9:01:58 PM
Certified Delivered	Security Checked	8/16/2023 8:46:31 AM
Signing Complete	Security Checked	8/16/2023 8:47:40 AM
Completed	Security Checked	8/16/2023 8:47:45 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

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

Required hardware and software

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

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

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

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and

- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and

- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

Docusign Envelope ID: 3AF66919-7172-4B46-A19D-4A6A2DCD88A3

Docusign Transmittal Coversheet

File Name	7968-004 IH-35/W Split to US-380 CO1
Purchasing Contact	Gabby Leeper
Contract Expiration	N/A

Docusign Envelope ID: 3AF66919-7172-4B46-A19D-4A6A2DCD88A3

CITY OF DENTON CHANGE ORDER FORM

City of Denton - Capital Projects
401 N. Elm Street
Denton, TX 76201
Shawn Messick, Project Manager

Contractor: Oscar Renda Contracting
1100 Kubota Dr.
Grapevine, TX 76051
David Gosdzinski

Proj: I-35 Utility Relocation (Split to US-380)
CHANGE ORDER NO. 1
IFB# 7968-004
ENG/PMO# 220003-1
PO# 204405

Notice To Proceed Issued:	Current Completion Date:	New Completion Date:
10/16/2023	4/13/2024	7/31/2024

Contract BID Amount:	$ 17,204,177.00	Prior Approved Other Funded CO's:	$ -
5% Contingency Amount:	$ 860,208.85	Current Contract Amount w CO's:	$ 17,204,177.00
Total NTE Amount :	$ 18,064,385.85	This CO Non-Contingency Fund Request:	$0.00
Prior Approved CUA's:	$ -	Total Change Request:	**$43,740.00**
Available Contingency:	$ 860,208.85		
This CUA Request:	$43,740.00	Orig Contract Days: 180	This CO Days Request: 109
Contingency Remaining:	$ 816,468.85	Approved CO Days: 0	New Contract Days: 289

PROJECT SCOPE AND REASON FOR CHANGE

Description of work included in Contract: Relocation of 10,200 LF of water and wastewater utilities along I-35

Reason for change:

PCO 1:
CO1 SSC - Changing MH from 4' to 5', boring delays
CO3 WLC - Deletion of casing & pipe, change pipe, additional gate valves & water services, and additional removals
CO4 WLF - Additional gate valves & water services, additional pipe, additional fire hydrant, removal, and Water Main Shutdown
CO5 WLU - Additional Pipe, water service, Water Main Shutdowns, Delays/Stangpy for redesign

CONTINGENCY USE ALLOWANCE (CUA) CONTRACT CHANGES

QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
12	33 05 05	Trench Safety	LF	6,370	307.00	$ 5.00	$ 1,535.00
14	33 05 07	18" Casing by Other Than Open Cut*	LF	933	-245.00	$ 830.00	$ (203,350.00)
17	33 05 15, 33 14 10	8" DIP Water Carrier Pipe	LF	953	-245.00	$ 548.00	$ (134,260.00)
21	33 14 11	6" PVC Water Pressure Pipe	LF	15	12.00	$ 642.00	$ 7,704.00
22	33 14 11	8" PVC Water Pressure Pipe	LF	4,168	265.00	$ 186.00	$ 49,290.00
23	33 14 11	12" PVC Water Pressure Pipe	LF	1,662	42.00	$ 324.00	$ 13,608.00
24	33 14 17	1" Water Service*	EA	5	1	$ 5,354.00	$ 5,354.00
25	33 14 17	2" Water Service	EA	9	4	$ 8,916.00	$ 35,664.00
27	33 14 20	6" Gate Valve*	EA	1	1	$ 3,786.00	$ 3,786.00
28	33 14 20	8" Gate Valve*	EA	15	1	$ 5,196.00	$ 5,196.00
29	33 14 20	12" Gate Valve*	EA	7	1	$ 9,084.00	$ 9,084.00
36	33 14 25	12" Water Main Connection with Shutdown	EA	6	-1	$ 5,454.00	$ (5,454.00)
38	34 71 13	Fire Hydrant Assembly*	EA	10	1	$ 11,126.00	$ 11,126.00
41	02 41 14	Remove 8" Utility Line	LF	8,880	20	$ 26.00	$ 520.00
45	02 41 14	Grout Fill 6" Utility Line	LF	54	20	$ 9.00	$ 180.00
51	02 41 14	Remove 8" Water Valve	EA	8	1	$ 302.00	$ 302.00
55	02 41 14	Remove Small Water Meter	EA	14	3	$ 605.00	$ 1,815.00
74	33 05 61, 33 05 62	5' Drop Concrete Manhole	EA	3	1	$ 36,890.00	$ 36,890.00
75	33 05 61, 33 05 62	4' Extra Depth Concrete Manhole	VF	55	-9	$ 1,850.00	$ (16,650.00)
76	33 05 61, 33 05 62	5' Extra Depth Concrete Manhole	VF	64	9	$ 2,190.00	$ 19,710.00
92	02 41 14	Remove 4' Utility Manhole	EA	27	1	$ 2,412.00	$ 2,412.00
						TOTAL CUA QTY CHANGES:	-$155,538.00

NEW ITEMS OF WORK

		Cast in Place Manhole	EA		1	$ 17,000.00	$ 17,000.00
		18" RCP Drainage R&R	EA		1	$ 12,096.00	$ 12,096.00

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		10" Water Main Connection with Shutdown	EA		2	$ 5,200.00	$ 10,400.00
		Delay (Bore)	DAY		5	$ 16,162.00	$ 80,810.00
		Delay/Standby	DAY		6	$ 13,162.00	$ 78,972.00
Contingency funds are used at City's discretion per contract spec language						**TOTAL CAA EXISTING ITEMS:**	**$199,278.00**

PROJECT (NON-CONTIGENCTY) FUNDED CONTRACT CHANGES (CO)

QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
						TOTAL PROJECT (NON-CONTIGENCTY) FUNDED EXISTING QTY CHANGES:	**$0.00**

TOTAL CO AMOUNT: **$43,740.00**

I-35 Utility Relocation (Split to US-380)

Original BID/Contract Amount:	$	17,204,177.00
Original Not To Exceed Amount:	$	18,064,385.85
Total CUA's:		$43,740.00
Total CO's:	$	-
Revised Contract Amount:	**$**	**17,247,917.00**
% of CUA Approved To-Date:		5.08%
Total Changes over Original Bid:		**0.25%**
Percent Changes over NTE:		0.00%

Docusign Envelope ID: 3AF66919-7172-4B46-A19D-4A6A2DCD88A3

THE AFOREMENTIONED CHANGE, AND WORK AFFECTED THEREBY,
IS SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS.

SUBMITTED BY:

DocuSigned by:
Shawn Messick
Shawn Messick, Project Manager

ACCEPTED BY CITY ENGINEER/DIRECTOR OF CAPITAL PROJECTS

Signed by:
Trevor Crain
Signature

ACCEPTED BY CONTRACTOR: Jon Dorma VP precon
Name, Title

DocuSigned by:
Jon Dorma
Signature

PURCHASING:

DocuSigned by:
Gabby Leeper 8/9/2024
Signature

Docusign Envelope ID: DC9B603E-1496-4229-BCA2-B6AF65B48E99

CITY OF DENTON

DocuSign Transmittal Coversheet

File Name	7968-004 Utility Relocation I35 Split to 380 CO#2
Purchasing Contact	Cori Power

DS

Docusign Envelope ID: DC9B603E-1496-4229-BCA2-B6AF65B48E99

CITY OF DENTON CHANGE ORDER FORM

City of Denton - Capital Projects
401 N Elm Street
Denton, TX 76201
Attn: Shawn Messick-Capital Projects

Contractor: Oscar Renda Contracting
1100 Kubota Dr.
Grapevine, TX 76051
David Gosdzinski

Project: I-35 Utility Relocation (Split to US-380)
CO NO. 2
IFB# 7968-004
CIP/ENG# 220003-1
PO #: 204405

Notice To Proceed Issued:	Current Completion Date:	New Completion Date:
10/16/2023	7/31/2024	7/31/2024

Contract BID Amount:	$ 17,204,177.00	Prior Approved Other Funded CO's:	$ -
Contingency Amount:	$ 860,208.85	Current Contract Amount w CO's:	$ 17,247,917.00
Total NTE Amount :	$ 18,064,385.85	This CO Other Funding Request:	$ -
Prior Approved CUA's:	$ 43,740.00	Total Change Request:	**$ 16,716.00**
Available Contingency:	$ 816,468.85		
This CUA Request:	$ 16,716.00		
Contingency Remaining:	$ 799,752.85		

Orig Contract Days:	180	This CO Days Request:	0
Approved CO Days:	109	New Contract Days:	289

PROJECT SCOPE AND REASON FOR CHANGE

Project Scope included in Contract: Relocation of 10,200 LF of water and wastewater utilities along I-35

Reason for change:

PCO 2:
CO 2 SS E - Redesign and rework due to percent fall correction
CO6 SS F - Removal of bore and use of existing line
CO7 WLE - Removal of bore and material change
CO8 SSH & WLG - Removal of bore, change to open cut, material changes

CONTINGENCY USE AUTHORIZED (CUA) CONTRACT CHANGES

QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
3	3201.013	Concrete Paving Repair for Utility Trench*	SY	2392	35	$ 300.00	$ 10,500.00
4	3201.007	Flexible Paving Repair for Utility Trench*	SY	555	355	$ 150.00	$ 53,250.00
9	33 01 50	Manhole Adjustment, Minor	EA	1	1	$ 20,171.00	$ 20,171.00
12	3305.021	Trench Safety	LF	6,677	180	$ 5.00	$ 900.00
13	33 05 07	18" Casing by Open Cut*	LF	20	80	$ 555.00	$ 44,400.00
14	3305.028	18" Casing by Other Than Open Cut*	LF	688	-100	$ 830.00	$ (83,000.00)
15	3305.029	24" Casing by Other Than Open Cut*	LF	1,043	-289	$ 1,150.00	$ (332,350.00)
17	3305.098	8" DIP Water Carrier Pipe	LF	708	-20	$ 548.00	$ (10,960.00)
18	3305.099	12" DIP Water Carrier Pipe	LF	1,043	-94	$ 674.00	$ (63,356.00)
21	3314.142	6" PVC Water Pressure Pipe	LF	27	40	$ 642.00	$ 25,680.00
22	3314.142	8" PVC Water Pressure Pipe	LF	4,433	-52	$ 186.00	$ (9,672.00)
23	3314.146	12" PVC Water Pressure Pipe	LF	1,704	80	$ 324.00	$ 25,920.00
24	3314.310	1" Water Service*	EA	6	1	$ 5,354.00	$ 5,354.00
25	3314.318	2" Water Service	EA	13	2	$ 8,916.00	$ 17,832.00
27	3314.327	6" Gate Valve*	EA	2	1	$ 3,786.00	$ 3,786.00
29	3314.329	12" Gate Valve*	EA	8	-1	$ 9,084.00	$ (9,084.00)
63	3305.021	Trench Safety	LF	3,711	519	$ 5.00	$ 2,595.00
64	3305.028	18" Casing by Other Than Open Cut*	LF	177	20	$ 702.00	$ 14,040.00
67	3305.046	8" PVC Sanitary Sewer Carrier Pipe	LF	177	-1	$ 476.00	$ (476.00)
68	3305.047	10" PVC Sanitary Sewer Carrier Pipe	LF	533	-434	$ 518.00	$ (224,812.00)
75	3305.132	4' Extra Depth Concrete Manhole	VF	46	10	$ 1,850.00	$ 18,500.00
81	33 31 14	8" PVC Gravity Sewer Pressure Pipe	LF	1,348	278	$ 198.00	$ 55,044.00
82	33 31 14	10" PVC Gravity Sewer Pressure Pipe	LF	51	540	$ 218.00	$ 117,720.00
83	33 31 14	6" Sewer Service	EA	10	1	$ 7,242.00	$ 7,242.00
85	0241.030	Remove 8" Utility Line	LF	1,883	340	$ 26.00	$ 8,840.00
92	0241.050	Remove 4' Utility Manhole	EA	28	6	$ 2,412.00	$ 14,472.00
						TOTAL CUA QTY CHANGES:	-$287,464.00

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NEW ITEMS OF WORK							
		Asphalt Haul Off	SY		355	$ 20.00	$ 7,100.00
		Pothole for Design	EA		1	$ 10,000.00	$ 10,000.00
		Cast in Place 4' Dia MH	EA		1	$ 17,000.00	$ 17,000.00
		Connect to Exisiting 10" SS with Couplings	EA		2	$ 7,500.00	$ 15,000.00
		16" Split Casing	LF		144	$ 595.00	$ 85,680.00
		Delays (Bore/ELB)	DAY		10	$ 16,100.00	$ 161,000.00
		CLSM Cap	EA		60	$ 140.00	$ 8,400.00
Contingency funds are used at City's discretion per contract spec language						**TOTAL CUA NEW ITEMS:**	**$304,180.00**

OTHER FUNDED CONTRACT CHANGES (CO)

QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
						TOTAL OTHER FUNDED QTY CHANGES:	**$0.00**

NEW ITEMS OF WORK

						TOTAL OTHER FUNDED NEW ITEMS:	**$0.00**

TOTAL CO AMOUNT: **$16,716.00**

I-35 Utility Relocation (Split to US-380)

Original BID/Contract Amount:	$	17,204,177.00
Original Total Not To Exceed Amount:	$	18,064,385.85
Total CUA's:	$	60,456.00
Total CO's:	$	-
Revised Contract Amount:	**$**	**17,264,633.00**
% of CUA Approved To-Date:		7.03%
Total Change Order over Original Bid:		**0.35%**
Percent Changes over NTE:		**0.00%**

THE AFOREMENTIONED CHANGE, AND WORK AFFECTED THEREBY,
IS SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS.

SUBMITTED BY:

Signed by: Shawn Messick 99E36DF592734E4...
Shawn Messick, Project Manager

ACCEPTED BY CITY ENGINEER/DIRECTOR OF CAPITAL PROJECTS

Signed by: Trevor Crain 7B46EEAB11BC4F2...
Signature

ACCEPTED BY CONTRACTOR: Jon Dorma VP of Precinstruction
Name, Title

DocuSigned by: Jon Dorma 5E0F85A4FB14F4...
Signature

PURCHASING:

DocuSigned by: Cori Power 5F1FE1663F7B4FE... 10/15/2024
Signature

Docusign Envelope ID: 4F8B16FA-54C9-4861-8958-C79D67CFC282

DocuSign Transmittal Coversheet

File Name	7968-004 - Utility Relocation (I35 Split to US380) CO#3
Purchasing Contact	Cori Power

Docusign Envelope ID: 4F8B16FA-54C9-4861-8958-C79D67CFC282

CITY OF DENTON CHANGE ORDER FORM

City of Denton - Capital Projects
401 N Elm Street
Denton, TX 76201
Attn: Shawn Messick-Capital Projects

Contractor: Oscar Renda Contracting
1100 Kubota Dr.
Grapevine, TX 76051
David Gosdzinski

Project: I-35 Utility Relocation (Split to US-380)
CUA NO. 3
IFB# 7968-004
CIP/ENG# 220003-1
PO #: 204405

Notice To Proceed Issued:	Current Completion Date:	New Completion Date:
10/16/2023	7/31/2024	7/31/2024

Contract BID Amount:	$ 17,204,177.00	Prior Approved Other Funded CO's:	$ -
Contingency Amount:	$ 860,208.85	Current Contract Amount w CO's:	$ 17,264,633.00
Total NTE Amount :	$ 18,064,385.85	This CO Other Funding Request:	$ -
Prior Approved CAA's:	$ 60,456.00	Total Change Request:	**$ 51,750.00**
Available Contingency:	$ 799,752.85		
This CAA Request:	$ 51,750.00	Orig Contract Days: 180	This CO Days Request: 0
Contingency Remaining:	$ 748,002.85	Approved CO Days: 109	New Contract Days: 289

PROJECT SCOPE AND REASON FOR CHANGE

Project Scope included in Contract: Relocation of 10,200 LF of water and wastewater utilities along I-35

Reason for change:

PCO 3:
CO11 - Cast in Place Manhole Repairs

CONTINGENCY ALLOWANCE AUTHORIZED (CAA) CONTRACT CHANGES

QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
						TOTAL CAA QTY CHANGES:	$0.00

NEW ITEMS OF WORK

		Cast in Place Manhole Repairs	LS		1	$ 51,750.00	$ 51,750.00
							$ -
Contingency funds are used at City's discretion per contract spec language						TOTAL CAA NEW ITEMS:	$51,750.00

OTHER FUNDED CONTRACT CHANGES (CO)

QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
						TOTAL OTHER FUNDED QTY CHANGES:	$0.00

NEW ITEMS OF WORK

						TOTAL OTHER FUNDED NEW ITEMS:	$0.00

TOTAL CO AMOUNT: $51,750.00

I-35 Utility Relocation (Split to US-380)

Original BID/Contract Amount:	$ 17,204,177.00
Original Total Not To Exceed Amount:	$ 18,064,385.85
Total CAA's:	$ 112,206.00
Total CO's:	$ -
Revised Contract Amount:	**$ 17,316,383.00**
% of CAA Approved To-Date:	13.04%
Total Change Order over Original Bid:	**0.65%**
Percent Changes over NTE:	**0.00%**

Docusign Envelope ID: 4F8B16FA-54C9-4861-8958-C79D67CFC282

THE AFOREMENTIONED CHANGE, AND WORK AFFECTED THEREBY,
IS SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS.

SUBMITTED BY:

Signed by:
Shawn Messick
925308E5827...
Shawn Messick, Project Manager

ACCEPTED BY CITY ENGINEER/DIRECTOR OF CAPITAL PROJECTS

Signed by:
Seth Garcia
A1370156BC954FC...
Signature

ACCEPTED BY CONTRACTOR: RUDY V. RENDA Co-COO/EVP
Name, Title

Signed by:
[signature]
685489F60DA54C7...
Signature

PURCHASING:

DocuSigned by:
Coni Power 7/16/2025
Signature

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE CHANGE ORDER NO. 4 TO THE CONTRACT BETWEEN THE CITY OF DENTON AND OSCAR RENDA CONTRACTING, INC., FOR THE CONSTRUCTION AND MOVEMENT OF PUBLIC WATER/WASTEWATER UTILITIES IN SUPPORT OF TXDOT'S I-35 WIDENING FROM THE SPLIT TO US-380 FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 7968-004 – CHANGE ORDER NO. 4 IN THE NOT-TO-EXCEED AMOUNT OF $2,722,204.25, FOR A TOTAL CONTRACT AWARD AGGREGATED TO $20,038,587.25).

WHEREAS, on August 15, 2023, by Ordinance No. 23-1490, the City Council awarded a contract to Oscar Renda Contracting, Inc., in the amount of $18,064,385.85, for the construction and movement of public water/wastewater utilities in support of TxDOT's I-35 widening from the split to US-380 for the Capital Projects Department; and

WHEREAS, on August 9, 2024, Purchasing awarded Change Order No. 1 to Oscar Renda Contracting, Inc., in the amount of $43,740.00, for the construction and movement of public water/wastewater utilities in support of TxDOT's I-35 widening from the split to US-380 for the Capital Projects Department; and

WHEREAS, on October 15, 2024, Purchasing awarded Change Order No. 2 to Oscar Renda Contracting, Inc., in the amount of $16,716.00, for the construction and movement of public water/wastewater utilities in support of TxDOT's I-35 widening from the split to US-380 for the Capital Projects Department; and

WHEREAS, on July 16, 2025, Purchasing awarded Change Order No. 3 to Oscar Renda Contracting, Inc., in the amount of $51,750.00, for the construction and movement of public water/wastewater utilities in support of TxDOT's I-35 widening from the split to US-380 for the Capital Projects Department; and

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

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that a change order be authorized to amend such contract agreement with respect to the scope of work and an increase in the payment amount; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Change Order No. 4, increasing the amount of the contract between the City and Oscar Renda Contracting, Inc., which is on file in the office of the Purchasing Agent, in the amount of Two Million Seven Hundred Twenty-Two Thousand Two Hundred Four and 25/100 ($2,722,204.25) dollars, is hereby approved and the expenditure of funds therefore is hereby

authorized in accordance with said change order. The total purchase order amount increases to $20,038,587.25.

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:	_____	_____	_____	_____
Jordan Villareal, District 1:	_____	_____	_____	_____
Nick Stevens, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
KRISTI FOGLE, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

IFB	7968-004
File Name	I-35 Utility Relocation (Split to US-380)
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: 784FFC3B-1111-4963-9FD5-04602344B116

CITY OF DENTON CHANGE ORDER FORM

City of Denton - Capital Projects
401 M. Elm Street
Denton, TX 76201
Shawn Messick, Project Manager

Contractor: Oscar Renda Contacting
1100 Kubota Dr.
Grapevine, TX 76051
Richard Olmos

Project: **I-35 Utility Relocation (Split to US-380)**
CHANGE ORDER NO. **4**
CSP/IFB# 7968-004 CIP/ENG# 220003-1 PO #:

Notice To Proceed Issued:	Current Completion Date:	New Completion Date:
10/16/2023	7/31/2024	2/24/2025

Contract BID Amount:	$ 17,204,177.00	Prior Approved Other Funded CO's:	$ -
Contingency Amount:	$ 860,208.85	Current Contract Amount w CUA & CO's:	$ 17,316,383.00
Total NTE Amount :	$ 18,064,385.85	This CO Other Funding Request:	**$ 2,722,204.25**
Prior Approved CUA's:	$ 112,206.00	Total Change Request:	**$ 2,722,204.25**
Available Contingency:	$ -		
This CUA Request:	$ -	Orig Contract Days: 180	This CO Days Request: 208
Contingency Remaining:	$ -	Approved CO Days: 109	New Contract Days: 497

PROJECT SCOPE AND REASON FOR CHANGE

Project Scope included in Contract: Relocation of 10,200 LF of water and wastewater utilities along I-35

Reason for change:

Addresses the construction sequencing of several water and wastewater lines. Due to the timing of easement acquisition for one parcel, specifically, work on that parcel was rescheduled, which would be after the original construction completion date. This adjustment subsequently impacted the installation schedule for several upstream lines, as the final design required a reversal of the flow direction. This rescheduling of work required the contractor to stay on site for a longer period then anticipated and to mobilize back and forth between several different sites on each side of I-35.

CONTINGENCY USE AUTHORIZED (CUA) CONTRACT CHANGES

QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
						TOTAL CUA QTY CHANGES:	$0.00

NEW ITEMS OF WORK

Contingency funds are used at City's discretion per contract spec language — TOTAL CUA NEW ITEMS: $0.00

OTHER FUNDED CONTRACT CHANGES (CO)

QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
						TOTAL OTHER FUNDED QTY CHANGES:	$0.00

NEW ITEMS OF WORK

		Labor	LS		1	$ 1,266,634.58	$ 1,456,629.77
		Equipment	LS		1	$ 909,243.68	$ 1,045,630.23
		Subcontractor	LS		1	$ 183,801.65	$ 192,991.73
		Bond/Insurance	LS		1	$ 26,952.52	$ 26,952.52
						TOTAL OTHER FUNDED NEW ITEMS:	$2,722,204.25

TOTAL CO AMOUNT: $2,722,204.25

Original BID/Contract Amount:	$ 17,204,177.00
Original Total Not To Exceed Amount:	$ 18,064,385.85
Total CUA's:	$ 112,206.00
Total CO's:	$ 2,722,204.25
Revised Contract Amount:	**$ 20,038,587.25**
% of CUA Approved To-Date:	13.04%
Total Change Order over Original Bid:	**16.48%**
Percent Changes over NTE:	15%

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THE AFOREMENTIONED CHANGE, AND WORK AFFECTED THEREBY, IS SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS. ADDITIONALLY, CONTRACTOR'S EXECUTION OF THIS CHANGE ORDER WAIVES AND RELEASES ALL CLAIMS FOR DELAY DAMAGES, DISRUPTION, IMPACT, EXTENDED, AND TIME-RELATED COSTS FOR ANY WORK SET FORTH IN THIS CHANGE ORDER, KNOWN AND UNKNOWN.

SUBMITTED BY:

Signed by: Aaron Skinner
BB8DC7BDD5BB42A...
Signature

ACCEPTED BY CITY ENGINEER/DIRECTOR OF CAPITAL PROJECTS

Signed by: Seth Garcia
A13701F6BC954FC...
Signature

ACCEPTED BY CONTRACTOR: RUDY V. RENDA Co-COO/EVP
Name, Title

Signed by:
685489F60DA54C7...
Signature

CITY MANAGER:

Signature

ATTEST: CITY SECRETERY

Signature

APPROVED AS TO LEGAL FORM:

Signed by: Leah Bush
3A6254145BDA469...
Signature

Certificate Of Completion

Envelope Id: 784FFC3B-1111-4963-9FD5-04602344B116
Status: Sent
Subject: Please DocuSign: City Council Contract 7968-004 I-35 Utility Relocation (Split to US-380)
Source Envelope:
Document Pages: 3
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Cori Power
901B Texas Street
Denton, TX 76209
cori.power@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
4/16/2026 4:42:47 PM
Holder: Cori Power
cori.power@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.104	Sent: 4/16/2026 4:47:58 PM Viewed: 4/16/2026 4:48:10 PM Signed: 4/16/2026 4:48:21 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: 4/16/2026 4:48:23 PM Viewed: 4/17/2026 8:50:09 AM Signed: 4/17/2026 8:56:14 AM
Aaron Skinner Aaron.Skinner@cityofdenton.com Sr. Project Manager Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/17/2026 12:08:05 PM ID: e099d023-8889-485f-a61d-264d9a22b265	 Signature Adoption: Pre-selected Style Using IP Address: 2600:6c56:7d00:29c:ed8e:3ce:97d6:63a0	Sent: 4/17/2026 8:56:16 AM Resent: 4/17/2026 11:50:42 AM Viewed: 4/17/2026 12:08:05 PM Signed: 4/17/2026 12:08:17 PM
Leah Bush leah.bush@cityofdenton.com Assistant City Attorney Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	 Signature Adoption: Pre-selected Style Using IP Address: 63.196.246.33	Sent: 4/17/2026 12:08:21 PM Viewed: 4/20/2026 1:26:44 PM Signed: 4/20/2026 2:33:15 PM

Signer Events	Signature	Timestamp
RUDY V. RENDA rudy@southlandholdings.com Co-COO/EVP Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/20/2026 4:33:54 PM ID: f90ac0a6-ab2e-4009-afab-ab6ff01033b2	Signed by:  685489F60DA54C7... Signature Adoption: Drawn on Device Using IP Address: 50.225.52.177 Signed using mobile	Sent: 4/20/2026 2:33:18 PM Viewed: 4/20/2026 4:33:54 PM Signed: 4/20/2026 4:34:37 PM
Seth Garcia Seth.Garcia@cityofdenton.com Director of Capital Projects Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/20/2026 4:46:19 PM ID: 55609e87-7dbb-440a-a882-cdb9cd7580f8	Signed by:  A13701F6BC954FC... Signature Adoption: Pre-selected Style Using IP Address: 2600:6c56:7d00:36d:705a:29c1:75fd:3478 Signed using mobile	Sent: 4/20/2026 4:34:40 PM Viewed: 4/20/2026 4:46:19 PM Signed: 4/20/2026 4:46:35 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 4/20/2026 4:46:38 PM
Cassey Ogden Cassey.Ogden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 4/16/2026 4:48:23 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 4/20/2026 4:46:37 PM Viewed: 4/22/2026 9:32:50 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Shawn Messick Shawn.Messick@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/16/2026 9:49:51 AM ID: 1336d055-3c73-4bc6-8ff5-2c8ac660d288		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/16/2026 4:47:58 PM
Envelope Updated	Security Checked	4/17/2026 11:50:41 AM
Envelope Updated	Security Checked	4/17/2026 11:50:41 AM
Envelope Updated	Security Checked	4/17/2026 11:50:41 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

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

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:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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

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

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and

- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and

- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: May 18, 2026

SUBJECT

Consider recommending 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 Halff Associates, Inc., for the development of a Pecan Creek Storm Water Master Plan update for the Drainage Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8377-016 – Professional Services Agreement for assessment services awarded to Halff Associates, Inc., in the not-to-exceed amount of $1,057,370.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The City of Denton does not have a city-wide storm water master plan (SWMP) to guide and prioritize capital projects. A Storm Water Master Plan Needs Assessment was completed in 2023 with the intent of identifying the areas of the City in most need of improvement and allowing future investments toward developing a SWMP to be focused on the most critical areas of the City. The Pecan Creek drainage basin is being prioritized to receive the first basin-wide master plan effort because of the ageing infrastructure within the basin and the large concentration of drainage hot-spots identified during the SWMP Needs Assessment. The Pecan Creek Master Plan will include the following ten (10) tasks:

Task 1	Project Administration	$62,750
Task 2	Data Collection	11,010
Task 3	Condition Assessment Program Development	111,130
Task 4	Existing Conditions H&H Analysis	251,380
Task 5	Conceptual Alternative Analysis	359,220
Task 6	Benefit Cost Analysis (BCA)	32,670
Task 7	Public Outreach	26,870
Task 8	Reporting	62,860
Task 9	Field Survey	86,500
Task 10	Grant Assistance	52,980
		$1,057,370

Staff from the Engineering Department reviewed and scored five (5) statements of qualifications submitted by firms listed on the pre-qualified engineer list, resulting in Halff Associates being awarded the most points, and therefore being selected for this project. Halff Associates has provided an estimated project timeline of 12 months to completion after receiving a notice to proceed.

Water Utilities initiated the selection process for an engineering firm to design the Pecan Creek Storm Water Master Plan update project by utilizing the approved RFQ 8377 pre-qualified list of firms specializing in Wastewater, Water, and Drainage Infrastructure. A request for supplementary qualifications was requested from the six pre-qualified firms for the project: Kimley-Horn and Associates, Inc., Freese and Nichols, Inc., Halff Associates, Inc., HR Green, Inc., Gresham, Smith and Partners, and Binkley & Barfield, Inc. Five (5) statements of additional qualifications were received and evaluated based on criteria including overall experience and qualification of the firm, past performance and relevant experience on similar projects, availability and experience of the proposed staff members. Based on this evaluation, the recommendation is to award to Halff Associates Inc. They proved a strong track record in preparing stormwater master plans and leveraging grant funding opportunities and their expertise will support the successful and efficient delivery of critical water utility projects.

Request for Qualifications for architectural firms for professional engineering services for various vertical capital infrastructure-related projects within the City of Denton for the Capital Projects Department was solicited using the City's formal solicitation process. City Council approved a pre-qualified list of professional service firms on February 20, 2024 (Ordinance 24-276).

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On February 20, 2024, City Council approved RFQ 8377 for state-certified engineers for professional engineering services for various capital infrastructure-related projects within the City of Denton for the Capital Improvements Department (Ordinance 24-276).

RECOMMENDATION

Award a contract with Halff Associates, Inc., for the development of a Pecan Creek Storm Water Master Plan for the Drainage Department, in a not-to-exceed amount of $1,057,370.

PRINCIPAL PLACE OF BUSINESS

Halff Associates, Inc.
Richardson, TX

ESTIMATED SCHEDULE OF PROJECT

This project's projected completion is estimated to be July 2027.

FISCAL INFORMATION

These services will be funded from a combination of the accounts listed below.

655053455.1360.30100	Pecan Creek Watershed Pre-design	$985,691.75
650170561.1360.30100	Pecan Creek Storm Water Master	$71,678.25

Requisition #174640 has been entered into the Purchasing software system in the amount of $1,057,370. The budgeted amount for this item is $1,057,370.

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: Mike Linder, 940-349-8942.

Legal point of contact: Leah Bush at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH HALFF ASSOCIATES, INC., FOR THE DEVELOPMENT OF A PECAN CREEK STORM WATER MASTER PLAN UPDATE FOR THE DRAINAGE DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8377-016 – PROFESSIONAL SERVICES AGREEMENT FOR ASSESSMENT SERVICES AWARDED TO HALFF ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF $1,057,370.00).

WHEREAS, on February 20, 2024, the City Council approved a pre-qualified professional services list of state certified Transportation Engineers for various improvements and public safety-related projects within the City of Denton (Ordinance 24-276), and the professional services provider (the "Provider") mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; 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 Halff Associates, Inc., to provide professional design services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

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

	Aye	**Nay**	**Abstain**	**Absent**
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Jordan Villareal, District 1:	_____	_____	_____	_____
Nick Stevens, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
KRISTI FOGLE, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

PSA	8377-016
File Name	Pecan Creek Storm Water Master Plan Update
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

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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 Halff Associates, Inc., with its corporate office at 2380 Performance Drive, Bldg. C, Suite 150, Richardson, TX 75082 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Pecan Creek Storm Water Master Plan update (the "PROJECT").

SECTION 1
Scope of Services

A. The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.

B. Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

SECTION 2
Compensation and Term of Agreement

A. The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed $1,057,370 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:

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A. Invoice and Payment

(1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment A to reasonably substantiate the invoices.

(2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.

(3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.

(4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

(5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

SECTION 4
Obligations of the Engineer

A. General

The ENGINEER will serve as the CITY's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary services incidental thereto.

B. Standard of Care

The ENGINEER shall perform its services:

(1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and

(2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

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C. Subsurface Investigations

(1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.

(2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

D. Preparation of Engineering Drawings

The ENGINEER will provide to the CITY the original drawings of all plans in ink on reproducible mylar sheets and electronic files in .pdf format, or as otherwise approved by CITY, which shall become the property of the CITY. CITY may use such drawings in any manner it desires; provided, however, that the ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

E. Engineer's Personnel at Construction Site

(1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

(2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the

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PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ENGINEER shall inform the CITY.

(3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

F. Opinions of Probable Cost, Financial Considerations, and Schedules

(1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Attachment A.

(2) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.

G. Construction Progress Payments

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

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H. Record Drawings

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

I. Right to Audit

(1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.

(2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.

(3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

J. INSURANCE

During the performance of the services under this Agreement, ENGINEER shall maintain insurance in compliance with the requirements of Attachment C which is attached hereto and made a part of this Agreement as if written word for word herein.

K. Independent Consultant

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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 not engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color,

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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.

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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

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(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.

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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

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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

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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

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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 23-1165 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the ENGINEER shall render the Contract voidable by the City. The ENGINEER shall complete and submit the City's Conflict of Interest Questionnaire.

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R. Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the ENGINEER 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.

ENGINEER will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

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

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

S. Agreement Documents

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. This AGREEMENT may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of this AGREEMENT:

Attachment A - Scope of Services, Project Schedule
Attachment B - Compensation
Attachment C - Insurance

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.

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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:
ENGINEER
Halff Associates, Inc.

Signed by:
Scott Rushing Vice President
Authorized Agent, Title

Full Name: Scott Rushing

_____
TEXAS ETHICS COMMISSION CERTIFICATE NUMBER

BY:
CITY OF DENTON, TEXAS

_____
Cassey Ogden, Interim City Manager

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Signed by: Leah Bush
3A6254145BDA469...

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

Signed by:
Stephen D. Gay
FEB48BB6726E4A8...
SIGNATURE

General Manager
TITLE

Water Utilities and Street Operations.
DEPARTMENT

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ATTACHMENT "A"
City of Denton
Pecan Creek Stormwater Master Plan
SCOPE OF SERVICES

General Description

The City has initiated the development of a comprehensive Stormwater Master Plan (SWMP) for the Pecan Creek watershed. The Pecan Creek watershed covers a large portion of the City of Denton spanning from the northwestern City limits to the southeastern City limits. This SWMP will serve as a blueprint for guiding future investment, prioritizing resources, and enhancing the resilience of the community's stormwater infrastructure. With emphasis on mitigating flood hazards, rehabilitating aging infrastructure, ensuring regulatory compliance, managing erosion and sedimentation, and supporting ongoing development and routine maintenance activities, the SWMP will identify both immediate and long-term needs.

The intent of this project is to evaluate current conditions and establish a proactive framework for balancing the repair of aging stormwater systems with the implementation of targeted improvements designed to reduce flood risk and support sustainable growth. Through a data-driven and stakeholder-informed approach, the City plans to develop actionable recommendations to strengthen stormwater management and safeguard the health and safety of residents across the Pecan Creek watershed.

Basic Services (Lump Sum)

TASK 1: PROJECT ADMINISTRATION

1. Kickoff Meeting: The Consultant will conduct a kickoff meeting with the City (in-person). The Consultant will prepare a meeting agenda as well as meeting minutes.
2. Project Status Meetings: The Consultant will meet as needed with the City to discuss project status and coordinate conceptual alternative development. Consultant attendance will be limited to project staff needed to facilitate the meeting and provide relevant input. This scope assumes up to nine (9) virtual meetings and nine (9) in-person meetings.
3. Monthly Reports and Invoicing: The Consultant will submit monthly invoices as the work progresses. Each invoice will be accompanied by a brief update of work completed for the period covered and required grant documentation.
4. Project Schedule: The Consultant will prepare a detailed project schedule indicating tasks, critical dates, milestones, deliverables, and review requirements. The Consultant will review the project schedule during the bi-weekly coordination meetings and update the schedule, if required, for recovery.
5. Quality Assurance/Quality Control (QA/QC): The Consultant will prepare, implement, and document a formal QA/QC plan. Each submittal will include a QAQC checklist signed by designated QAQC personnel.
6. Team Coordination: The Consultant will provide role and assignment definitions of the project team at the kick-off meeting. The Consultant will notify the City if key roles and

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assignments change on the project team. The Consultant will manage the project team throughout the project.

TASK 2: DATA COLLECTION

Existing Information - Assumed Available

1. Obtain and utilize 2020 Denton County Lidar data. Develop terrain for the Pecan Creek watershed.
2. Obtain "as-built" record drawings from City for improved channels and bridge/culvert crossings. Obtain record drawings from City for existing storm drain systems, as needed, for conceptual alternatives analysis. Halff will review the provided as-built data and determine where survey will be needed to inform data gaps.
3. Obtain "as-built" plans for water and sewer infrastructure that cross channels, bridges/culverts, and storm drains.
4. Obtain subsurface utility GIS shapefiles from the City.
5. Obtain available zoning maps, land use maps, soils data and thoroughfare plans in the project area from the City, NCTCOG, NRCS and others. Note: This scope assumes existing and future land use or zoning maps are available from the City and NCTCOG to be used as a base in preparing the hydrologic land use maps.
6. Collect applicable past studies and reports (including LOMRs), drainage concerns, flood insurance records, records of street closures or rescues, and related flooding data from the City.
7. Collect existing hydrologic or hydraulic models – HEC-HMS, HEC-RAS, ICM or other available models (obtained from City of Denton or FEMA Current Effective models).
8. Obtain bid tabs from recent City projects to assist conceptual cost estimation.
9. Collect any technical data on proposed projects and/or roadway improvements within the project area.

TASK 3: CONDITION ASSESSMENT PROGRAM DEVELOPMENT

This task will provide the City with a program framework for storm drain condition assessment and rehabilitation as well as for open-channel condition assessment and rehabilitation.

Program Goals and Framework

1. Level of Service Goals: A defined set of goals for the target level of service (LOS) is important to establish priorities and direction for an effective asset management program. The Consultant will define LOS goals focused on, but not limited to, prioritization, condition assessment, corrective action and data flow updates for both storm drains and open channels through collaboration with City staff. As part of this exercise, the Consultant will work with City staff to establish key performance indicators (KPIs) that will allow the City to track the program's annual progress for each LOS goal with data generated through the program.
2. Program Framework: A defined program framework is essential to successful management of storm drain assets. The Consultant will define a simple and effective

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program framework through collaboration with City staff. The program framework will establish the key resources (internal and external) needed to operate the program, roles and responsibilities, and the desired flow of data to meet the annual level of service goals.

Storm Drain Data Evaluation

1. Business Risk Exposure Prioritization: The Consultant will develop a business risk exposure (BRE) prioritization for all storm drains[1] (~255K LF) located within the Pecan Creek watershed. A BRE analysis quantifies and ranks the relative risk associated with asset failure, and it includes measurable factors that represent public and utility safety, asset condition, and system operations and maintenance. The BRE framework will serve as a data-driven tool to help City staff prioritize near-term inspection efforts and to direct repair resources towards storm drains that are essential to maintain a high LOS.
2. Near-Term Sustainability Plan: The Consultant will prepare a near-term sustainability plan (NTSP) with annual budgeting recommendations to guide renewal planning efforts for the City's storm drains in the Pecan Creek watershed. The results will guide a strategic investment to renew the storm drains for enhanced safety, level of service, and resiliency. The NTSP forecasts the pace and magnitude of near-term (10 to 20-year) investment needed to sustain the City's storm drain assets into the future. The NTSP will forecast the level of asset rehabilitation or replacement required to maintain standards of customer service and system performance over the coming decades. The NTSP will provide results to aid communication with Council and other stakeholders the value of the existing infrastructure assets and the renewal investment required to sustain those assets in the long-term.
3. Standard Defect Scoring Methodology: A standard scoring methodology for storm drain defects will allow the City to efficiently apply methodologies and codes (NASSCO PACP[2] or similar) commonly used in mainstream CCTV inspection software and data deliverables. The Consultant will prepare a PACP-based scoring methodology that uses both severity and density/incidence of storm drain defects to apply a simple score (scale of 1 to 10) for each storm drain pipe segment post-inspection. This involves a linear referencing workflow in GIS to spatially locate/reference each defect in XY space along the "route" of inspection per the stationing of inspection observations. A standard scoring methodology will enable the City to objectively compare and dynamically rank the post-inspection condition of past and future storm drain inspections.

   Based on the Consultant's experience, a standard scoring methodology applied post-inspection is Step 1 of a two-step process. Step 2 of this process involves a standard

[1] After discussion with City staff on July 10, 2025, the Consultant reviewed the storm drain GIS for the Pecan Creek watershed and applied various size thresholds, with 24" diameter and larger providing the best fit to define trunk mains in the watershed. This threshold highlights approximately 54K LF of storm drain within the Pecan Creek watershed. However, given that the additional effort to develop the BRE for all pipes in the watershed (~255K LF) is minimal, the Consultant recommends the more comprehensive approach of ranking all pipes using business risk exposure (using multiple risk criteria), versus only ranking the trunk mains based only size.

[2] National Association of Sewer Service Companies (NASSCO) is a non-profit trade association focused on the assessment and rehabilitation of underground infrastructure, particularly sanitary sewer systems. The Pipeline Assessment Certification Program (PACP) is a standardized system for inspecting and coding pipeline condition.

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recommendations workflow, described in the sub-task for the recommendations workflow and schema.

To demonstrate the value of this component of the program framework, the Consultant will apply the standard scoring methodology to linear reference and score 10K LF of the City's existing storm drain inspection data.

4. Recommendations Workflow and Data Schema: A standard recommendations workflow and spatial data schema enables the City to effectively prioritize both known and future corrective actions after storm drain inspections take place. The Consultant will develop a recommendations workflow and data schema to evaluate and prioritize high-priority storm drain inspection data. As part of this sub-task, the Consultant will establish a threshold to systematically filter/limit the inspected storm drains that will be included for detailed review. The workflow and data schema will include the recommended schedule, responsible group, and planning-level budget for each recommended corrective action.

   Based on the Consultant's experience, a standard recommendations workflow Step 2 of a two-step process to successfully evaluate storm drain corrective actions. Step 1 involves a standard scoring methodology, described in previous sub-task on standard scoring. A standard recommendations workflow helps to document but disregard minor defects and to catch major defects that get missed.

   To demonstrate the value of this component of the program framework, the Consultant will apply the recommendations workflow and data schema to evaluate 10K LF of the City's existing storm drain inspection data. This sub-task will build on scoring sub-task by working with the same 10K LF data subset.

Documentation

1. Technical Memorandum: The Consultant will prepare a technical memorandum that summarizes the program goals and framework as noted in the Task 3 sub-tasks. The documentation will streamline and standardize implementation as the City's program grows.

TASK 4: EXISTING CONDTIONS H&H ANALYSIS

The existing conditions H&H analysis methodology will follow the scope of work template for a riverine watershed study developed in 2024 for the City of Denton.

1. Hydrology
   a. Leverage the Halff 2020 HEC-HMS model for Pecan Creek and develop new/updated HEC-HMS model for the entire Pecan Creek watershed.
   b. Utilize Atlas 14 rainfall data and compute peak discharges for the 2-, 5-, 10-, 25-, 50-, 100-year and 500-year storm events.
   c. Develop SCS hydrologic parameters including land use, soils, curve numbers and times of concentration.
2. Hydraulics
   a. Develop existing conditions 1D HEC-RAS hydraulic models for all FEMA named streams that fall within the Pecan Creek watershed and within the City of Denton city limits. See list of study streams in Table 1 below.

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Table 1: Study Streams

Stream Name	Length (mi)
Pecan Creek	12.7
North Pecan Creek	2.8
North Pecan Creek Tributary 1	0.8
Stream PEC-2	1.3
Stream PEC-3	1.0
Stream PEC-4	1.6
Stream PEC-5	2.9
PEC Tributary 2	0.4
PEC Tributary 3	0.3
PEC Tributary 6	0.4
PEC Tributary 7	0.8
PEC Tributary 9	0.5
PEC Tributary 10	0.6
PEC Tributary 11	0.5
PEC Tributary 12	0.4
PEC Tributary 13	0.7
PEC Tributary 14	0.5
PEC Tributary 16	0.7

b. Cross section geometry will be extracted from the 2020 Denton County Lidar data and supplemented with field survey at surveyed crossings.

c. Bridge/Culvert crossings will be input based on field survey or as-built record drawings where available.

d. Compute HEC-RAS profiles for all simulated storm events.

e. Compute floodways for all streams with current effective FEMA floodways. Upstream and downstream floodway extents will match the current effective FEMA floodway limits.

f. Detailed floodplain mapping will be delineated for the 100-year and 500-year floodplains and the floodway for regulatory purposes.

g. General floodplain mapping will be delineated for the 2-, 5-, 10-, 25-, and 50-year floodplains to understand the level of service at potentially flooded structures.

h. Intersect building planimetrics with floodplain mapping to identify potentially flooded structures and flooding hotspot locations from riverine sources.

3. Existing Conditions Flood Losses

   a. Develop existing conditions annualized flood losses for a “do nothing” scenario using the FEMA BCA Toolkit for potentially flooded structures within the Pecan Creek Watershed. Finished flood elevations will be estimated using 2020 Denton County Lidar data. Building footprints will be based on the TWDB GIS Data Hub and will be reviewed and updated based on the latest aerial imagery. Flood elevations will be estimated from models developed under this contract and other available models within the watershed.

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TASK 5: CONCEPTUAL ALTERNATIVES ANALYSIS

1. Prepare conceptual alternatives for up to ten (10) project areas identified in the City's Flooding Hotspot Analysis performed by FNI, known historical locations from City staff, and from the existing conditions analysis performed as part of this project. Halff will proceed with alternative analysis upon written notice to proceed by the City for the approved project areas. Alternative model scenario will be developed for each project area using InfoWorks ICM or HEC-RAS depending on the most appropriate software tool based on flooding sources and complexity. Each alternative will focus on reducing flooding impacts that meet or exceed City drainage criteria and do not increase flooding downstream or on adjacent property owners. Generally, these alternatives may include a combination of storm drain\channel resizing, property acquisition, detention, and parallel drainage systems. Up to two (2) conceptual alternatives will be evaluated at each identified project area.
2. Identify potential easements necessary for future construction and maintenance if improvements are located outside of street right-of-way. Halff will not research property records and deeds as part of this task.
3. ROW Evaluation: Based on the conceptual project alignment, the Consultant shall identify potential property owners impacted. The City's Real Estate group will assist with investigating potential ROW constraints/needs.
4. Conceptual alternatives will consider potential surface and sub-surface constraints based on available GIS data and record drawings.
5. City to provide available geotechnical information within or near the preliminary schematic project corridors from previous studies.
6. Develop an Alternative Risk Assessment to evaluate project implementation risks for various categories based on discussions with the City. The categories may include, but not limited to: ROW, Utility Conflicts, External, Permitting, Organizational and Construction.
7. Prepare conceptual cost estimates for each project area alternative.
8. Prepare exhibits for each conceptual alternative.
9. Project phasing will be considered and determined by factors such as project type, downstream impacts, and cost.

Environmental Evaluation

The environmental evaluation outlined below will help identify potential risks to implementing drainage improvement alternatives.

Waters of the United States Desktop Evaluation

1. An evaluation of the site regarding Waters of the United States will be based only on information from readily available public records.
1. The water features within the site will be digitized using the most recent aerial photography and a desktop determination of the potentially jurisdictional water features will be provided.
2. The deliverable will include a report, associated maps, and historic aerial photography used to develop jurisdictional determinations.

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Section 404/Nationwide Permit Assessment

After the desktop delineation is completed, the desktop delineation will be utilized to evaluate the proposed site plan to determine compliance with Section 404 of the CWA, specifically the NWP program. This task includes:

1. Evaluation of the proposed project impacts to the Waters of the United States to determine the USACE's scope and necessary permits.
2. Documentation of the terms and conditions, General Conditions, and Fort Worth District Regional Conditions for the applicable permit as well as the proposed project's compliance.
3. Summarization of the delineation, impact assessment, permit conditions, and compliance in a brief letter report.

Baseline Cultural Resources Assessment

1. Perform a baseline assessment of cultural resources constraints for all prepared alternatives using desktop-based resources. Cultural resources data prepared under the baseline assessment will be gathered from both public and restricted data sources. Conduct one site visit to review/photograph any historic-age buildings or structures that may be impacted by conceptual alternatives. Provide a brief memo of the cultural resources assessment. No archeological surveys will be performed under this scope of work.

Environmental Evaluation Deliverables

- Waters of the United States Desktop Analysis Report
- Section 404/Nationwide Permit Assessment Memo
- Baseline Cultural Resources Assessment Memo

Please Note: The conceptual alternatives evaluation performed under this scope is not considered a feasibility study and preliminary schematic layouts will not be developed. Halff recommends progressing the recommended CIP alternatives to further evaluate potential conflicts and constructability to further refine estimates of probable cost and project viability prior to advancing to design.

Task 6: Benefit Cost Analysis (BCA)

FEMA BCA

The FEMA Benefit-Cost Analysis will be developed for the top three (3) ranked conceptual improvement alternatives to quantify the benefits of reduced structural flooding. The Consultant will create a BCA utilizing the latest available version of the FEMA BCA Toolkit, to include a detailed benefits Excel workbook and narrative documentation. The Consultant analysis will include:

1. Project Configuration including project location, hazard, and mitigation action types.
2. Cost Estimation for the project will be based on the Opinion of Probable Construction Cost developed in Phase 2.

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3. Damages will be estimated using a FEMA-approved damage estimation methodology based on the information provided through hydrologic and hydraulic modeling, City records, and other relevant sources. Socioeconomic and demographic data for the area, as available, will be incorporated into the damages and benefits.
4. Benefits will be quantified for the reduction of flooding on private property and utilize ecosystem and social benefits, among others, as appropriate.

TASK 7: PUBLIC OUTREACH

1. Conduct one (1) public meeting after the draft conceptual alternatives analysis is complete.

Assist the City in preparation for a City Council presentation to present the results of the Pecan Creek SWMP.

TASK 8: REPORTING

1. Document work efforts and methodology including recommendations in a technical report for the Pecan Creek SWMP. Associated figures, tables, models, and GIS files will be included with the report. Include TWDB state flood plan table information.
2. Address up to two (2) rounds of City comments on the draft report and deliver a digital copy of the final Pecan Creek SWMP report.
3. Develop an illustrative graphical summary that will highlight key results and recommendations from the Pecan Creek SWMP technical report. The document will be appropriate for public and City Council review.
4. Address up to two (2) rounds of CITY comments on the draft graphical summary and deliver a digital copy of the graphical summary.

Special Services (Hourly Not-to-Exceed)

TASK 1: FIELD SURVEY

Field survey will be performed as needed after review of as-built data provided by the City.

Field Survey

1. Collect field survey for up to 50 bridge/culvert crossings along study stream within the Pecan Creek watershed. Each structure will be surveyed per FEMA standards and will include field sketches and site photos.

TASK 2: GRANT ASSISTANCE

Grant Opportunity Assessment Report

1. The Consultant will review initial feasibility, concept, FEMA BCA, and alternatives analysis of the project and project elements, and identify potential grant funding opportunities that best align with the PROJECT and PROJECT elements. The Consultant will develop a report that summarizes potential grant funding opportunities, including grant deadlines, maximum grant request, local match required, and whether the program received federal dollars.

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2. The Consultant will research potential grant funding opportunities for additional master planning within the Pecan Creek watershed and other watersheds throughout the City.

Provide Strategic Guidance to Pre-Position for Selected Grants

1. Assist the City in activities to pre-position the most advantageous projects for competitive grant application development in the near term. Activities may include:
    a. Up to three (3) virtual follow-up meetings with City Staff to discuss specific projects/programs and necessary pre-position steps.
    b. Internal scoring exercise to test candidate project strengths and weaknesses. Collaborating with additional Halff personnel with expertise in Benefit-Cost Analysis, environmental review, and preliminary engineering reports, as needed, to determine further consideration for the level of effort and competitiveness of projects for grant applications.
    c. Facilitate meetings with partner stakeholders and/or grant agency personnel when needed.
2. Peer review of City-developed applications up to 10 hours

Task 2 Deliverables

- Digital PDF Copy of Grant Opportunity Assessment Report

Exclusions

Any additional services required beyond those specifically identified in this Scope of Services are beyond the services to be provided under this agreement. A scope and commensurate fee for any required additional services would be negotiated and provided under a separate supplementation agreement to this contract. Should the Client request additional support including an alternative funding analysis and program for flood mitigation or other aspects of the proposed project, a separated fee will be negotiated.

SERVICES EXCLUDED FROM THE SCOPE

The following services are excluded from the scope of work above unless agreed upon through contract renegotiation or formal, written consent.

1. USACE Individual Permit
2. Cultural resource pedestrian survey
3. TDLR review/inspection
4. ROW/Easement acquisition
5. CLOMR/LOMR Preparation
6. Public and private utility relocation design
7. Coordination with TxDOT or TxDOT permit submittal
8. Traffic Control Plans not specifically outlined in this scope of work
9. Roadway Design, Plan & Profile or Typical Section sheets
10. Landscape Plan
11. Full civil design plans

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12. Feasibility studies and schematic project layouts
13. SUE services
14. Additional meetings not stipulated in the above scope of work
15. External fees associated with data collection
16. Water quality testing and analysis
17. Geotechnical exclusions: Boring cores through channel, site clearing, potholing to confirm underground utilities at borings, long-term maintenance of bore hole patches
18. Right of Entry coordination for SUE
19. Field Condition Assessment: The Consultant understands that the City plans to perform most of the field condition assessment work using in-house crews and equipment. Should the need arise, the Consultant has the capability to perform field condition assessment at-scale with support from several qualified inspection contractors.

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Attachment B

Pecan Creek Stormwater Master Plan

	PROJECT TASK	PRINCIPAL	PROJECT MANAGER	DEPUTY PROJECT MANAGER	WR QAQC MANAGER	WR PE SENIOR	WR PE	WR EIT II	WR EIT I	SR GIS ANALYST	JR GIS ANALYST	RPLS	SURVEY TECH	3-MAN SURVEY CREW	2-MAN SURVEY CREW	1-MAN SURVEY CREW	GRANT PRINCIPAL	GRANT MANAGER	SENIOR PLANNER	PLANNER	CLERICAL	SUB-CONSULTANT	EXPENSES	TOTAL
	Labor Rate	$325.00	$300.00	$250.00	$265.00	$240.00	$180.00	$150.00	$135.00	$140.00	$100.00	$230.00	$120.00	$295.00	$225.00	$150.00	$224.00	$155.00	$230.00	$130.00	$85.00	Varies		
Basic Services (Lump Sum)																								
	TASK 1 - PROJECT ADMINISTRATION																							
1.A	**Project Administration**																							
1	Kickoff Meeting		4	4				4																$ 2,800.00
2	Monthly Coordination Meetings (up to 16 meetings)	3	36	36		12		46																$ 30,560.00
3	Monthly Reports and Invoicing		18																		10			$ 6,250.00
4	Project Schedule		10	1																				$ 3,250.00
5	Quality Assurance/Quality Control Plan	1	2	1	4																			$ 2,240.00
6	Team Coordination	2	40	20																				$ 17,650.00
	TASK 1 - SUBTOTAL: PROJECT ADMINISTRATION	6.0	110.0	62.0	4.0	12.0	0.0	50.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	10.0	$ -	$ -	**$ 62,750.00**
																	0.0	0.0	0.0	0.0				
	TASK 2 - DATA COLLECTION																							
2.A	**Existing Available Information**																							
1	Terrain Development			1					1	4	40													$ 4,950.00
2	Collect & review as-built data		2						24															$ 3,840.00
3	Collect all avaliable zoning maps		1						4															$ 840.00
4	Collect and compile previous studies		1						8															$ 1,380.00
	Subtotal Task 2.A																							**$ 11,010.00**
	TASK 2 - SUBTOTAL: DATA COLLECTION	0.0	1.0	0.0	0.0	0.0	0.0	0.0	37.0	4.0	40.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ -	$ -	**$ 11,010.00**
	TASK 3 - CONDITION ASSESSMENT PROGRAM DEVELOPMENT																							
3.A	**Program Goals and Framework**																							
1	Level of Service Goals				12		30	20																$ 11,580.00
2	Program Framework				8		12	20																$ 7,280.00
	Subtotal Task 3.A																							**$ 18,860.00**
3.B	**Storm Drain Data Evaluation**																							
1	Business Risk Exposure Prioritization (Storm Drains)				12		35	60			30													$ 21,480.00
2	Near-Term Sustainability Plan				10		35	40			20													$ 16,950.00
3	Standard Defect Scoring Methodology				8		35	30			20													$ 14,920.00
4	Recommendations Workflow and Data Schema				8		35	40			20													$ 16,420.00
	Subtotal Task 3.B																							**$ 69,770.00**
3.C	**Documentation**																							
1	Technical Memorandum				20		40	40			40													$ 22,500.00
	Subtotal Task 3.C																							**$ 22,500.00**
	TASK 3 - SUBTOTAL: CONDITION ASSESSMENT PROGRAM DEVELOPMENT	0.0	0.0	0.0	58.0	0.0	182.0	210.0	0.0	0.0	90.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ -	$ -	**$ 111,130.00**
	TASK 4 - EXISTING CONDITIONS H&H ANALYSIS																							
4.A	**Existing Conditions**																							
1	Hydrology		8	16			40		280															$ 51,400.00
2	Hydraulic Model Geometry		20	40			120		560															$ 113,200.00
3	Hydraulic Model Troubleshooting/Iterations		6				40		240															$ 41,400.00
4	Floodplain Depth Grid Mapping		1				4		24	20	40													$ 11,060.00
5	Existing Conditions Flood Losses		1	2			16	40			16													$ 11,280.00
6	Internal QAQC		8	4	32		32		40															$ 23,040.00
	TASK 4 - SUBTOTAL: EXISTING CONDITIONS H&H ANALYSIS	0.0	44.0	62.0	32.0	0.0	252.0	40.0	1144.0	20.0	56.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ -	$ -	**$ 251,380.00**
	TASK 5 - CONCEPTUAL ALTERNATIVES ANALYSIS																							
5.A	**Conceptual Alternatives Analysis**																							
1	Identify Hotspot Areas - Existing Conditions Modeling (up to 10)		8	20			32	260	380															$ 103,460.00
2	Hydraulic Modeling (2 alternatives per location)		20	40		24	60	320	480															$ 145,360.00
3	Preliminary ROW Acquisition Evaluation		2	3		8			24															$ 6,510.00
4	Perform Alternative Risk Assessment		4	8			24		60															$ 15,620.00
5	Prepare Conceptual OPCCs	2	4	6			12		40															$ 10,910.00
6	Prepare Conceptual Alternative Exhibits		2	4			8	24	80															$ 17,440.00
7	Internal QAQC		12	6	40		30		60															$ 29,200.00
	Subtotal Task 5.A																							**$ 328,500.00**
5.B																								
1	Archeological Desktop Analysis		2				4	16	32															$ 8,040.00
2	Waters of the United States Desktop Evaluation		2				8	20	72															$ 14,760.00
3	Section 404/Nationwide Permit Assessment		2				4	8	40															$ 7,920.00
	Subtotal Task 5.B																							**$ 30,720.00**
	TASK 5 - SUBTOTAL: CONCEPTUAL ALTERNATIVES ANALYSIS	2.0	52.0	87.0	40.0	32.0	166.0	604.0	1124.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ -	$ -	**$ 359,220.00**

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Attachment B

	PROJECT TASK	PRINCIPAL	PROJECT MANAGER	DEPUTY PROJECT MANAGER	WR QAQC MANAGER	WR PE SENIOR	WR PE	WR EIT II	WR EIT I	SR GIS ANALYST	JR GIS ANALYST	RPLS	SURVEY TECH	3-MAN SURVEY CREW	2-MAN SURVEY CREW	1-MAN SURVEY CREW	GRANT PRINCIPAL	GRANT MANAGER	SENIOR PLANNER	PLANNER	CLERICAL	SUB-CONSULTANT	EXPENSES	TOTAL
	Labor Rate	$325.00	$300.00	$250.00	$265.00	$240.00	$180.00	$150.00	$135.00	$140.00	$100.00	$230.00	$120.00	$295.00	$225.00	$150.00	$224.00	$155.00	$230.00	$130.00	$85.00	Varies		
Basic Services (Lump Sum)																								
	TASK 6- BENEFIT COST ANALYSIS																							
6.A	**FEMA BCA**																							
1	Project Configuration							20																$ 3,000.00
2	Cost Estimation							24																$ 3,600.00
3	Damage Development and Calculation	1	2	4			8	60																$ 12,370.00
4	Benefit Development and Calculation	1	2	4			8	60																$ 12,370.00
5	Internal QAQC				5																			$ 1,330.00
	TASK 6 - SUBTOTAL: BENEFIT COST ANALYSIS	2.0	4.0	8.0	5.0	0.0	16.0	164.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ -	$ -	**$ 32,670.00**
	TASK 7 - PUBLIC OUTREACH																							
7.A	**Prepare and Present One Public Meeting**																							
1	Public Meeting	1	8	8			4		24															$ 8,690.00
2	City Council Presentation	1	8	4			8		32															$ 9,490.00
	TASK 7 - SUBTOTAL: PUBLIC OUTREACH	1.0	8.0	8.0	0.0	0.0	4.0	0.0	24.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ -	$ -	**$ 26,870.00**
	TASK 8 - REPORTING																							
8.A	**Phase 1 Report**																							
1	Develop Draft Technical Report	1	8	12	4		40		100		24													$ 29,890.00
2	Address City Comments & Deliver Final Report		2	2			6		24															$ 5,420.00
3	Develop Draft Graphical Summary	1	8	12			8		12										12	50				$ 18,050.00
4	Address City Comments & Deliver Final Graphical Summary		4	8			4		8										6	24				$ 9,500.00
	TASK 8 - SUBTOTAL: REPORTING	2.0	22.0	34.0	4.0	0.0	58.0	0.0	144.0	0.0	24.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	18.0	74.0	0.0	$ -	$ -	**$ 62,860.00**
	Subtotal: Basic Services	11.0	237.0	253.0	138.0	44.0	662.0	904.0	2473.0	24.0	210.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	18.0	74.0	10.0	$ -	$ -	$ 917,890.00
Special Services (Hourly Not-to-Exceed)																								
	TASK 1 - DATA COLLECTION																							
1.A	**Field Survey**																							
1	Bridge/Culvert Crossing Survey (up to 50 structures)		2	4				24				60	120	180										$ 86,500.00
	TASK 1 - SUBTOTAL: DATA COLLECTION	0.0	2.0	4.0	0.0	0.0	0.0	24.0	0.0	0.0	0.0	60.0	120.0	180.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ -	$ -	**$ 86,500.00**
	TASK 2 - GRANT ASSISTANCE																							
2.A	**Grant Opportunity Assessment Report**																							
1	Project Narratives																24	48	24	48				$ 24,580.00
2	Strategic Guidance																50	20	50	20				$ 28,400.00
	TASK 2 - SUBTOTAL: GRANT ASSISTANCE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	74.0	68.0	74.0	68.0	0.0	$ -	$ -	**$ 52,980.00**
	Subtotal: Special Services	0.0	2.0	4.0	0.0	0.0	0.0	24.0	0.0	0.0	0.0	60.0	120.0	180.0	0.0	0.0	74.0	68.0	74.0	68.0	0.0	0.0	0.0	$ 139,480.00
																								$ 1,057,370.00

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Attachment C
INSURANCE REQUIREMENTS

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

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

As soon as practicable after notification of contract award, ENGINEER 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. ENGINEER may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, ENGINEERS are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. ENGINEER 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 ENGINEER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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- Liability policies shall be endorsed to provide the following:

    - Name as Additional Insured the City of Denton, its Officials, Agents, Employees, and volunteers on commercial general liabilities (CGL) and automobile liability policies.

    - 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 ENGINEER shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

A. <u>COMMERCIAL GENERAL LIABILITY INSURANCE</u>

Commercial General Liability Insurance including, but not limited to,

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Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. PROFESSIONAL LIABILITY INSURANCE

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

SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the ENGINEER, the ENGINEER shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name ENGINEER as an additional insured.

(2) ENGINEER shall obtain and monitor the certificates of insurance from each Subcontractor. ENGINEER must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

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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.**

Halff Associates, 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 Signed by: Scott Rushing 560D1E9BAB4F465...

Signature of vendor doing business with the governmental entity

4/16/2026

Date

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CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

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

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

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

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

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

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

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

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

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

Certificate Of Completion

Envelope Id: 66EA72AF-F6E7-40AD-A4E2-FBC647A01610
Status: Sent
Subject: Please DocuSign: City Council Contract 8377-016 Pecan Creek Storm Water Master Plan
Source Envelope:
Document Pages: 34
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Gabby Leeper
901B Texas Street
Denton, TX 76209
Gabby.Leeper@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
4/15/2026 1:32:26 PM
Holder: Gabby Leeper
Gabby.Leeper@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Gabby Leeper Gabby.Leeper@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 4/15/2026 1:35:25 PM Viewed: 4/15/2026 1:35:36 PM Signed: 4/15/2026 1:36:18 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/15/2026 1:36:21 PM Viewed: 4/15/2026 1:37:09 PM Signed: 4/15/2026 1:39:02 PM
Leah Bush leah.bush@cityofdenton.com Assistant City Attorney Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Signed by: Leah Bush 3A6254145BDA469... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 4/15/2026 1:39:05 PM Viewed: 4/15/2026 3:06:08 PM Signed: 4/15/2026 3:22:00 PM
Scott Rushing srushing@halff.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/15/2026 3:36:43 PM ID: 95f3c483-4229-4d44-b863-17483c2c04c2	Signed by: Scott Rushing 560D1E9BAB4F465... Signature Adoption: Pre-selected Style Using IP Address: 4.1.252.178	Sent: 4/15/2026 3:22:02 PM Viewed: 4/15/2026 3:36:43 PM Signed: 4/16/2026 8:36:20 AM

Signer Events	Signature	Timestamp
Stephen D. Gay Stephen.Gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/17/2026 9:11:10 AM ID: e41f7c5c-5526-45f4-a4df-742588ee0744	Signed by:  FEB48BB9726E4A9... Signature Adoption: Pre-selected Style Using IP Address: 65.222.164.2	Sent: 4/16/2026 8:36:23 AM Viewed: 4/17/2026 9:11:10 AM Signed: 4/17/2026 9:14:46 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 4/17/2026 9:14:50 AM
Cassey Ogden Cassey.Ogden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 4/15/2026 1:36:20 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 4/17/2026 9:14:49 AM Viewed: 4/17/2026 3:06:02 PM

Carbon Copy Events	Status	Timestamp
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		
Mike Linder mike.linder@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/1/2026 3:52:21 PM ID: e800f791-0963-4229-845d-f12f1ac94dd9		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/15/2026 1:35:25 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

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

Required hardware and software

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

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

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

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and

- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and

- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: May 18, 2026

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, ratifying Change Order No. 1 to the contract between the City of Denton and 4X Construction Group, LLC, for the Cell 6 Construction Project for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8907 – Change Order No. 1 in the not-to-exceed amount of $618,467.03, for a total contract award aggregated to $5,491,222.03).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Promote Sustainability and the Environment.

INFORMATION/BACKGROUND

The contract for this project was awarded to 4X Construction Group, LLC, through the City's formal competitive proposal process. The contract was approved by City Council on March 24, 2026.

Recently, the price of oil has been rising, directly impacting the petroleum-based products essential to this project. The project requires the installation of over 3.3 million square feet of specialized materials, including High-Density Polyethylene (HDPE) and Geocomposite liners. Because these materials are produced on demand and are highly susceptible to UV damage during storage, they cannot be purchased in advance. The Contractor has submitted a price increase of 23.5% based on documented supplier cost escalations.

To remain on the timeline necessary to maintain regulatory compliance, the Solid Waste and Recycling Department and Procurement recommend processing this change order under the Declaration of Emergency process to remain on track with the critical path for the project. Any further delays can impact the Landfill's capacity, which could result in violations of the Municipal Solid Waste Permit with the TCEQ and the Settlement Agreement with local neighbors, leading to significant fines, legal fees, and threats to public health. Therefore, the Declaration of Emergency is necessary to award Change Order No. 1 in the amount of $618,467.03.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On March 24, 2026, City Council approved a contract with 4X Construction Group, LLC, in the not-to-exceed amount of $4,872,755 (Ordinance 26-0342).

RECOMMENDATION

Approve ratifying Change Order No. 1 for the Cell 6 Construction Project for the Solid Waste and Recycling Department, in the not-to-exceed amount of $618,467.03, for a total contract award aggregated to $5,491,222.03.

PRINCIPAL PLACE OF BUSINESS

4X Construction Group, LLC
Mansfield, TX

ESTIMATED SCHEDULE OF PROJECT

This project has been awarded, with a contract time of six (6) months, to a substantial completion schedule.

FISCAL INFORMATION

These services will be funded from Cell 6 Construction Project account 660270595.1365.40100. Purchase Order #214556 will be revised to include the change order amount of $618,467.03. The total amended amount of this contract is $5,491,222.03.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Original Ordinance and Contract
Exhibit 3: Ordinance and Change Order 1

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

For information concerning this acquisition, contact: Brenda Haney, 940-349-8056.

Legal point of contact: Leah Bush at 940-349-8333.

ORDINANCE NO. 26-0342

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH 4X CONSTRUCTION GROUP, LLC, FOR THE CELL 6 CONSTRUCTION PROJECT AT THE LANDFILL FOR THE SOLID WASTE AND RECYCLING DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8907 – AWARDED TO 4X CONSTRUCTION GROUP, LLC, IN THE NOT-TO-EXCEED AMOUNT OF $4,872,755.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the Cell 6 Construction Project at the Landfill for the Solid Waste and Recycling Department; and

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

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

CSP NUMBER	CONTRACTOR	AMOUNT
8907	4X Construction Group, LLC	$4,872,755.00

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 Jill Jester and seconded by Joe Holland. This ordinance was passed and approved by the following vote [7 - 0]:

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

PASSED AND APPROVED this the 24th day of March, 2026.

GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: Ingrid Rex

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

FILE	8907
File Name	CELL 6 CONSTRUCTION PROJECT
Purchasing Contact	Crystal Westbrook
City Council Target Date	MARCH 24, 2026
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	26-0342

Initial
LH

Docusign Envelope ID: D470A203-EF67-402E-82BA-522590081329

SECTION 00 52 44
AGREEMENT - CSP

THIS AGREEMENT, authorized on 03/24/2026 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 4X CONSTRUCTION GROUP, LLC, 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:

Cell 6 Excavation and Liner & 1590 Separation Liner Construction

Proposal Number 8907

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 four million six hundred forty thousand seven hundred nineteen dollars and twenty-five Cents ($4,640,719.25). At the sole option of the City, five (5) percent contingency in the amount of two hundred thirty-two thousand thirty-five dollars and seventy-five Cents ($232,035.75) may be used for a total not-to-exceed amount of four million eight hundred seventy-two thousand seven hundred fifty-five Dollars ($4,872,755.00).

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 240 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

4.3 Final Acceptance.

The Work will be complete for Final Acceptance within 270 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.

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4.5 Liquidated Damages:

A. Contractor recognizes that time is of the essence to achieve Milestones, Substantial Completion, and Final Acceptance of the Work, and City will suffer financial and other losses if the Work is not completed within the times specified in the Contract Documents. The Contractor also recognizes the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work related to the Milestones, Substantial Completion, or Final Acceptance is not completed on time. Accordingly, instead of requiring any such proof, Contractor agrees that liquidated damages for delay (but not as a penalty):

1. Substantial Completion: If the Contractor neglects, refuses, or fails to achieve Substantial Completion, as defined in the Supplementary Conditions, within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2, Contractor shall pay City Five Hundred Dollars ($500.00) for each day that expires after such time, until Substantial Completion is achieved.
2. Final Acceptance: If Contractor neglects, refuse, or fails to complete the Work within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.3, for completion and readiness for Final Payment, Contractor shall pay City One Thousand Dollars ($1,000.00) for each day that expires after such time, until the date determined by City as stated in the City-issued Letter of Final Acceptance.

Article 5. CONTRACT DOCUMENTS

5.1 CONTENTS:

A. The Contract comprises the entire agreement between City and Contractor concerning the Work and consists of this Agreement and the items set forth below. The Contract Documents consist of all items below other than this Agreement:

1. Attachments to this Agreement:
   a. Proposal Form
      1) Proposal Form
      2) Unit Price Proposal Form
      3) Vendor Compliance to State Law Non-Resident Offeror
   b. Current Prevailing Wage Rate Table
   c. Worker's Compensation Affidavit
   d. General Conditions.
   e. Supplementary Conditions.
2. The following located in File Purchasing file number 8907 at:

   https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1

   a. Specifications described in the Table of Contents (Section 00 00 00) of the Project's Contract Documents.
   b. Drawings.
   c. Addenda.
   d. Documentation submitted by Contractor prior to Notice of Award.
3. The following which shall be issued after the Effective Date of this Agreement and delivered to the City within ten (10) days of the Effective Date and before beginning Work:

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a. Payment Bond
b. Performance Bond
c. Maintenance Bond
d. Power of Attorney for the Bonds
e. Form 1295 – Certificate of Interested Parties (email to City's Materials Management department)
f. Insurance Certificate

4. Specifications specifically made a part of the Contract Documents by attachment or, if not attached, as incorporated by reference and described in the Table of Contents of the Project's Contract Documents.

5. The following which may be delivered or issued after the Effective Date of the Agreement and, if issued, become an incorporated part of the Contract Documents:
   a. Notice to Proceed.
   b. Field Orders.
   c. Change Orders.
   d. Letter of Final Acceptance.

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Article 6. INDEMNIFICATION

6.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH 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. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.

6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH 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. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.

Article 7. MISCELLANEOUS

7.1 Capitalized Terms.

Unless otherwise stated herein, capitalized terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

7.2 Assignment of Contract.

This Agreement, including all of the Contract Documents may not be assigned by the Contractor without the advance express written consent of the City.

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7.3 Successors and Assigns.

City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, in respect to all covenants, agreements and obligations contained in the Contract Documents.

7.4 Severability.

Any provision or part of the Contract Documents held to be unconstitutional, void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor.

7.5 Venue and Waiver of Sovereign Immunity.

This Agreement, including all of the Contract Documents is performable in the State of Texas. Venue shall be in the state district courts of Denton County, Texas. The City's sovereign immunity is waived only to the extent set forth and in accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code or as otherwise specifically waived by law. The City does not waive its sovereign immunity to suit in federal court.

7.6 Authority to Sign.

Contractor hereby certifies that the person signing the Agreement on its behalf is the duly authorized signatory of the Contractor.

7.7 Prohibition on Contracts with Companies Boycotting Israel.

Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. **By signing this contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.**

7.8 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.

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7.9 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.

8.0 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.

8.1 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.

7.8 Immigration Nationality Act.

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Contractor 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, Contractor shall provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Contractor 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 Contractor employee who is not legally eligible to perform such services. **CONTRACTOR SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CONTRACTOR, CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right to immediately terminate this Agreement for violations of this provision by Contractor.

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

Docusign Envelope ID: D470A203-EF67-402E-82BA-522590081329

IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective as of the date subscribed by the City's City Manager or his designee ("Effective Date").

CITY OF DENTON

DocuSigned by:
Sara Hensley
5236DB296270423...

BY: _____

TITLE: City Manager

DATE: 3/25/2026

CONTRACTOR
4X CONSTRUCTION GROUP, LLC

DocuSigned by:
Jeff Parrish
C84CF2F734CB491...

BY: _____
AUTHORIZED AGENT

Jeff Parrish
NAME

Managing Member
TITLE

817-779-3290
PHONE NUMBER

jeff.parrish@4xconstruction.com
EMAIL ADDRESS

2026-1407381
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

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

Signed by:
Brenda Haney
C3C63BE563154A1...

Brenda Haney
SIGNATURE PRINTED NAME

Director
TITLE

Solid Waste & Recycling
DEPARTMENT

ATTEST:
INGRID, REX, CITY SECRETARY

Signed by:
Ingrid Rex
F116805422D0464...

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

Signed by:
Leah Bush
2A936B08B5D7485...

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SECTION 00 41 01
PROPOSAL FORM - CSP

TO: *City of Denton*
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: *Cell 6 Excavation and Liner & 1590 Separation Liner Construction*

1 Enter into Agreement

The undersigned Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with City in the form included in the Proposal Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Unit Price Proposal and within the Contract Time indicated in this Proposal and in accordance with the other terms and conditions of the Contract Documents.

2 OFFEROR Acknowledgements and Certification

2.1 In submitting this Proposal, Offeror accepts all of the terms and conditions of the INVITATION TO OFFORERS and INSTRUCTIONS TO OFFORERS, including without limitation those dealing with the disposition of Offeror's Bond.

2.2 Offeror is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.

2.3 Offeror certifies that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.

2.4 Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal.

2.5 Offeror has not solicited or induced any individual or entity to refrain from proposing.

2.6 Offeror has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:

a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process.

b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process to the detriment of City (b) to establish proposal prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.

c. "collusive practice" means a scheme or arrangement between two or more Offerors, with or without the knowledge of City, a purpose of which is to establish proposal prices at artificial, non-competitive levels.

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d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

2.7 The Offeror acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 18-757.

3 Time of Completion

3.1 The Work will be Substantially Complete as defined in the Supplementary Conditions within *240 days* after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.2 The Work will be complete for Final Acceptance within *270 days* after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.3 Offeror accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable), Substantial Completion, and Final Acceptance within the times specified in the Agreement.

4 Attached to this Proposal

4.1 The following documents are attached to and made a part of this Proposal:

a. Section 00 35 14 – Conflict of Interest Affidavit – CSP
b. Section 00 41 01 – This Proposal Form – CSP
c. **Section 00 42 44 – Unit Price Proposal Form – CSP – Excel Electronic Copy (either included in the hard copy Proposal, or submitted via Ionwave)**
d. Section 00 43 14 – Required Offeror's Bond – CSP, issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions.
e. Section 00 43 38 – Proposed Subcontractors Form – CSP
f. Section 00 43 39 – Vendor Compliance to State Law Non-Resident Offeror – CSP
g. Section 00 45 14 – Safety Record Questionnaire – CSP
h. Section 00 45 27 – Contractor Compliance with Workers Compensation Law – CSP
i. Section 00 45 44 – Corporate Resolution of Authorized Signatories – CSP
j. Any additional documents required by Paragraph 12 of Section 00 21 16 – Instructions to Offerors

5 Total Proposal Amount

5.1 Offeror will complete the Work in accordance with the Contract Documents for the following proposal amount. In the space provided below, please enter the total proposed amount for this project. This figure will be read publicly by the City at the proposal opening.

5.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Total Proposal Amount: $ 4,759,699.00

Docusign Envelope ID: D470A203-EF67-402E-82BA-522590081329

6 Proposal Submittal

6.1 It is understood by Offeror that submission of the total proposal amount is only one of the factors for the City's evaluation process, and that any award of contract will be based on the complete evaluation of the Proposal and Offeror by City under the terms provided in the Instructions to Offerors or any validly issued amendments or addenda.

6.2 This Proposal is submitted on November 5, 2025 by the entity named below.

Respectfully submitted,

By: _____
(Signature)

Jeff Parrish
(Printed Name)

Title: Managing Member

Company: 4X Construction Group, LLC

Address: 99 Regency Parkway, Suite 303
Mansfield, TX 76063

State of Incorporation: DE

Email: jeff.parrish@4xconstruction.com

Phone: 817-779-3290

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	JP
Addenda No. 2:	JP
Addenda No. 3:	JP
Addenda No. 4:	
Addenda No. 5:	

END OF SECTION

Docusign Envelope ID: D470A203-EF67-402E-82BA-522590081329

BAFO PROPOSAL FORM ATTACHMENT

To: Crystal Westbrook
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: CSP 8907 Cell 6 Construction Project

The undersigned Offeror hereby submits this Proposal Form Revision and Best and Final Offer (this "BAFO") for CSP 8907 Cell 6 Construction Project and confirms that this BAFO Proposal is based on the project requirements per the CSP documents and any subsequent addenda.

1 Total BAFO Proposal Amount

1.1 Offeror will complete the Work in accordance with the Contract Documents for the following BAFO proposal amount. In the space provided below, please enter the total proposed BAFO amount for this project.

1.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed BAFO amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Total BAFO Proposal Amount: $ 4,640,719.25

2 BAFO Proposal Submittal

2.1 It is understood by Offeror that submission of the total BAFO proposal amount is only one of the factors for the City's evaluation process, and that any award of contract will be based on the complete evaluation of the Proposal and Offeror by City under the terms provided in the Instructions to Offerors or any validly issued amendments or addenda.

2.2 This BAFO Proposal is submitted on December 5, 2025 by the entity named below.

Respectfully submitted,

By: _____
(Signature)

Jeff Parrish
(Printed Name)

Title: Managing Member

Company: 4X Construction Group, LLC

Docusign Envelope ID: D470A203-EF67-402E-82BA-522590081329

Address: 99 Regency Parkway, Suite 303

Mansfield, TX 76063

State of Incorporation: DE

Email: jeff.parrish@4xconstruction.com

Phone: 817-779-3290

END OF SECTION

Docusign Envelope ID: D470A203-EF67-402E-82BA-522590081329

SECTION 00 42 44 - UNIT PRICE PROPOSAL FORM - CSP 8907

To: City of Denton - Capital Projects
901-B Texas Street
Denton, TX 76209
Crystal Westbrook/Purchasing Dept.

From: 4X Construction Group, LLC
99 Regency Parkway, Ste 303
Mansfield, TX
Jeff Parrish
817-779-3290
jeff.parrish@4Xconstruction.com

PROJ.: **Cell 6 Excavation and Liner Construction & 1590 Separation Liner**

RFP:
ENG
PMO:

OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
1	01 22 00 & 01 70 00	Mobilization (3% Max.)	LS	1	$ 139,035.00	$ 139,035.00
2	01 22 00 & 01 57 13	Erosion Control, Furnish and Install Temporary Sediment and All Related Items, Complete and in Place as Required.	LS	1	$ 24,375.00	$ 24,375.00
3	01 22 00	Groundwater Underdrain - Phase I (as shown on Sheet C-006) & dewatering; including all labor, equipment, materials, and all other appurtenances	LS	1	$ 34,125.00	$ 34,125.00
4	01 22 00	Groundwater Underdrain System - Phase II (as shown on Sheet C-006A); including all labor, equipment, materials, and all other appurtenances (if required, based upon field conditions)	LS	1	$ 394,875.00	$ 394,875.00
5	01 22 00	Groundwater Underdrain Sump, Riser & Headwall	LS	1	$ 58,500.00	$ 58,500.00
6	01 22 00, 31 05 13, & 31 23 00	Excavation (including hauling and stockpiling the excavated material) from Cell 6 & 1590 Separation Liner Area	CY	300,000	$ 2.25	$ 675,000.00
7	01 22 00, 31 05 13, & 31 23 00	Subgrade Fill (at 95% standard proctor density as per Section 31 23 00) for Cell 6 & 1590 Separation Liner Area	CY	4,250	$ 1.95	$ 8,287.50
8	01 22 00	Cell 6 Subgrade Preparation - Floor (vertical tolerance -0.2 ft to +0.0 ft)	SF	608,300	$ 0.18	$ 109,494.00
9	01 22 00	Cell 6 Subgrade Preparation - Side Slope (vertical tolerance -0.2 ft to +0.0 ft)	SF	120,550	$ 0.20	$ 24,110.00
10	01 22 00 & 31 90 33	2-ft Compacted Clay Liner for Cell 6 & 1590 Separation Liner, measured perpendicular to the subgrade, Prepared for Geomembrane, inclusive of Hauling from on-site Stockpiles, Complete in Place (vertical tolerance 0.0 ft to +0.2 ft)	SY	145,500	$ 2.25	$ 327,375.00
11	01 22 00 & 31 90 33	Hauling Clay from North stockpile (Haul Distance is 1.00 miles from the Northeast corner of Cell 6) for Constructing Cell 6 and 1590 Separation Liner CCL, this line item is for additional length of haul only, as needed and if needed	CY	29,695	$ 1.65	$ 48,996.75
12	01 22 00 & 31 90 34	60 Mil HDPE Geomembrane - Textured for Cell 6, Complete in Place (no additional quantity paid for overlap, anchor trench and/or sacrificial liner)	SF	728,850	$ 0.60	$ 437,310.00
13	01 22 00 & 31 05 19.26	Geocomposite Drainage Layer for Cell 6 Composite Liner, Complete in Place	SF	728,850	$ 0.62	$ 451,887.00
14	01 22 00 & 31 90 30	2 ft thick Protective Soil Cover, measured perpendicular from the liner, Complete in Place for Cell 6 & Separation Liner (vertical tolerance 0.0 ft to +0.2 ft)	SY	145,500	$ 1.95	$ 283,725.00
15	01 22 00 & 31 05 19.13	Geotextile Fabric - 8oz, Complete in Place (including all labor, equipment, materials, and all other appurtenances)	SF	23,100	$ 0.50	$ 11,550.00

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Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
16	01 22 00 & 31 90 20	Gravel Drainage Material	CY	430	$ 102.50	$ 44,075.00
17	01 22 00 & 31 90 40.10	Leachate Collection Trench including Drainage Gravel and 12-Inch LCS Pipe, Complete in Place (including all labor, equipment, materials, and all other appurtenances)	LF	1,030	$ 63.40	$ 65,302.00
18	01 22 00 & 31 90 40.10	18-Inch Riser Pipe, Complete in Place (including all labor, equipment, materials, and all other appurtenances)	LF	70	$ 171.00	$ 11,970.00
19	01 22 00 & 31 90 40.10	2-Inch Flush Lines, Complete in Place (including all labor, equipment, materials, and all other appurtenances)	EA	2	$ 1,950.00	$ 3,900.00
20	01 22 00 & 22 14 29	Wheeled Sump Drainer (EPG SurePump™, 45 gpm at 45 ft TDH), Control panel, flow meter, and all appurtenances, includes both leachate sump pump and groundwater underdrain pump	EA	2	$ 35,000.00	$ 70,000.00
21	01 22 00	Electrical Power to Sump	LS	1	$ 27,500.00	$ 27,500.00
22	01 22 00	Leachate Connection to the Forcemain & Gas Line	LS	1	$ 4,875.00	$ 4,875.00
23	01 22 00	Sump Access Structure & Headwall	EA	1	$ 17,550.00	$ 17,550.00
24	01 22 00 & 31 23 16.13	Anchor Trench for Cell 6 Bottom Liner and 1590 Separation Liner, Complete in Place (including all labor, equipment, materials, and all other appurtenances)	LF	2,800	$ 8.75	$ 24,500.00
25	01 22 00	Liner Tie-in (New Composite Liner to Existing Composite Liner)	LF	1,260	$ 14.50	$ 18,270.00
26	01 22 00	Liner Tie-in (New Separation Liner to Existing Separation Liner)	LF	780	$ 14.50	$ 11,310.00
27	01 22 00 & 31 90 35	Cell 1590 Subgrade Preparation for Separation Liner	SF	630,770	$ 0.15	$ 94,615.50
28	01 22 00	Separation Liner Geocomposite Gas Venting Layer, Complete in Place (including all labor, equipment, materials, and all other appurtenances)	SF	600,300	$ 0.48	$ 288,144.00
29	01 22 00 & 31 05 19.26	Separation Liner Geocomposite Drainage Layer, Complete in Place (including all labor, equipment, materials, and all other appurtenances)	SF	650,000	$ 0.62	$ 403,000.00
30	01 22 00 & 31 90 35	Separation Liner 40 Mil LLDPE Geomembrane (no additional quantity paid for overlap and/or sacrificial liner)	SF	650,000	$ 0.47	$ 305,500.00
31	01 22 00 & 31 90 30	Protective Cover Berm (including all labor, equipment, materials, and all other appurtenances)	LF	3,350	$ 8.75	$ 29,312.50
32	01 22 00	SLER/GLER/Grid Marker, Complete in Place	EA	16	$ 475.00	$ 7,600.00
33	01 22 00	Traffic Control Signage	LS	1	$ 4,300.00	$ 4,300.00
34	01 22 00, 31 05 13, & 31 23 00	East Pond Excavation	CY	65,000	$ 2.70	$ 175,500.00
35	--	East Pond - Remove Existing Riprap and Place Rock Riprap	LS	1	$ 4,850.00	$ 4,850.00
					TOTAL BASE PROPOSAL:	**$4,640,719.25**

Alternate Proposal

1A					$ -	$ -
2A					$ -	$ -
3A					$ -	$ -
					TOTAL ALT. Proposal:	**$0.00**

TOTAL BASE PLUS ALTERNATE PROPOSAL: $4,640,719.25

Cell 6 Excavation and Liner Construction & 1590 Separation Liner **TOTAL PROPOSAL: $4,640,719.25**

Docusign Envelope ID: D470A203-EF67-402E-82BA-522590081329

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:

4X Construction Group, LLC
Company

By: Jeff Parrish
(Please Print)

99 Regency Parkway, Suite 303
Address

Signature: [signature]

Mansfield, TX 76063
City/State/Zip

Title: Managing Member
(Please Print)

Date: 11/5/2025

END OF SECTION

Docusign Envelope ID: D470A203-EF67-402E-82BA-522590081329

"General Decision Number: TX20240025 01/05/2024

Superseded General Decision Number: TX20230025

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)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.20 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 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $12.90 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 2024.

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

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http://www.dol.gov/whd/govcontracts.

Modification Number 0 | Publication Date 01/05/2024

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 **	

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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.

==========

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.20) or 13658 ($12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the 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

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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.

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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.

==========

END OF GENERAL DECISION"

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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:

4X Construction Group, LLC
Company

By: Jeff Parrish
(Please Print)

99 Regency Parkway, Suite 303
Address

Signature: [signature]

Mansfield, TX 76063
City/State/Zip

Title: Managing Member
(Please Print)

Date: 11/5/2025

END OF SECTION

Docusign Envelope ID: D470A203-EF67-402E-82BA-522590081329

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Docusign Envelope ID: D470A203-EF67-402E-82BA-522590081329

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.

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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.

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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

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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 toto support scheduled performance of related construction activities.

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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

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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.

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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.

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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.

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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 CityCity, 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.

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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.

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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

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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

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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.

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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.

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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

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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.

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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.

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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.

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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

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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 underwrittenmay 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.

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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

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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

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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

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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.

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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

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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.

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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.

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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.

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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.

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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

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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;

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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.

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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

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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;

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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.**

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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

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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

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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.

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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.

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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 9.07. 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.

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ARTICLE 11 – CHANGES ININ THE WORK; CLAIMS; EXTRA WORK

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended toto 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

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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.

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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. TheThe 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:

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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.

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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.

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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:

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1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, 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.

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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.

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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, thisany 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.

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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;

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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

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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.

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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 CityCity, 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.

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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 hashas 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

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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 1313.08, 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;

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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.

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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

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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

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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

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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

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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.

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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 a 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

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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.

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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

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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.

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SECTION 00 73 00

SUPPLEMENTARY CONDITIONS
TO
GENERAL CONDITIONS

[Text in Blue is for information or guidance. Remove all blue text in the final project document.]

Supplementary Conditions

These Supplementary Conditions modify and supplement Section 00 72 00 - General Conditions, and other provisions of the Contract Documents as indicated below. All provisions of the General Conditions that are modified or supplemented remain in full force and effect as so modified or supplemented. All provisions of the General Conditions which are not so modified or supplemented remain in full force and effect.

Defined Terms

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meaning assigned to them in the General Conditions, unless specifically noted herein.

Modifications and Supplements

The following are instructions that modify or supplement specific paragraphs in the General Conditions and other Contract Documents.

SC-5.01A

Easement limits shown on the Drawing are approximate and were provided to establish a basis for bidding. Upon receiving the final easements descriptions, Contractor shall compare them to the lines shown on the Contract Drawings.

SC-5.01A.1., "Availability of Lands"

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of *July 2025*:

Outstanding Right-Of-Way, and/or Easements to Be Acquired

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
None		

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

If Contractor considers the final easements provided to differ materially from the representations on the Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work, notify City in writing associated with the differing easement line locations.

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SC-5.01A.2, "Availability of Lands"

Utilities or obstructions to be removed, adjusted, and/or relocated

The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of *July 2025*

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
	None	

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

SC-5.03A., "Subsurface and Physical Conditions"

The following are reports of explorations and tests of subsurface conditions at the site of the Work:

See *Appendix B*, providing additional information on *soil stockpile and soil boring information.*

The following are drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of the Work:
C-003 Site Utility Plan

SC-5.05 A., "Underground Facilities

The following are additional resources for identification of Underground Facilities which are at or contiguous to the site of the Work, and which are not necessarily shown in the Drawings:
None

SC-5.06A., "Hazardous Environmental Conditions at Site"

The following are reports and drawings of existing hazardous environmental conditions known to the City:
None

SC-6.02, "Performance, Payment, and Maintenance Bonds"

The "Contract Price" for Performance, Payment, and Maintenance Bonds will be the same as indicated in Article 3 as listed in the Agreement.

SC-6.03A., "Certificates of Insurance"

The entities listed below are "additional insureds as their interest may appear" including their respective officers, directors, agents and employees.

(1) City
(2) Consultant: *Parkhill, Smith & Cooper, Inc.*
(3) Other: *None*

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SC-6.04A., "Contractor's Insurance"

The limits of liability for the insurance required by Paragraph GC-6.04 shall provide the following coverages for not less than the following amounts or greater where required by laws and regulations:

6.04A. Workers' Compensation, under Paragraph GC-6.04A.

Statutory limits
Employer's liability
$100,000 each accident/occurrence
$100,000 Disease - each employee
$500,000 Disease - policy limit

SC-6.04B., "Contractor's Insurance"

6.04B. Commercial General Liability, under Paragraph GC-6.04B. Contractor's Liability Insurance under Paragraph GC-6.04B., which shall be on a per project basis covering the Contractor with minimum limits of:

$1,000,000 each occurrence
$2,000,000 aggregate limit

The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site.

The Commercial General Liability Insurance policies shall provide "X", "C", and "U" coverage's. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

SC 6.04C., "Contractor's Insurance"

6.04C. Automobile Liability, under Paragraph GC-6.04C. Contractor's Liability Insurance under Paragraph GC-6.04C., which shall be in an amount not less than the following amounts:

(1) **Automobile Liability** - a commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

$1,000,000 each accident on a combined single limit basis.

SC-6.04D., "Contractor's Insurance"

The Contractor's construction activities will require its employees, agents, subcontractors, equipment, and material deliveries to cross railroad properties and tracks, or perform work within 25 feet of the center line of tracks *None.*

The Contractor shall conduct its operations on railroad properties in such a manner as not to interfere with, hinder, or obstruct the railroad company in any manner whatsoever in the use or operation of its/their trains or other property. Such operations on railroad properties may require that Contractor to execute a "Right of Entry Agreement" with the particular railroad company or companies involved, and to this end the Contractor should satisfy itself as to the requirements of each railroad company and be prepared to execute the right-of-entry (if any) required by a railroad company. The requirements specified herein likewise relate to the Contractor's use of private and/or construction access roads crossing said railroad company's properties.

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The Contractual Liability coverage required by Paragraph 5.04D of the General Conditions shall provide coverage for not less than the following amounts, issued by companies satisfactory to the City and to the Railroad Company for a term that continues for so long as the Contractor's operations and work cross, occupy, or touch railroad property:

(1) General Aggregate: *$Confirm Limits with Railroad*

(2) Each Occurrence: *$Confirm Limits with Railroad*

____ *Required for this Contract* __X__ *Not required for this Contract*

With respect to the above outlined insurance requirements, the following shall govern:

1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.

2. Where more than one railroad company is operating on the same right-of-way or where several railroad companies are involved and operated on their own separate rights-of-way, the Contractor may be required to provide separate insurance policies in the name of each railroad company.

3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a railroad company's right-of-way at a location entirely separate from the grade separation or at-grade crossing, insurance coverage for this work must be included in the policy covering the grade separation.

4. If no grade separation is involved but other work is proposed on a railroad company's right-of-way, all such other work may be covered in a single policy for that railroad, even though the work may be at two or more separate locations.

No work or activities on a railroad company's property to be performed by the Contractor shall be commenced until the Contractor has furnished the City with an original policy or policies of the insurance for each railroad company named, as required above. All such insurance must be approved by the City and each affected Railroad Company prior to the Contractor's beginning work.

The insurance specified above must be carried until all Work to be performed on the railroad right-of-way has been completed and the grade crossing, if any, is no longer used by the Contractor. In addition, insurance must be carried during all maintenance and/or repair work performed in the railroad right-of-way. Such insurance must name the railroad company as the insured, together with any tenant or lessee of the railroad company operating over tracks involved in the Project.

SC 6.04F., "Contractor's Insurance"

Add Paragraph 6.04F. Environmental Impairment/Pollution

Environmental Impairment/Pollution Insurance to include coverage for the handling, receiving, dispensing, removal, storage, testing, transportation, disposal, discharge, dispersal release or escape of any hazardous material into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including ground water, with a minimum combined bodily injury (including death) and property damage limit of *$2,000,000* per occurrence to be obtained upon substantial completion and acceptance of facility by the City.

SC-7.08C., "Concerning Subcontractors and Suppliers"

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The following subcontractors shall be required to be utilized by the Contractor for specific portions of the Work as indicated below:

Required Subcontractors

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
None	

SC-7.11., "Permits and Utilities"

SC-7.11A., "Contractor obtained permits and licenses"
The following are known permits and/or licenses required by the Contract to be acquired by the Contractor:
None

SC-7.11B. "City obtained permits and licenses"
The following are known permits and/or licenses required by the Contract to be acquired by the City: *None.*

SC-7.11C. "Outstanding permits and licenses"

The following is a list of known outstanding permits and/or licenses to be acquired, if any as of *July 2025*:

Outstanding Permits and/or Licenses to Be Acquired

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
None		

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
None	*None*	*CITY*

SC-9.01, "Communications to Contractor"

Mobilization, stockpiling material, liner testing and schedule

SC-10.01B., "City's Project Manager"

The City's Project Manager for this Contract is *Randall Morris* or his/her successor pursuant to **written notification from the City Engineer.**

SC-13.02B., "Tests and Inspections"

As noted in the relevant sections of the project manual.

SC-14.01G, "Reduction in Payment"

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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.*

SC-16.01C.1, "Methods and Procedures"

None

SC – 17.01, "Documents"

Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

END OF SECTION

Revision Log		
DATE	NAME	SUMMARY OF CHANGE

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CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.
By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

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

1 **Name of vendor who has a business relationship with local governmental entity.**

4X CONSTRUCTION GROUP, LLC

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

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

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

N/A

Name of Officer

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:

Jeff Parrish

C84CF2F734CB491...

Signature of vendor doing business with the governmental entity

1/19/2026

Date

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CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

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

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

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

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

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

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

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

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

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

Certificate Of Completion

Envelope Id: D470A203-EF67-402E-82BA-522590081329
Status: Completed
Subject: Please DocuSign: City Council Contract 8907 Cell 6 Construction Project
Source Envelope:
Document Pages: 102
Signatures: 6
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Crystal Westbrook
901B Texas Street
Denton, TX 76209
crystal.westbrook@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
1/9/2026 4:55:48 PM
Holder: Crystal Westbrook
crystal.westbrook@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.104	Sent: 1/9/2026 5:02:15 PM Viewed: 1/9/2026 5:02:28 PM Signed: 1/9/2026 5:03:25 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/9/2026 5:03:27 PM Viewed: 1/12/2026 8:17:38 AM Signed: 1/12/2026 9:47:09 AM
Leah Bush leah.bush@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/16/2026 2:48:17 PM ID: 1d56b049-7086-457d-adb0-b5ec14dcd5a9	Signed by: Leah Bush 2A936B08B5D7485... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 1/12/2026 1:39:10 PM Viewed: 1/12/2026 2:29:47 PM Signed: 1/16/2026 3:03:06 PM
Jeff Parrish jeff.parrish@4xconstruction.com Managing Member 4X Construction Group, LLC Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/16/2026 5:40:18 PM ID: 712c5991-26b0-4db1-819c-93454aa12f3f	DocuSigned by: Jeff Parrish C84CF2F734CB491... Signature Adoption: Pre-selected Style Using IP Address: 69.162.70.148	Sent: 1/16/2026 3:03:09 PM Viewed: 1/16/2026 5:40:18 PM Signed: 1/19/2026 8:59:07 AM

Signer Events	Signature	Timestamp
Brenda Haney brenda.haney@cityofdenton.com Director Security Level: Email, Account Authentication (None)	Signed by: Brenda Haney C3C63BE563154A1... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 1/19/2026 8:59:10 AM Viewed: 1/20/2026 7:01:14 AM Signed: 1/20/2026 7:01:54 AM
Electronic Record and Signature Disclosure: Accepted: 1/20/2026 7:01:14 AM ID: 256c0d0f-d6a2-4ada-8d79-588347af6372		
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	**Completed** Using IP Address: 198.49.140.10	Sent: 1/20/2026 7:01:57 AM Viewed: 3/25/2026 8:28:33 AM Signed: 3/25/2026 8:29:44 AM
Electronic Record and Signature Disclosure: Not Offered via Docusign		
Sara Hensley sara.hensley@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by: Sara Hensley 5236DB296270423... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/25/2026 8:29:47 AM Viewed: 3/25/2026 8:38:30 AM Signed: 3/25/2026 8:38:33 AM
Electronic Record and Signature Disclosure: Not Offered via Docusign		
Ingrid Rex Ingrid.Rex@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)	Signed by: Ingrid Rex F116805422D0464... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/25/2026 8:38:36 AM Viewed: 3/26/2026 11:10:48 AM Signed: 3/26/2026 11:11:18 AM
Electronic Record and Signature Disclosure: Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 1/9/2026 5:03:28 PM
Electronic Record and Signature Disclosure: Not Offered via Docusign		

Carbon Copy Events	Status	Timestamp
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 1/12/2026 1:39:13 PM Viewed: 3/26/2026 11:14:58 AM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 1/20/2026 7:01:57 AM Viewed: 2/19/2026 1:59:32 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 3/26/2026 11:11:22 AM Viewed: 3/26/2026 11:14:54 AM
Randall Morris randall.morris@cityofdenton.com Landfill Manager Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 2/6/2026 6:48:21 AM ID: 58e78947-5180-4799-a8dc-9929bd9e6f7e	COPIED	Sent: 3/26/2026 11:11:23 AM Viewed: 3/26/2026 11:14:52 AM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/9/2026 5:02:15 PM
Envelope Updated	Security Checked	3/6/2026 2:47:35 PM
Envelope Updated	Security Checked	3/6/2026 2:47:35 PM
Envelope Updated	Security Checked	3/6/2026 2:57:43 PM
Envelope Updated	Security Checked	3/6/2026 2:57:43 PM
Envelope Updated	Security Checked	3/6/2026 3:25:27 PM
Envelope Updated	Security Checked	3/6/2026 3:25:27 PM
Certified Delivered	Security Checked	3/26/2026 11:10:48 AM
Signing Complete	Security Checked	3/26/2026 11:11:18 AM
Completed	Security Checked	3/26/2026 11:11:23 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

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

Required hardware and software

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

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

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

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and

- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and

- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, RATIFYING CHANGE ORDER NO. 1 TO THE CONTRACT BETWEEN THE CITY OF DENTON AND 4X CONSTRUCTION GROUP, LLC, FOR THE CELL 6 CONSTRUCTION PROJECT FOR THE SOLID WASTE AND RECYCLING DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8907 – CHANGE ORDER NO. 1 IN THE NOT-TO-EXCEED AMOUNT OF $618,467.03, FOR A TOTAL CONTRACT AWARD AGGREGATED TO $5,491,222.03).

WHEREAS, state law and city policy requires that certain contracts requiring an expenditure or payment by the city in an amount exceeding $50,000 be by competitive bids, except in the case of public calamity where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens of the city, or in case of unforeseen damage to public property, machinery, or equipment, or where the procurement is necessary to preserve or protect the public health or safety of the city's residents under Section 252 of the Local Government Code; and

WHEREAS, on March 24, 2026, by Ordinance No. 26-0342, the City Council awarded a contract to 4X Construction Group, LLC, in the amount of $4,872,755.00, for the Cell 6 Construction Project at the Landfill for the Solid Waste and Recycling Department; and

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

WHEREAS, the City Manager has recommended to the City Council that it is necessary to ratify the purchase of goods or services due to the following emergency conditions outlined in the memorandum referenced herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council hereby determines that there is a public calamity that makes it necessary to act at once to appropriate money to relieve the necessity of the citizens of the city, or to provide for unforeseen damage to public property, machinery, or equipment, or to preserve or protect the public health or safety of the city's residents, and by reason thereof, the following emergency purchases of materials, equipment, supplies, or services, as described in the "Declaration of Emergency Memorandum" referenced herein and on file in the office of the Purchasing Agent, are hereby approved.

SECTION 2. Because of such emergency, the City Manager, or a designated employee, is hereby authorized to purchase the materials, equipment, supplies, or services as described in the Memorandum on file in the office of the Purchasing Agent, and to make payment therefore in the amounts therein stated. Such emergency purchases, being in accordance with the provisions of state law, exempt such purchases by the city from the requirements of competitive bids.

SECTION 1. Change Order No. 1, increasing the amount of the contract between the City and 4X Construction Group, LLC, which is on file in the office of the Purchasing Agent, in the amount of Six Hundred Eighteen Thousand Four Hundred Sixty-Seven and 03/100 $618,467.03) dollars, is hereby approved and the expenditure of funds therefore is hereby authorized in accordance with said change order. The total purchase order amount increases to $5,491,222.03.

SECTION 3. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 4. 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:	_____	_____	_____	_____
Jordan Villareal, District 1:	_____	_____	_____	_____
Nick Stevens, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
KRISTI FOGLE, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

Docusign Envelope ID: D5AD90A2-CBCC-4A93-8ABF-BFFE08F10B7E

Docusign City Council Transmittal Coversheet

FILE	8907
File Name	CELL 6 CONSTRUCTION PROJECT-CHANGE ORDER #1
Purchasing Contact	Crystal Westbrook
City Council Target Date	N/A
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	26-0342

Initial
LH

Docusign Envelope ID: D5AD90A2-CBCC-4A93-8ABF-BFFE08F10B7E

CITY OF DENTON CHANGE ORDER FORM

City of Denton-Solid Waste & Recycling Dept
Project Manager: Randall Morris
1527 S Mayhill Rd.
Denton, TX 76208

Contractor: 4X Construction Group LLC
Project Manager: Jeff Parrish
99 Regency Parkway, STE 303
Mansfield, TX 76063

Project: Cell 6 Project
CSP# 8907 CIP/ENG# 41129.23
CHANGE ORDER NO. 1
PO #: 214556

Notice To Proceed Issued:	Current Completion Date:	New Completion Date:
	1/0/1900	1/0/1900

Contract BID Amount:	$ 4,640,719.25	Prior Approved Other Funded CO's:	$ -
5% Contingency Amount:	$ 232,035.96	Current Contract Amount w CUA & CO's:	$ 4,640,719.25
Total NTE Amount :	$ 4,872,755.21	This CO Other Funding Request:	$618,467.03
Prior Approved CUA's:	$ -	Total Change Request:	**$ 618,467.03**
Available Contingency:	$ 232,035.96		
This CUA Request:	$0.00	Orig Contract Days:	This CO Days Request:
Contingency Remaining:	$ 232,035.96	Approved CO Days: 180	New Contract Days: 180

PROJECT SCOPE AND REASON FOR CHANGE

Project Scope included in Contract: Cell 6 Excavation and Liner Construction & 1590 Seperation Liner

Reason for change:

The contract for this project was awarded to 4X Construction Group, LLC, through the City's formal competitive proposal process. The contract was approved by Council on March 24, 2026.

Recently the price of oil has been rising, directly impacting on the petroleum-based products essential to this project. The project requires the installation of over 3.3 million square feet of specialized materials, including High-Density Polyethylene (HDPE) and Geocomposite liners. Because these materials are produced on demand and are highly susceptible to UV damage during storage, they could not be purchased in advance. The Contractor has submitted a price increase of 23.5% based on documented supplier cost escalations.

To remain on the timeline necessary to maintain regulatory compliance, the Solid Waste and Recycling Department and Procurement recommend processing this change order under the Declaration of Emergency process to remain on track with the critical path for the project. Any further delays can impact the Landfill's capacity, that could result in violations of the Municipal Solid Waste Permit with the TCEQ and the Settlement Agreement with local neighbors, leading to significant fines, legal fees, and threats to public health. Therefore, the Declaration of Emergency is necessary to award Change Order No. 1 in the amount of

CONTINGENCY USE AUTHORIZED (CUA) CONTRACT CHANGES

QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
							$ -
						TOTAL CUA QTY CHANGES:	$0.00

NEW ITEMS OF WORK

1							
							$ -
Contingency funds are used at City's discretion per contract spec language						TOTAL CUA NEW ITEMS:	$0.00

OTHER FUNDED CONTRACT CHANGES (CO)

QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
1		HDPE Liner Pricing Increase	LS	0	1	468,467.03	$ 468,467.03
2		Fuel Cost Increase	GAL	0	2	75,000.00	$ 150,000.00
						TOTAL OTHER FUNDED QTY CHANGES:	$618,467.03

NEW ITEMS OF WORK

							$ -
						TOTAL OTHER FUNDED NEW ITEMS:	$0.00

TOTAL CO AMOUNT: $618,467.03

Cell 6 Project

Original BID/Contract Amount:	$	4,640,719.25
Original Total Not To Exceed Amount:	$	4,872,755.21
Total CUA's:	$	-
Total CO's:	$	618,467.03
Revised Contract Amount:	**$**	**5,259,186.28**
% of CUA Approved To-Date:		0.00%
Total Change Order over Original Bid:		**13.33%**

Docusign Envelope ID: D5AD90A2-CBCC-4A93-8ABF-BFFE08F10B7E

Percent Changes over NTE:	13%

THE AFOREMENTIONED CHANGE, AND WORK AFFECTED THEREBY,
IS SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS.

SUBMITTED BY:

Signed by: Arturo Garcia
C5CDBB6D6CA8458...
Project Manager

ACCEPTED BY DIRECTOR OF SOLID WASTE

Signed by: Brenda Haney
C3C63BE563454A1...
Signature

ACCEPTED BY CONTRACTOR: Jeff Parrish Managing Member
Name, Title

DocuSigned by: Jeff Parrish
C84CF2F734CE4...
Signature

INTERIM CITY MANAGER

DocuSigned by: Cassey Ogden
E7FF20C194EA4F8...
Signature

ATTEST: CITY SECRETERY

Signed by: Ingrid Rex
F116805422D04B1...
Signature

APPROVED AS TO LEGAL FORM

DocuSigned by: Marcella Lunn
4B070831B4AA438...
Signature

]

Docusign Envelope ID: D5AD90A2-CBCC-4A93-8ABF-BFFE08F10B7E

PROPOSAL

4X Construction Group, LLC

99 Regency Parkway, STE 303
Mansfield, Texas 76063

Phone: 817-779-3290
Fax: 817-779-3291

C.O.R. No. 001

TO: City of Denton TX
Crystal Westbrook

PROJECT: Denton Landfill
Cell 6

CHANGE ORDER REQUEST

DESCRIPTION

As the City is aware, the project start was delayed due to a situation beyond our control, nor the City's control. Unfortunately, because of the world's current situation regarding fuel / oil costs, we can longer keep our pricing the same as it was at the time of the original proposal. We are respectfully requesting additional costs for fuel for the work and liner costs.

Regarding the fuel, we used a base price of $2.50/Gallon in our proposal. Currently fuel is anywhere from $4.25 - $4.50 per gallon. We had approximately 75,000 gallons of fuel built into this project. We would like to suggest a fuel escalator be added to this project. 4XCG is willing to take on an additional $0.25/Gallon cost, as that could be a reasonable risk. Anything over $2.75/Gallon, would be invoiced monthly. We would supply the invoices to the City for transparency.

Regarding the liner costs, unfortunately, the liner subcontractors will not hold their pricing because the manufacturers will not hold their pricing.Resin prices have increased dramatically, and we are seeing liner costs increase every few days.

We apprecaite your consideration and look forward to hearing from you. Thank you.

Requestor: Jeff Parrish
Date: 4/10/2026

Docusign Envelope ID: D5AD90A2-CBCC-4A93-8ABF-BFFE08F10B7E

April 10, 2026

COR 001: Added Cost Request due to Project Start Delay

To: City of Denton, TX
Crystal Westbrook

PROJECT: City of Denton Landfill
Cell 6

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
1	Geosynthecti Liner Increases	LS	1.00	$ 468,467.03	$ 468,467.03
2	Fuel Cost Increase	GALLON	75,000.00	$ 2.00	$ 150,000.00
				TOTAL	**$ 618,467.03**

Special Conditions

1. The above pricing increase request is based on the Project Start Delay.

4X Construction Group, LLC

Jeff Parrish

Docusign Envelope ID: D5AD90A2-CBCC-4A93-8ABF-BFFE08F10B7E

City of Denton Cell 6 and OL liner increase analysis

					Falcon Original In Bid			Falcon Revised 4/3/2026			GSI revised 4/10/2026			Mustang Revised 4/3/2026	
Resource	Description	Bid Item #	Quan	Unit	FALCON Original UP	Falcon Original Extended		Falcon Revised UP	Falcon Revised Extended		GSI revised UP	GSI revise Extended		Mustang Revised UP	Mustang Revised Extended
4LINER	Mobilization Liner Sub	1	1.00	LS	$ 9,600.00	$ 9,600.00		$ 9,600.00	$ 9,600.00		$ 14,580.00	$ 14,580.00		$ 7,500.00	$ 7,500.00
4LINER	60 Mil HDPE Geomembrane - Textured	12	728,850.00	SF	$ 0.57	$ 416,902.20		$ 0.71	$ 517,483.50		$ 0.60	$ 434,248.83		$ 0.65	$ 472,513.46
4LINER	Geocomposite Drainage Layer for Cell 6	13	728,850.00	SF	$ 0.59	$ 430,021.50		$ 0.72	$ 521,127.75		$ 0.80	$ 586,505.60		$ 0.79	$ 577,832.28
4LINER	Liner Tie-in-Sub for Liner	25	1,260.00	LF	$ 3.00	$ 3,780.00		$ 3.00	$ 3,780.00		$ 8.33	$ 10,489.88		$ 13.31	$ 16,770.60
4LINER	Liner Tie-in-Sub for Liner	26	780.00	LF	$ 3.00	$ 2,340.00		$ 3.00	$ 2,340.00		$ 8.37	$ 6,532.19		$ 12.50	$ 9,750.00
4LINER	Separation Liner Geocomposite Gas Venting Layer	28	600,300.00	SF	$ 0.45	$ 270,135.00		$ 0.58	$ 348,174.00		$ 0.61	$ 365,162.49		$ 0.62	$ 374,046.93
4LINER	Separation Liner Geocomposite Drainage Layer	29	650,000.00	SF	$ 0.59	$ 383,500.00		$ 0.72	$ 464,750.00		$ 0.81	$ 527,540.00		$ 0.84	$ 547,560.00
4LINER	Separation Liner 40 Mil LLDPE Geomembrane	30	650,000.00	SF	$ 0.44	$ 286,000.00		$ 0.56	$ 364,000.00		$ 0.44	$ 283,075.00		$ 0.51	$ 333,710.00
	Total Liner System install					$ 1,802,278.70			$ 2,231,255.25			$ 2,228,133.98			$ 2,339,683.27
	Supply Only Underdrain Geocomposite	4	1.00	LS	$ 185,039.93	$ 185,039.93		$ 244,730.23	$ 244,730.23		$ 227,651.68	$ 227,651.68		$ 256,959.94	$ 256,959.94
	Total with Supply of Underdrain Geocomposite					$ 1,987,318.63			$ 2,475,985.48			$ 2,455,785.66			$ 2,596,643.21

	Analysis	
	Falcon Original (In Contract/Bid)	$ 1,987,318.63
	Increase to Stay with Falcon	$ 488,666.85
	Increase to Use GSI	$ 468,467.03 Best Option
	Increase to Use Mustang	$ 609,324.58

Docusign Envelope ID: D5AD90A2-CBCC-4A93-8ABF-BFFE08F10B7E

Date: April 8, 2026

Attn:

Ref: Geo-Synthetics Systems LLC Proposal
Project Name: 260008 Denton LF Cell 6 rev4
Location: Denton, TX

Geo-Synthetics Systems LLC (GSI) is pleased to provide pricing for the supply and installation of the geosynthetic materials on the referenced project.

Geo-Synthetics Systems LLC (GSI) is a distributor, fabricator, and installer of geosynthetic materials for a broad range of containment applications for MSW (Municipal Solid Waste) & Energy landfill sites, construction sites, road construction projects and contaminated waterways. At Geo-Synthetics, our highly skilled employees have more than 40 years of experience providing geosynthetic materials, project field support, and installation expertise for containment, erosion control, and remediation projects.

GSI is one of the country's largest independent installers of liners for landfill sites and manages installation projects across the country. GSI is an authorized distributor for many of the most recognized names of geosynthetic materials and erosion control products. Our experienced team has installed more than 700 million square feet of geosynthetic solutions across the nation and includes project planning, accurate estimating, project management, and the best geosynthetic installation reputation in the industry.

If job site safety (EMR 0.68), timeliness, and high-quality work is of importance to you, then GSI is your choice.

Please contact me to review our Proposal and answer any questions you may have.

Thank you for the opportunity,

Steve Story
Business Development Manager – Southwest Region
(262) 282-1141

Docusign Envelope ID: D5AD90A2-CBCC-4A93-8ABF-BFFE08F10B7E

PROPOSAL

I. Pricing Summary:

I.a. Supply and Installation Prices:

Bid Item	Descriptions	Quantity	Unit	Unit Price	Extended Price
1	Mobilization	1	EA	$14,580.00	$14,580.00
2	Underdrain Geocomposite – Cell 6 (Supply Only)	535,525	SF	$0.4251	$227,651.68
3	60 mil HDPE Textured – Cell 6	728,850	SF	$0.5958	$434,248.83
4	Geocomposite Drainage Layer – Cell 6	728,850	SF	$0.8047	$586,505.60
5	Liner Tie-in (New Composite Liner to Existing Composite Liner)	1,260	LF	$8.3253	$10,489.88
6	Liner Tie-in (New Separation Liner to Existing Separation Liner)	780	LF	$8.3746	$6,532.19
7	Geocomposite Gas Venting Layer – Separation Liner	600,300	SF	$0.6083	$365,162.49
8	Geocomposite Drainage Layer – Separation Liner	650,000	SF	$0.8116	$527,540.00
9	40 mil LLDPE Textured – Separation Liner	650,000	SF	0.4355	$283,075.00
Total Estimated Price excluding Tax on Material					**$2,455,785.67**

Certificate Of Completion

Envelope Id: D5AD90A2-CBCC-4A93-8ABF-BFFE08F10B7E
Status: Completed
Subject: Please DocuSign: City Council Contract 8907 Cell 6 Construction Project-Declaration of Emergency
Source Envelope:
Document Pages: 8
Signatures: 6
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Crystal Westbrook
901B Texas Street
Denton, TX 76209
crystal.westbrook@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
4/14/2026 3:23:54 PM
Holder: Crystal Westbrook
crystal.westbrook@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 4/14/2026 3:29:32 PM Viewed: 4/15/2026 3:53:38 PM Signed: 4/15/2026 3:54:10 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/15/2026 3:54:13 PM Viewed: 4/15/2026 4:06:38 PM Signed: 4/15/2026 4:07:21 PM
Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by: Marcella Lunn 4B070831B4AA438... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/15/2026 4:07:23 PM Viewed: 4/15/2026 4:29:40 PM Signed: 4/15/2026 4:31:01 PM
Jeff Parrish jeff.parrish@4xconstruction.com Managing Member 4X Construction Group, LLC Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/16/2026 5:40:18 PM ID: 712c5991-26b0-4db1-819c-93454aa12f3f	DocuSigned by: Jeff Parrish C84CF2F734CB491... Signature Adoption: Pre-selected Style Using IP Address: 216.14.243.53	Sent: 4/15/2026 4:31:03 PM Viewed: 4/15/2026 4:40:14 PM Signed: 4/15/2026 4:50:59 PM

Signer Events	Signature	Timestamp
Arturo Garcia Arturo.Garcia@cityofdenton.com Solid Waste Project Manager Solid Waste & Recycling Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/16/2026 8:34:23 AM ID: d4171875-555b-4321-8abc-b94ced2893df	Signed by: Arturo Garcia C5CDBB6D6CA8458... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/15/2026 4:51:01 PM Resent: 4/16/2026 8:32:00 AM Viewed: 4/16/2026 8:34:23 AM Signed: 4/16/2026 8:36:57 AM
Brenda Haney brenda.haney@cityofdenton.com Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/16/2026 8:39:50 AM ID: ffc230ea-aa64-4887-8474-ec8e13f07258	Signed by: Brenda Haney C3C63BE563154A1... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/16/2026 8:37:01 AM Viewed: 4/16/2026 8:39:50 AM Signed: 4/16/2026 8:40:02 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.104	Sent: 4/16/2026 8:40:06 AM Viewed: 4/16/2026 12:13:55 PM Signed: 4/16/2026 12:14:20 PM
Cassey Ogden Cassey.Ogden@cityofdenton.com Deputy City Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by: Cassey Ogden E7FF20C194EA4F9... Signature Adoption: Pre-selected Style Using IP Address: 150.220.215.5	Sent: 4/16/2026 12:14:22 PM Viewed: 4/16/2026 5:55:56 PM Signed: 4/16/2026 5:56:04 PM
Ingrid Rex Ingrid.Rex@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Signed by: Ingrid Rex F116805422D0464... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/16/2026 5:56:07 PM Viewed: 4/16/2026 8:27:35 PM Signed: 4/16/2026 8:30:18 PM

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 4/15/2026 3:54:13 PM Viewed: 4/16/2026 8:33:38 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 4/16/2026 8:40:05 AM Viewed: 4/16/2026 8:34:02 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 4/16/2026 8:30:20 PM Viewed: 4/16/2026 8:35:04 PM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/14/2026 3:29:32 PM
Envelope Updated	Security Checked	4/14/2026 4:33:45 PM
Envelope Updated	Security Checked	4/14/2026 4:33:45 PM
Envelope Updated	Security Checked	4/14/2026 4:33:45 PM
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Envelope Updated	Security Checked	4/15/2026 1:10:05 PM
Envelope Updated	Security Checked	4/16/2026 8:31:59 AM
Envelope Updated	Security Checked	4/16/2026 8:31:59 AM
Certified Delivered	Security Checked	4/16/2026 8:27:35 PM
Signing Complete	Security Checked	4/16/2026 8:30:18 PM
Completed	Security Checked	4/16/2026 8:30:20 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

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

Required hardware and software

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

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

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

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and

- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and

- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: May 18, 2026

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Online Information Services, Inc., for fraud detection and credit risk assessment for the Customer Service Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 9001 – awarded to Online Information Services, Inc., in the five (5) year not-to-exceed amount of $320,000.00).

INFORMATION/BACKGROUND

A ruling known as the Identity Theft Red Flag Regulation was jointly issued by the Federal Trade Commission, Office of Thrift Supervision, and several other governing agencies, implementing Section 114 of the Fair and Accurate Credit Transaction Act of 2003 (FACT ACT) that came in to effective May 1, 2009.

As part of compliance with federal guidelines, the City of Denton Utilities Customer Service has to provide fraud protection, credit risk assessment, and debit recovery solutions. Use of a system allows the City to verify the identity of customers via telephone in order to reduce the opportunity for identity fraud in accordance with federal law. This service is utilized when a new account is set up and any time a new person is added to an account as an authorized party. Historically, the City has spent $51,314 a year for these services, but expects an increase in usage over the contract term due to growth.

Year	Estimate Expenditure
Year 1	$55,000
Year 2	$55,000
Year 3	$55,000
Year 4	$55,000
Year 5	$55,000
Contingency	$45,000
Total	**$320,000**

Request for Proposals was sent to 263 prospective suppliers of this item, including four (4) 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 evaluated based upon published criteria, including compliance with specifications, schedule, probable performance, and price. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, Online Information Services, Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	943 - (Service Only) - Financial Services
Notifications sent for Solicitation sent in IonWave:	263
Number of Suppliers that viewed Solicitation in IonWave:	7
HUB-Historically Underutilized Business Invitations sent out:	35
SBE-Small Business Enterprise Invitations sent out:	56
Responses from Solicitation:	3

RECOMMENDATION

Award a contract with Online Information Services, Inc., for fraud detection and credit risk assessment for the Customer Service Department, in a five (5) year not-to-exceed amount of 320,000.

PRINCIPAL PLACE OF BUSINESS

Online Information Services, Inc.
Winterville, NS

ESTIMATED SCHEDULE OF PROJECT

This is a five (5) year contract.

FISCAL INFORMATION

These services will be funded from Customer Service Department account 870100.7866. Requisitions will be entered on an as-needed basis. The budgeted annual amount for this item is $55,000. $265,000 will be budgeted in future fiscal years to align with the contract terms and expenditures. The expenditure is a recurring cost and will create recurring obligations. The City will only pay for items purchased and is not obligated to pay the full contract amount unless needed.

EXHIBITS

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

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

For information concerning this acquisition, contact: Christa Foster, 940-349-7412.

Legal point of contact: Leah Bush at 940-349-8333.

Exhibit 2
RFP 9001 - Pricing Evaluation for Fraud Protection Credit Risk Assessment and Debt Recovery

				ONLINE Information Services, Inc.		Salter Elite Consulting		Demi Woods LLC	
			Respondent's Business Name:						
			Principal Place of Business (City and State):	Winterville, NC		Houston, TX		Austin, TX	
Line #	**Description**	**QTY**	**UOM**	**Unit**	**Extended**	**Unit**	**Extended**	**Unit**	**Extended**
1	Monthly Service Fee	12	Monthly	**$0.00**	**$0.00**	$2,450.00	$29,400.00	$350.00	$4,200.00
2	Individual Applicant Reports (Please price for all options).	14,174	EA	**$2.03**	**$28,773.22**	$1.65	$23,387.10	$50.00	$708,700.00
3	Skip Tracing (Please price for all options).	15	EA	**$0.27**	**$4.05**	$6.50	$97.50	$50.00	$750.00
3 ALT1	Social Search	1	EA	**$1.26**	**$1.26**				
4	Business Applicant Reports (Please price for all options).	780	EA	**$20.96**	**$16,348.80**	$3.95	$3,081.00	$45.00	$35,100.00
4 ALT1	ONLINE Business Verification Report	1	EA	**$10.00**	**$10.00**				
5	Initial Set Up Cost	1	EA	**$0.00**	**$0.00**	$3,500.00	$3,500.00	$0.00	$0.00
6	**Optional Services**								
7	Mail/Email Letter Notification to Applicant (Please price for all options)	1	EA	**$1.55**	**$1.55**	$1.50	$1.50	$1.55	$1.55
			Total Price	**$45,138.88**		$59,467.10		$748,751.55	

Evaluation

Item #	**Standard Criteria**	**ONLINE Utility Exchange, Inc.**	Salter Elite Consulting	Demi Woods LLC
1	Delivery/Project Schedule - 20%	**20.00**	14.67	4.00
2	Compliance with Specifications - 20%	**20.00**	13.33	4.00
3	Probable Performance - 20%	**18.67**	10.67	8.00
4	Price, Total Cost of Ownership - 40%	**40.00**	30.36	2.41
	Total Score:	**98.67**	69.03	18.41

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ONLINE INFORMATION SERVICES, INC., FOR FRAUD DETECTION AND CREDIT RISK ASSESSMENT FOR THE CUSTOMER SERVICE DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 9001 – AWARDED TO ONLINE INFORMATION SERVICES, INC., IN THE FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF $320,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for fraud detection and credit risk assessment for the Customer Service Department; and

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

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

RFP NUMBER	CONTRACTOR	AMOUNT
9001	Online Information Services, Inc.	$320,000.00

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:	_____	_____	_____	_____
Jordan Villareal, District 1:	_____	_____	_____	_____
Nick Stevens, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
KRISTI FOGLE, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

RFP	9001
File Name	Fraud Protection, Credit Risk Assessment, and Debt Recovery
Purchasing Contact	Christina Dormady
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

Initial
LH

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CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND ONLINE INFORMATION SERVICES, INC.
(Contract #9001)

THIS CONTRACT is made and entered into this date _____, by and between ONLINE INFORMATION SERVICES, INC. a NORTH CAROLINA corporation, whose address 202 W FIRETOWER RD, WINTERVILLE, NC 28590, 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 services in accordance with the City's RFP# Fraud Protection, Credit Risk Assessment, and Debt Recovery, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFP 9001 (the "Solicitation") **(Exhibit "B" on file at the office of the Purchasing Agent**);
(c) City of Denton Standard Terms and Conditions **(Exhibit "C");**
(d) Certificate of Interested Parties Electronic Filing **(Exhibit "D");**
(e) Insurance Requirements **(Exhibit "E");**
(f) Contractor's Proposal ("Contractor's Offer") **(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 Contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Contract.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies
Contractor acknowledges that in accordance with Chapter 2276 of the Texas Government Code, City is

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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 Contract.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this Contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of this Contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Section 2252 of the Texas Government Code restricts City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this Contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapter 2252, is not ineligible to enter into this Contract and will not become ineligible to receive payments under this Contract by doing business with Iran, Sudan, or a foreign terrorist organization***. Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2275, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

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BY:
CONTRACTOR
ONLINE INFORMATION SERVICES, INC.

DocuSigned by:
JW Blair
3F1856DE7C2B4D6...
Authorized Signature

Printed Name: JW Blair

Title: President

Email Adress: jw@onlineis.com

2026-1449290
TEXAS ETHICS COMMISSION CERTIFICATE NUMBER

BY:
CITY OF DENTON, TEXAS

Cassey Ogden, Interim City Manager

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

Signed by:
Leah Bush
BY: 3A6254145BDA469...

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

Signed by:
Antonio Puente, Jr.
E3760944C2BF4B5...
SIGNATURE

DME General Manager
TITLE

Electric
DEPARTMENT

Contract 9001

Docusign Envelope ID: 0F00A2A7-AA52-40EA-9A89-D3DD6EC42B8A

Exhibit A
Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed $320,000. 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 five (5) 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.

4. Price Escalation and De-escalation

On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued.

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Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

5. 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.

6. Cooperative Purchasing

It is the intent of the City that any contract resulting from this solicitation be made available for use by other governmental entities, to the maximum extent permitted under applicable federal, state, and local laws, including, but not limited to, the *Texas Government Code Chapter 791*. The Contractor agrees to make the same pricing, terms, and conditions available to any eligible public agency, political subdivision, or governmental entity that elects to purchase under this Contract, provided that such entity issues its own purchase order or agreement referencing the City's contract. Each such participating entity shall be responsible solely for its own obligations, including issuance of purchase orders, receipt of goods or services, and payment of invoices. The City shall not be responsible for the performance or payment of any obligations incurred by such participating entities.

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Exhibit B
City of Denton's RFP 9001 File

On File at the Office of the Purchasing Agent

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Exhibit C
City of Denton
Standard Purchase Terms and Conditions

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

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

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

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

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

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

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

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

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

8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract to perform but not afterward. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

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

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

10. **WORKFORCE** This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way.

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A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not (1) while engaged in, participating, or responding to a solicitation; or (2) while in the course and scope of delivering goods or services under a City of Denton contract; or (3) on the City's property.

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

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

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

IMMIGRATION: THE CONTRACTOR REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE REQUIREMENTS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 AND 1990 REGARDING EMPLOYMENT VERIFICATION AND RETENTION OF VERIFICATION FORMS FOR ANY INDIVIDUALS HIRED ON OR AFTER NOVEMBER 6, 1986, WHO WILL PERFORM ANY LABOR OR SERVICES UNDER THE CONTRACT AND THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 ("IIRIRA) ENACTED ON SEPTEMBER 30, 1996, AND SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY ACTION ARISING RELATED THERETO.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS**: This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules, and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**

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

12. **INVOICES**:
A. The Contractor shall submit separate invoices on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
B. **Proper Invoices must include a unique invoice number, invoice date, the purchase order number, and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department**. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if

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applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

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

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

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

F. Contractor must submit invoices no later than thirty (30) calendar days after termination or expiration of the Contract. Any invoices sent after that date will be considered noncompliant and will not be approved for payment.

13. **PAYMENT**:

A. All proper invoices need to be sent to Accounts Payable – accountspayable@cityofdenton.com. Approved invoices will be paid within thirty (30) calendar days of the invoice being received in Accounts Payable.

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

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

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

i. delivery of defective or non-conforming deliverables by the Contractor;

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

iii. failure of the Contractor to pay Subcontractors, or for labor, materials, or equipment;

iv. damage to the property of the City or the City's agents, employees, or contractors, which is not covered by insurance required to be provided by the Contractor;

v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, all required attachments, and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given to any awarded firm who is in arrears to the City for delinquent taxes of any kind or otherwise indebted to the City that the City shall be entitled to counterclaim and/or offset against any such debt, claim, demand, or account owed to the City through payment withholding until the debt is paid in full, and no assignment of such debt, claim, demand, or

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account after the said taxes or debt are due shall affect the right of the City to offset the said taxes or debt against same.

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

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

14. **TRAVEL EXPENSES**: All travel, lodging, and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the Contract Documents. During the term of this Contract, the Contractor shall bill and the City shall reimburse Contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the Contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. **FINAL PAYMENT AND CLOSE-OUT**:

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

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

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

ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

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17. **RIGHT TO AUDIT**:

A. The Contractor agrees that the City shall, until the expiration of five (5) years after final payment under this Contract unless required to be retained for longer under applicable law, have electronic access to and the right to examine all books, records, and computations pertaining to this Contract. If necessary, the City shall have the right to audit and make copies of the books, records, and computations pertaining to the Contract. The Contractor shall retain such books, records, documents, and other evidence pertaining to the Contract period and five (5) years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents, and other evidence shall be available, within ten (10) business days of written request. All books and records will be made available within a fifty (50) mile radius of the City of Denton if the vendor is not able to provide electronic access. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Subcontractor, material supplier, or other payee agrees that the City shall, until the expiration of five (5) years after final payment under the subcontract unless required to be retained for longer under applicable law, have electronic access to and the right to examine all books, records, documents, and other evidence of the Subcontractor, material supplier, or other payee involving transactions relating to the subcontract. If necessary, the City maintains the right to photocopy any physical books, documents, papers, and records of the subconsultant involving transactions relating to the subcontract. All books and records will be made available within a fifty (50) mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

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

18. **SUBCONTRACTORS**:

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

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract Documents, and shall contain provisions that:

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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 Contractor's Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
B. The Contractor certifies that the prices in the Contractor's Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
C. In the event Contractor breaches this warranty, in addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase, or in the alternative, the City may cancel this Contract without liability to Contractor for breach.

20. **WARRANTY – TITLE**: **The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests, and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.**

21. **WARRANTY – DELIVERABLES**: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship, or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Contract Documents, to any samples furnished by the Contractor, to the terms, covenants, and conditions of the Contract, and to all applicable State, federal, or local laws, rules,

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and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned. In addition, Contractor warrants that the goods sold to City shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA). In the event the product does not conform to OSHA standards, City may return the product for correction or replacement at the Contractor's expense. In the event Contractor fails to make the appropriate correction within a reasonable time, correction made by City will be at Contractor's expense.

A. Recycled deliverables shall be clearly identified as such.

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

C. Unless otherwise specified in the Contract or required by the Solicitation, the warranty period shall be at least one (1) year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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

F. Contractor shall not limit, exclude, or disclaim any implied warranties, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

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

A. The Contractor may not limit, exclude, or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one (1) year from the date of acceptance of the work. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor

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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 (being a minimum of 5 days) after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

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

26. **DEFAULT**:

A. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely, and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 25, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

B. In the event the City terminates the awarded contract for default or any other reason, the Contractor shall not be relieved of liability to the City for damages sustained by the City by reason of any default of the contract by the Contractor or otherwise, and the City may withhold any payments to the Contractor for the purpose of an offset until such time as the amount of damages due the City from the Contractor can be determined.

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such

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ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and/or any offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause and/or for convenience any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof, provided such payment amount is not disputed by City. The City reserves all rights, causes of action, and remedies available under law or in equity with respect to any dispute under this Contract and a termination under this provision does not waive such rights, causes of action, and remedies.

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

30. **DELAYS**:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in Paragraph 53. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

31. **TIME OF COMPLETION AND LIQUIDATED DAMAGES**: Contractor agrees and acknowledges that completing the services and/or delivering the goods described in this Contract

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in a timely manner is very important to the City. Contractor agrees to perform all obligations within the timeframes required. As it is impracticable and extremely difficult to fix the actual damages, if any, that may proximately result from a failure by Contractor to provide the goods or perform the service, should Contractor fail to timely perform its obligations, Contractor agrees to pay to City, or have withheld and offset from monies due it, the amount stated in the Contract Documents as liquidated damages for each calendar day of delay or nonperformance. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract. Execution of the Contract shall constitute agreement by the City and Contractor that said amount is the minimum value of the costs and actual damage caused by the Contractor's failure to timely perform. Adjustments to the contract times can only be made as provided in the Contract Documents and any conditions or specifications referenced therein.

32. **INDEMNITY**:

A. Definitions:

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

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

33. **LIMITATION OF LIABILITY**: This Contract does not, and shall not be interpreted to, contain an artificial limitation of liability (e.g. liability limited to contract price or liability capped at an amount actually paid in previous 3 months, etc.) or an artificial statute of limitations (e.g. any lawsuit must be commenced within one year of the event).

34. **INSURANCE**: The Contractor shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton outlined in the Insurance Exhibit attached hereto, if applicable. The insurance shall be written by a company licensed to do business in the State of

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Texas and satisfactory to the City of Denton. The City of Denton reserves the right to add insurance during the contract term.
B. Specific Coverage Requirements: Specific insurance requirements are contained in the Solicitation and the Insurance Exhibit.

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

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

37. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

38. **INDEMNIFICATION AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. Moreover, Contractor does not know of any valid basis for any such claims. **THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM: (I) ANY CLAIM THAT THE CITY'S EXERCISE ANYWHERE IN THE WORLD OF THE RIGHTS ASSOCIATED WITH THE CITY'S' OWNERSHIP, AND IF APPLICABLE, LICENSE RIGHTS, AND ITS USE OF THE**

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DELIVERABLES INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; OR (II) THE CONTRACTOR'S BREACH OF ANY OF CONTRACTOR'S REPRESENTATIONS OR WARRANTIES STATED IN THIS CONTRACT. IN THE EVENT OF ANY SUCH CLAIM, THE CITY SHALL HAVE THE RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF. FURTHER, CONTRACTOR AGREES THAT THE CITY'S SPECIFICATIONS REGARDING THE DELIVERABLES SHALL IN NO WAY DIMINISH CONTRACTOR'S WARRANTIES OR OBLIGATIONS UNDER THIS PARAGRAPH AND THE CITY MAKES NO WARRANTY THAT THE PRODUCTION, DEVELOPMENT, OR DELIVERY OF SUCH DELIVERABLES WILL NOT IMPACT SUCH WARRANTIES OF CONTRACTOR. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

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

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

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 41 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-

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for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 41 A., B., and C. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 40 above.

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

42. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, State, or local government.

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

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

45. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: The Contractor agrees to comply with the conflict of interest provisions of the City of Denton Code of Ordinances

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and/or State law. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance codified at Chapter 2, Article XI and in the City Charter Section 14.04, as amended. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire. The Contractor agrees to maintain current, updated disclosure of information on file with the Procurement Department throughout the term of this Contract.

46. **NO SUBCONTRACTING BID AFTER AWARD**: Following the award of the Contract, no subcontracting except that specifically identified in the response to the Solicitation will be permitted without the express prior written consent of the City.

47. **NO GIFT OF PUBLIC PROPERTY**: The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Contractor.

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

49. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

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50. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

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

52. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

53. **DISPUTE RESOLUTION**:

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

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

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interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
C. The parties shall not be required to submit to binding arbitration.

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

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

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

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

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

57. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose

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continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract for fifteen (15) years.

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

59. **EQUAL OPPORTUNITY** Contractor agrees that during the performance of its contract it will:
A. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age, or handicap.
B. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or request. The Contractor shall be advised of any complaints filed with the City alleging that Contractor is not an Equal Opportunity Employer. The City reserves the right to consider its reports from its human relations administrator in response to such complaints in determining whether or not to terminate any portion of this contract for which purchase orders or authorities to deliver have not been included, however, the Contractor is specifically advised that no Equal Opportunity Employment complaint will be the basis for cancellation of this contract for which a purchase order has been issued or authority to deliver granted.
C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined
in the ADA.

60. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**
The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –
i. "Component" means an article, material, or supply incorporated directly into an end product.
ii. "Cost of components" means -
(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
iii. "Domestic end product" means-
(1) An unmanufactured end product mined or produced in the United States; or
(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency

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determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
v. "Foreign end product" means an end product other than a domestic end product.
vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Contractor shall submit documentation with their offer demonstrating that the article is on an approved Governmental list.
D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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

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

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

64. **COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The Contractor or supplier shall comply with all State, federal, and local laws and requirements. The Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; and (iii) Chapter 552 of the Texas Government Code, which outlines policy for public information. The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

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

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66. **ATTORNEY'S FEES; LEGAL COSTS:** Contractor and City agree that the City will not be required to pay Contractor's attorney's fees or legal costs under any circumstances, unless expressly required by law.

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

68. **CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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

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

72. **RECORDS RETENTION:** The Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit

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and litigation matters are resolved, whichever period is longer. The Contractor shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract. In the event the value of this Contract is One Million ($1,000,000) Dollars or greater: (i) all contracting information related to this contract will be preserved for the duration of the Contact; (ii) the Contractor shall provide any contracting information in its possession promptly upon request by the City; and (iii) at the expiration of this Contract, the Contractor will either provide all contracting information in its possession to the City or preserve same as required by the record retention requirements of the State of Texas.

73. **PROCUREMENT LAWS**: The City will not agree to any terms or conditions that cause the City to violate any federal, State, or local procurement laws, including its own Charter or Procurement Policy and any such laws included in boilerplate terms, online terms or other terms provided by the Contractor are considered null and void.

74. **AUTHORITY**: Contractor represents and warrants to the other that (a) it has company authority to execute and perform this Contract; (b) executing this Contract does not constitute a material conflict with, breach, or default under any applicable law, its respective organizational documents, or any documents, agreements, contracts or instruments which are binding upon it; and (c) this Contract creates valid, legal, and binding obligation enforceable against it, subject to applicable insolvency and bankruptcy laws. Contractor recognizes and agrees that a violation of this provision constitutes a material breach under this Contract.

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Exhibit D
Certificate of Interested Parties Electronic Filing

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

Contractor will be required to furnish a Certificate of Interest Parties before the Contract is awarded, in accordance with Government Code 2252.908.

The Contractor shall:

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

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

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Exhibit E

INSURANCE REQUIREMENTS

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

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

As soon as practicable after notification of contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- or better**.

- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- Liability policies shall be endorsed to provide the following:

    - Name as Additional Insured the City of Denton, its Officials, Agents,

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Employees and volunteers.

- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

A. <u>COMMERCIAL GENERAL LIABILITY INSURANCE</u>

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of

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$1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. PROFESSIONAL LIABILITY INSURANCE

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

SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

Bid Lines

Exhibit F

1 Monthly Service Fee

Quantity: 1 UOM: Monthly Price: $0.00 Total: $0.00

Supplier Notes: Waived

2 Individual Applicant Reports (Please price for all options).

Quantity: 1 UOM: EA Price: $2.03 Total: $2.03

Supplier Notes: ONLINE Utility Exchange report. Price per applicant/SSN.

3 Skip Tracing (Please price for all options).

Quantity: 1 UOM: EA Price: $0.27 Total: $0.27

Supplier Notes: People Search

Alternate 1

Social Search

Quantity: 1 UOM: EA Price: $1.26 Total: $1.26

Manufacturer: *No response*

Manufacturer #: *No response*

4 Business Applicant Reports (Please price for all options).

Quantity: 1 UOM: EA Price: $20.96 Total: $20.96

Supplier Notes: Experian Intelliscore Report

Alternate 1

ONLINE Business Verification Report

Quantity: 1 UOM: EA Price: $10.00 Total: $10.00

Manufacturer: *No response*

Manufacturer #: *No response*

5 Initial Set Up Cost

Quantity: 1 UOM: EA Price: $0.00 Total: $0.00

6 **Optional Services**

(Line excluded from response total)

7 Mail/Email Letter Notification to Applicant (Please price for all options).

(Line excluded from response total)

Quantity: 1 UOM: EA Price: $1.55 Total: $1.55

Supplier Notes: Automated mailed Adverse Letter service

Response Total: $23.26

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Exhibit G

CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 **Name of vendor who has a business relationship with local governmental entity.**

ONLINE Information Services, 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

Jessica F Mones

Signature of vendor doing business with the governmental entity

02/04/2026

Date

Certificate Of Completion

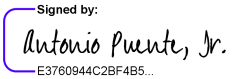
Envelope Id: 0F00A2A7-AA52-40EA-9A89-D3DD6EC42B8A
Status: Sent
Subject: Please DocuSign:City Council Contract 9001 Fraud Protection Credit Risk Assessment and Debt Recovery
Source Envelope:
Document Pages: 34
Signatures: 3
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Christina Dormady
901B Texas Street
Denton, TX 76209
christina.dormady@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
3/31/2026 11:22:30 AM
Holder: Christina Dormady
christina.dormady@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Christina Dormady christina.dormady@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: 3/31/2026 11:38:08 AM Viewed: 3/31/2026 11:38:19 AM Signed: 3/31/2026 11:38:40 AM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/31/2026 11:38:42 AM Viewed: 3/31/2026 1:35:43 PM Signed: 3/31/2026 1:37:26 PM
Leah Bush leah.bush@cityofdenton.com Assistant City Attorney Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Signed by: Leah Bush 3A6254145BDA469... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/31/2026 1:37:29 PM Viewed: 3/31/2026 4:36:32 PM Signed: 3/31/2026 4:42:30 PM
JW Blair jw@onlineis.com President John W. Blair Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/9/2026 7:52:29 AM ID: f3b0759f-395d-45a0-8a9b-b6405efcee60	DocuSigned by: JW Blair 3F1856DF7C2B4D6... Signature Adoption: Pre-selected Style Using IP Address: 75.108.52.71	Sent: 3/31/2026 4:42:34 PM Resent: 4/2/2026 12:57:47 PM Resent: 4/8/2026 9:06:44 AM Resent: 4/8/2026 12:41:52 PM Resent: 4/15/2026 11:39:46 AM Resent: 4/16/2026 10:00:05 AM Viewed: 4/20/2026 10:42:15 AM Signed: 4/20/2026 10:42:27 AM

Signer Events	Signature	Timestamp
Antonio Puente, Jr. antonio.puente@cityofdenton.com DME General Manager Denton Municipal Electric Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/20/2026 10:59:54 AM ID: 00ef2359-8e8e-48e8-afb4-3b7df45088e6	Signed by:  E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/20/2026 10:42:30 AM Viewed: 4/20/2026 10:59:54 AM Signed: 4/20/2026 11:03:01 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 4/20/2026 11:03:05 AM
Cassey Ogden Cassey.Ogden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 3/31/2026 11:38:42 AM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 4/20/2026 11:03:03 AM Viewed: 4/22/2026 9:31:48 AM

Carbon Copy Events	Status	Timestamp
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		
Autumn Perkins Autumn.perkins@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Accepted: 12/1/2025 10:23:26 AM ID: c93c42f5-4a18-4a4a-8eab-bb10ad83ee1a		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/31/2026 11:38:08 AM
Envelope Updated	Security Checked	4/8/2026 12:41:51 PM
Envelope Updated	Security Checked	4/8/2026 12:41:51 PM
Envelope Updated	Security Checked	4/8/2026 12:41:51 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

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

Required hardware and software

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

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

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

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and

- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and

- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: May 18, 2026

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with BRCT LLC, dba Black Rock Construction, for the construction of the Baker Offsite Sewer Project with the geographical limits as follows: Masch Branch Road from Hampton Road to Jim Crystal Road for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 8833 – awarded to BRCT LLC, dba Black Rock Construction, in the not-to-exceed amount of $2,719,616.55).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The Baker Offsite Sewer Project is a component of the 2024 Wastewater Master Plan. The project includes the installation of approximately 9,114 linear feet of sewer line along Masch Branch Road, extending from Hampton Road to Jim Crystal Road. This improvement supports efficient and sustainable wastewater management, protects public health and safety, and strengthens the City's wastewater treatment and conveyance infrastructure to accommodate projected population growth over the next 25 years.

On December 16, 2025, City Council approved a development agreement for cost-sharing between the City of Denton and RM Squared Denton LLC and Baker 35 LLC for the Baker Offsite Sewer Project. To expedite the delivery of the city sewer line, the developer engaged Kimley-Horn & Associates to complete design and engineering services for the project. The Developer has also funded the associated design and engineering costs for the City sewer line in advance of construction.

The Baker Offsite Sewer Project has a total project construction cost of $2,719,616.55. This estimate includes a $2,590,111 total base proposal amount and a 5% contingency of $129,505.55. 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.

Invitation for Bids was sent to 1,275 prospective suppliers, including 75 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download, and advertised in the local newspaper. Ten (10) bids were received, with nine (9) bids meeting specifications. The lowest bid was received by BRCT LLC, dba Black Rock Construction.

NIGP Code Used for Solicitation:	911, 912, 913
Notifications sent for Solicitation sent in IonWave:	1,275
Number of Suppliers that viewed Solicitation in IonWave:	41
HUB-Historically Underutilized Business Invitations sent out:	156
SBE-Small Business Enterprise Invitations sent out:	398
Responses from Solicitation:	10
Responses Meeting Specifications:	9

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On December 16, 2025, City Council approved a development agreement between the City of Denton and RM Squared Denton LLC and Baker 35 LLC (Ordinance 25-2155).

RECOMMENDATION

Award a contract with BRCT LLC, dba Black Rock Construction, for the construction of the Baker Offsite Sewer Project with the geographical limits as follows: Masch Branch Road from Hampton Road to Jim Crystal Road for the Capital Projects Department, in a not-to-exceed amount of $2,719,616.55.

PRINCIPAL PLACE OF BUSINESS

BRCT LLC, dba Black Rock Construction
Mansfield, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval, with a completion date of Q3 2027

FISCAL INFORMATION

These services will be funded from a combination of the accounts listed below.

Other WW Project Funding	640527541.1360.40100	$550,000.00
Masch Sewer Line Replacement	640549545.1360.40100	$2,040,111.00

Requisition #175262 has been entered into the Purchasing software system in the amount of $2,590,111. The budgeted amount for this item is $ 2,719,616.55.

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: Sheldon Gatewood, 940-349-7423.

Legal point of contact: Leah Bush at 940-349-8333.

Exhibit 2
IFB 8833 - Bid Tabulation for Baker Offsite Sewer

	Respondent's Business Name:	**BRCT LLC, dba Black Rock Construction**	Mountain Cascade of Texas, LLC	Quality Excavation, Ltd.	DDM Construction Corporation	3S Contracting, LLC	Acadia Services, LLC	J&L Construction, LLC.	Western Municipal Construction of Texas, LLC.	Canary Construction, Inc
	Principal Place of Business (City and State):	**Mansfield, TX**	Alvarado, TX	Aubrey, TX	Addison, TX	Quilan, TX	Richland Hills, TX	Denton, TX	Justin, TX	Lewisville, TX
Line #	**Description**	**Bid**	**Bid**	**Bid**	**Bid**	**Bid**	**Bid**	**Bid**	**Bid**	**Bid**
1										
2	Total Base Bid Amount	**$2,590,111.00**	$3,494,161.00	$3,586,803.05	$3,634,984.00	$3,956,245.00	$4,142,257.00	$4,900,931.79	$5,348,651.00	$5,620,415.00

5% Contingency:	**$129,505.55**
Total Contract NTE Amount:	**$2,719,616.55**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH BRCT LLC, DBA BLACK ROCK CONSTRUCTION, FOR THE CONSTRUCTION OF THE BAKER OFFSITE SEWER PROJECT WITH THE GEOGRAPHICAL LIMITS AS FOLLOWS: MASCH BRANCH ROAD FROM HAMPTON ROAD TO JIM CRYSTAL ROAD FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 8833 – AWARDED TO BRCT LLC, DBA BLACK ROCK CONSTRUCTION, IN THE NOT-TO-EXCEED AMOUNT OF $2,719,616.55).

WHEREAS, the City has solicited, received, and tabulated competitive bids for the purchase of necessary materials, equipment, supplies, or services in accordance with the procedures of state law and city ordinances; and

WHEREAS, the City Manager, or a designated employee, has reviewed and recommended that the herein described bids are the lowest responsible bids for the materials, equipment, supplies, or services as shown in the "Bid Proposals" submitted therefore; and

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following competitive bids for the materials, equipment, supplies, or services as described in the "Bid Invitations", "Bid Proposals", or plans and specifications on file in the Office of the City's Purchasing Agent filed according to the bid number assigned hereto, are hereby accepted and approved as being the lowest responsible bids:

BID NUMBER	VENDOR	AMOUNT
8833	BRCT LLC, dba Black Rock Construction	$2,719,616.55

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

SECTION 3. Should the City and the winning bidder(s) wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the bids, the City Manager, or their designated representative, is hereby authorized to execute a written contract, which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Bid Proposal and related documents, and to extend that contract as determined to be advantageous to the City of Denton.

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

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

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

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

	Aye	**Nay**	**Abstain**	**Absent**
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Jordan Villareal, District 1:	_____	_____	_____	_____
Nick Stevens, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
KRISTI FOGLE, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

Docusign Envelope ID: 9B28E4F2-8369-4128-8DFF-D3069E7CC229

Docusign City Council Transmittal Coversheet

IFB	8833
File Name	Baker Offsite Sewer
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: 9B28E4F2-8369-4128-8DFF-D3069E7CC229

SECTION 00 52 43

AGREEMENT – UNIT PRICE BID

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 BRCT LLC, dba Black Rock Construction , 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:

Baker Offsite Sewer

IFB 8833

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 Two Million Five Hundred Ninety Thousand One Hundred Eleven Dollars and Zero Cents ($2,590,111.00). At the sole option of the City, five (5) percent contingency in the amount of One Hundred Twenty-Nine Thousand Five Hundred Five Dollars and Fifty-Five Cents ($129,505.55) may be used for a total not-to-exceed amount of Two Million Seven Hundred Nineteen Thousand Six Hundred Sixteen Dollars and Fifty-Five Cents ($2,719,616.55).

Article 4. CONTRACT TIME

4.1 Time is of the essence.

All time limits for Milestones, if any, and Final Acceptance as stated in the Contract Documents are of the essence to this Contract.

4.2 Final Acceptance.

The Work will be completed for Final Acceptance within *300* Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

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4.3 Liquidated Damages:

A. Contractor recognizes that *time is of the essence* to achieve Milestones and Final Acceptance of the Work, and City will suffer financial and other losses if the Work is not completed within the times specified in the Contract Documents. The Contractor also recognizes the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work related to the Milestones or Final Acceptance is not completed on time. Accordingly, instead of requiring any such proof, Contractor agrees that liquidated damages for delay (but not as a penalty):

1. *Final Acceptance*: If Contractor neglects, refuse, or fails to complete the Work within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2, for completion and readiness for Final Payment, Contractor shall pay City *Six Hundred Twenty-Five* Dollars ($*625.00*) for each day that expires after such time, until the date determined by City as stated in the City-issued Letter of Final Acceptance.

Article 5. CONTRACT DOCUMENTS

5.1 CONTENTS:

A. The Contract comprises the entire agreement between City and Contractor concerning the Work and consists of this Agreement and the items set forth below. The Contract Documents consist of all items below other than this Agreement.

1. Attachments to this Agreement:
   a. Proposal Form
      1) Bid Form
      2) Unit Price Proposal Form
      3) Vendor Compliance to State Law Non-Resident Offeror
      4) State and Federal documents (*project specific)*
   b. Current Prevailing Wage Rate Table
   c. Worker's Compensation Affidavit
   d. General Conditions.
   e. Supplementary Conditions.
2. The following located in File *8833* at: *https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1*
   a. Specifications described in the Table of Contents of the Project's Contract Documents.
   b. Drawings.
   c. Addenda.
   d. Documentation submitted by Contractor prior to Notice of Award.
3. The following which shall be issued after the Effective Date and delivered to the City within ten (10) days of the Effective Date and before beginning Work:
   a. Payment Bond
   b. Performance Bond
   c. Maintenance Bond
   d. Power of Attorney for the Bonds
   e. Form 1295 – Certificate of Interested Parties (email to purchasing)
   f. Insurance Certificate

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4. Specifications specifically made a part of the Contract Documents by attachment or, if not attached, as incorporated by reference and described in the Table of Contents of the Project's Contract Documents.
5. The following which may be delivered or issued after the Effective Date of the Agreement and, if issued, become an incorporated part of the Contract Documents:
   a. Notice to Proceed.
   b. Field Orders.
   c. Change Orders.
   d. Letter of Final Acceptance.

Article 6. INDEMNIFICATION

6.1 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH 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. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.

6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH 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. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.

Article 7. MISCELLANEOUS

Docusign Envelope ID: 9B28E4F2-8369-4128-8DFF-D3069E7CC229

7.1 Capitalized Terms.

Unless otherwise provided herein, capitalized terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

7.2 Assignment of Contract.

This Agreement, including all of the Contract Documents may not be assigned by the Contractor without the advance express written consent of the City.

7.3 Successors and Assigns.

City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, in respect to all covenants, agreements and obligations contained in the Contract Documents.

7.4 Severability.

Any provision or part of the Contract Documents held to be unconstitutional, void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor.

7.5 Venue and Waiver of Sovereign Immunity.

This Agreement, including all of the Contract Documents is performable in the State of Texas. Venue shall be in the state district courts of Denton County, Texas. The City's sovereign immunity is waived only to the extent set forth and in accordance with the provisions of Subchapter I, Chapter 271 of the Texas Local Government Code or as otherwise specifically waived by law. The City does not waive its sovereign immunity to suit in federal court.

7.6 Authority to Sign.

Contractor hereby certifies that the person signing the Agreement on its behalf is the duly authorized signatory of the Contractor.

7.7 Prohibition on Contracts with Companies Boycotting Israel.

Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. By signing this contract, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

7.8 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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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.

7.9 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.

7.10 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.

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

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

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7.12 Immigration Nationality Act.

Contractor 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, Contractor shall provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Contractor 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 Contractor employee who is not legally eligible to perform such services. **CONTRACTOR SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CONTRACTOR, CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right to immediately terminate this Agreement for violations of this provision by Contractor.

7.13 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.

7.14 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

Docusign Envelope ID: 9B28E4F2-8369-4128-8DFF-D3069E7CC229

IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective as of the date subscribed by the City's City Manager or his designee ("Effective Date").

CITY OF DENTON

BY: _____

TITLE: _____

DATE: _____

CONTRACTOR
BRCT LLC, DBA BLACK ROCK CONSTRUCTION

BY: Signed by: Donny Gamblin B26D9C2247E7495... _____
AUTHORIZED AGENT

Donny Gamblin
NAME

operations manager
TITLE

5127386700
PHONE NUMBER

donny@blackrockconstructiontx.com
EMAIL ADDRESS

2026-1451531
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

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

Signed by: Seth Garcia A13701E6BC954FC...
SIGNATURE

Seth Garcia
PRINTED NAME

Director of Capital Projects
TITLE

Capital Projects
DEPARTMENT

ATTEST:
INGRID REX, CITY SECRETARY

_____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

Signed by: Leah Bush 3A6254145BDA469...
_____

Docusign Envelope ID: 9B28E4F2-8369-4128-8DFF-D3069E7CC229

SECTION 00 41 00
BID FORM

TO: City of Denton
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: *IFB 8833 – Baker Offsite Sewer*

1 Enter Into Agreement

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with City in the form included in the Bidding Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2 BIDDER Acknowledgements and Certification

2.1 In submitting this Bid, Bidder accepts all of the terms and conditions of the INVITATION TO BIDDERS and INSTRUCTIONS TO BIDDERS, including without limitation those dealing with the disposition of Bid Bond.

2.2 Bidder is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.

2.3 Bidder certifies that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.

2.4 Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.

2.5 Bidder has not solicited or induced any individual or entity to refrain from bidding.

2.6 Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:

a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.

b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of City (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.

c. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish Bid prices at artificial, non-competitive levels.

d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

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2.7 The Bidder acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

3 Time of Completion

3.1 The Work will be complete for Final Acceptance within *300* Working Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.2 Bidder accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable) and Final Acceptance within the times specified in the Agreement.

4 Attached to this Bid

The following documents are attached to and made a part of this Bid:

a. Section 00 35 13 – Conflict of Interest Affidavit
b. Section 00 41 00 – This Bid Form
c. Section 00 42 43 – Unit Price Proposal Form – Electronic Copy (either included in the Bid, or submitted via Ion Wave)
d. Section 00 42 13 – Required Bid Bond, issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions
e. Section 00 43 36 – Proposed Subcontractors Form
f. Section 00 43 37 – Vendor Compliance to State Law Non-Resident Bidder
g. Section 00 45 13 – Bidders Minimum Qualification Statement
h. Section 00 45 26 – Contractor Compliance with Workers Compensation Law
i. Section 00 45 43 – Corporate Resolution of Authorized Signatories
j. Any additional documents that may be required by Section 00 21 13 – Instructions to Bidders

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5 Total Bid Amount

5.1 Bidder will complete the Work in accordance with the Contract Documents for the following bid amount. In the space provided below, please enter the total bid amount for this project. Only this figure will be read publicly by the City at the bid opening.

5.2 It is understood and agreed by the Bidder in signing this proposal that the total bid amount entered below is subject to verification and/or modification by multiplying the unit bid prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

5.3 Evaluation of Alternate Bid Items

Total Bid Amount: $2,590,111.00

6 Bid Submittal

This Bid is submitted on APRIL 1ST, 2026 by the entity named below.

Respectfully submitted,

By: _____
(Signature)

DONNY GAMBLIN
(Printed Name)

Title: OPERATIONS MANAGER

Company: BLACKROCK CONSTRUCTION

Address: 2400 HWY 287 N SUITE 100
MANSFIELD,TEXAS 76063

State of Incorporation: TEXAS

Email: donny@blackrockconstructiontx.com

Phone: 512-738-6700

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1: 3/10/26	DG
Addenda No. 2: 3/13/26	DG
Addenda No. 3: 3/20/26	DG
Addenda No. 4:	
Addenda No. 5:	

END OF SECTION

Docusign Envelope ID: 9B28E4F2-8369-4128-8DFF-D3069E7CC229

SECTION 00 42 43 - UNIT PRICE BID FORM

To: City of Denton - Capital Projects
901-B Texas Street
Denton, TX 76209
Purchasing Dept.

From: BLACKROCK CONSTRUCTION
2400 HWY 287 N STE 100
MANSFIELD,TX 76063
DONNY GAMBLIN
512-738-6700
donny@blackrockconstructiontx.com

PROJ.: **Baker Offsite Sewer**

IFB: **8833**
ENG
PMO:

BIDDERS APPLICATION - UNIT PRICE BID ADDENDUM NO. 3

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
1	00 61 13	PERFORMACE BOND	EA	1	$ 19,500.00	$ 19,500.00
2	00 61 14	PAYMENT BOND	EA	1	$ 19,500.00	$ 19,500.00
3	00 61 19	MAINTENANCE BOND	EA	1	$ 2,500.00	$ 2,500.00
4	01 11 00	SURVEY, PLATTING, ENGINEERING, PERMITTING & CPS	EA	1	$ 36,850.00	$ 36,850.00
6	01 45 23	TESTING (PRESSURE & T.V.)	LF	9,105	$ 2.80	$ 25,494.00
7	01 45 23	TESTING (GEOTECH)	LF	9,105	$ 4.00	$ 36,420.00
8	01 45 23	INSPECTION FEE	EA	1	$ 1.00	$ 1.00
10	01 57 13	SWPPP, INSPECTION, MAINTENANCE, & OTHER	LS	1	$ 3,125.00	$ 3,125.00
11	01 74 23	CLEANING AND GRUBBING	AC	9.4	$ 4,185.00	$ 39,339.00
12	02 41 13	FENCE REMOVAL AND REPLACEMENT IN KIND	LS	1	$ 70,800.00	$ 70,800.00
13	02 41 13	OPEN CUT AND REPLACE EXISTING GRAVEL DRIVE	SY	3,373	$ 19.00	$ 64,087.00
14	02 41 15	DEMOLISH EXISTING LIFT STATION	LS	2	$ 12,500.00	$ 25,000.00
15	02 41 15	REMOVAL OF EXISTING SANITARY SEWER FORCE MAIN (SAME TRENCH)	LF	1,019	$ 15.00	$ 15,285.00
17	31 23 16	TRENCH SAFETY	LF	9,105	$ 5.00	$ 45,525.00
18	31 25 14	EROSION CONTROL (SILT FENCE)	LF	11,700	$ 2.50	$ 29,250.00
19	31 25 14	CONSTRUCTION ENTRANCE	LS	1	$ 4,400.00	$ 4,400.00
20	31 37 00	12'' STONE RIPRAP, GROUTED (ASSUMES 1.5' OF DEPTH)	CY	180	$ 200.00	$ 36,000.00
21	33 05 07	30'' STEEL CASING BY OTHER THAN OPEN CUT (1/2'' THICK)	LF	263	$ 265.00	$ 69,695.00
22	33 05 07	36'' STEEL CASING BY OTHER THAN OPEN CUT (5/8'' THICK)	LF	106	$ 295.00	$ 31,270.00
23	33 05 10	SEWER LINE BORE	LF	369	$ 580.00	$ 214,020.00
24	33 05 61	4' DIAMETER CONCRETE MANHOLE (0' - 6') AND LINER	EA	2	$ 12,450.00	$ 24,900.00
25	33 05 61	5' DIAMETER CONCRETE MANHOLE (0' - 6') AND LINER	EA	17	$ 16,530.00	$ 281,010.00
26	33 05 61	5' DIAMETER CONCRETE MANHOLE AND LINER EXTRA DEPTH	VF	117	$ 615.00	$ 71,955.00
27	33 05 62	5' DIAMETER MONOLITHICALLY PRECAST FIBERGLASS MANHOLE (0' - 6')	EA	2	$ 13,500.00	$ 27,000.00
28	33 05 62	5' DIAMETER MONOLITHICALLY PRECAST FIBERGLASS MANHOLE EXTRA DEPTH	VF	17	$ 1,075.00	$ 18,275.00
29	33 05 62	5' DIAMETER MONOLITHICALLY PRECAST FIBERGLASS DROP MANHOLE PLACED ON EXISTING LINE (0' - 6')	EA	1	$ 40,460.00	$ 40,460.00
30	33 05 62	5' DIAMETER MONOLITHICALLY PRECAST FIBERGLASS DROP MANHOLE PLACED ON EXISTING LINE (0' - 6')	VF	19	$ 1,075.00	$ 20,425.00
31	33 14 13	8'' ATSM F679 PS-115 PVC SANTITARY SEWER PIPE	LF	420	$ 94.00	$ 39,480.00
32	33 14 13	18'' ATSM F679 PS-115 PVC SANTITARY SEWER PIPE	LF	4,274	$ 125.00	$ 534,250.00
33	33 14 13	21'' ATSM F679 PS-115 PVC SANTITARY SEWER PIPE	LF	4,831	$ 140.00	$ 676,340.00
34	33 14 13	18'' ASTM F679 PS-115 PVC SANITARY SEWER CARRIER PIPE	LF	263	$ 85.00	$ 22,355.00
35	33 14 13	21'' ASTM F679 PS-115 PVC SANITARY SEWER CARRIER PIPE	LF	106	$ 100.00	$ 10,600.00
36	33 32 11	BYPASS PUMPING ALLOWANCE (EX. SERVICE & MAINS)	LS	1	$ 35,000.00	$ 35,000.00

TOTAL PROJECT BID AMOUNT: $ 2,590,111.00

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SECTION 00 43 37

VENDOR COMPLIANCE TO STATE LAW NON- RESIDENT BIDDER

Texas Government Code Chapter 2252 was adopted for the award of contracts to nonresident bidders. This law provides that, in order to be awarded a contract as low bidder, nonresident bidders (out-of-state contractors whose corporate offices or principal place of business are outside the State of Texas) bid projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a nonresident bidder 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 bidders in order for your bid to meet specifications. The failure of nonresident bidders to do so will automatically disqualify that bidder. Resident bidders must check the box in Section B.

A. Nonresident bidders in the State of _____, our principal place of business, are required to be _____ percent lower than resident bidders by State Law. A copy of the statute is attached.

   Nonresident bidders in the State of _____, our principal place of business, are not required to underbid resident bidders.

B. The principal place of business of our company or our parent company or majority owner is in the State of Texas. ☑

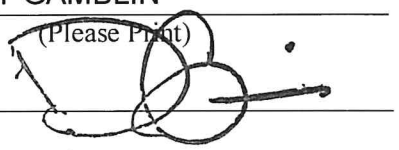
BIDDER:

BLACKROCK CONSTRUCTION
Company

2400 HWY 287 N SUITE 100
Address

MANSFIELD,TEXAS 76063
City/State/Zip

By: DONNY GAMBLIN
(Please Print)

Signature: 

Title: OPERATIONS MANAGER
(Please Print)

Date: 4/1/2026

END OF SECTION

Docusign Envelope ID: 9B28E4F2-8369-4128-8DFF-D3069E7CC229

"General Decision Number: TX20260018 01/02/2026

Superseded General Decision Number: TX20250018

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)

Modification Number	Publication Date
0	01/02/2026

PLUM0100-002 11/01/2024

	Rates	Fringes
Plumbers and Pipefitters	$ 39.76	14.04

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.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic

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violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio.

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The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION
"

Docusign Envelope ID: 9B28E4F2-8369-4128-8DFF-D3069E7CC229

"General Decision Number: TX20260294 01/02/2026

Superseded General Decision Number: TX20250294

State: Texas

Construction Type: Highway

Counties: Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/02/2026

SATX2025-007 11/15/2023

	Rates	Fringes
Asphalt Distributor Operator	$ 24.40	0.00
Asphalt Paving Machine Operator	$ 22.52	0.00
Asphalt Raker	$ 19.87	0.00
Broom or Sweeper Operator	$ 18.01	0.00
Concrete Finisher, Paving and Structures	$ 22.48	0.00
Concrete Pavement Finishing Machine Operator	$ 24.07	0.00
Concrete Saw Operator	$ 20.34	0.00
Crane Operator, Hydraulic 80 tons or less	$ 31.32	0.00
Crane Operator, Lattice Boom 80 Tons or Less	$ 29.90	0.00
Crane Operator, Lattice Boom Over 80 Tons	$ 33.55	0.00
Crawler Tractor Operator	$ 24.06	0.00
Electrician	$ 36.10	0.00
Excavator Operator, 50,000 pounds or less	$ 25.08	0.00
Excavator Operator, Over 50,000 pounds	$ 25.34	0.00
Flagger	$ 14.80	0.00
Form Builder/Setter, Structures	$ 22.50	0.00
Form Setter, Paving & Curb	$ 20.89	0.00

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Foundation Drill Operator, Crawler Mounted	$ 29.25	0.00
Foundation Drill Operator, Truck Mounted	$ 29.86	0.00
Front End Loader Operator, 3 CY or Less	$ 20.93	0.00
Front End Loader Operator, Over 3 CY	$ 22.56	0.00
Laborer, Common	$ 18.01	0.00
Laborer, Utility	$ 19.32	0.00
Loader/Backhoe Operator	$ 23.22	0.00
Mechanic	$ 27.44	0.00
Milling Machine Operator	$ 20.94	0.00
Motor Grader Operator, Fine Grade	$ 27.09	0.00
Motor Grader Operator, Rough	$ 24.90	0.00
Off Road Hauler	$ 23.70	0.00
Pavement Marking Machine Operator	$ 22.35	0.00
Pipelayer	$ 22.46	0.00
Reclaimer/Pulverizer Operator	$ 22.17	0.00
Reinforcing Steel Worker	$ 23.50	0.00
Roller Operator, Asphalt	$ 20.35	0.00
Roller Operator, Other	$ 18.60	0.00
Scraper Operator	$ 21.54	0.00
Servicer	$ 24.86	0.00
Sign Erector	$ 18.01	0.00
Small Slipform Machine Operator	$ 25.09	0.00
Spreader Box Operator	$ 23.59	0.00
Telecommunication Technician	$ 23.14	0.00
Truck Driver Lowboy Float	$ 25.57	0.00
Truck Driver, Single Axle	$ 20.60	0.00
Truck Driver, Single or Tandem Axle Dump Truck	$ 22.64	0.00
Truck Driver, Tandem Axle Tractor with Semi Trailer	$ 23.22	0.00

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Truck Driver, Transit-Mix.....$ 21.97 0.00

Welder.....$ 23.72 0.00

Work Zone Barricade Servicer.....$ 18.01 0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

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Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the

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state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

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Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION
"

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SECTION 00 45 26
CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW

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 *Baker Offsite Sewer*. 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:

BLACKROCK CONSTRUCTION
Company

By: DONNY GAMBLIN
(Please Print)

2400 HWY 287 N SUITE 100
Address

Signature: _____

MANSFIELD,TEXAS 76063
City/State/Zip

Title: OPERATIONS MANAGER
(Please Print)

THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared DONNY GAMBLIN, 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 BLACKROCK CONSTRUCTION for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1ST day of APRIL, 2026.

CARLOS JIMENEZ
Notary ID #134825643
My Commission Expires
March 26, 2028

_____
Notary Public in and for the State of Texas

END OF SECTION

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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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.

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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.

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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

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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 toto support scheduled performance of related construction activities.

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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

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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.

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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.

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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.

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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 CityCity, 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.

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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.

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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

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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

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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.

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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.

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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

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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.

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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.

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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.

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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

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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 underwrittenmay 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.

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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

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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

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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

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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.

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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

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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.

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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 minimum value as oulined in Section 00 43 38 - Proposed Subcontractors Form, 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.

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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.

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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.

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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

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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;

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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.

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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

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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;

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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.**

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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

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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

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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.

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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.

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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 9.07. 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.

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ARTICLE 11 – CHANGES ININ THE WORK; CLAIMS; EXTRA WORK

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended toto 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

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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.

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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. TheThe 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:

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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.

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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.

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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:

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1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, 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.

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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.

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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, thisany 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.

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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;

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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

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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.

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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 CityCity, 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.

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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 hashas 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

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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 1313.08, 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;

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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.

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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

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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

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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

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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

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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.

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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 a 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

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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.

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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

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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.

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SECTION 00 73 00
SUPPLEMENTARY CONDITIONS
TO
GENERAL CONDITIONS

Supplementary Conditions

These Supplementary Conditions modify and supplement Section 00 72 00 - General Conditions, and other provisions of the Contract Documents as indicated below. All provisions of the General Conditions that are modified or supplemented remain in full force and effect as so modified or supplemented. All provisions of the General Conditions which are not so modified or supplemented remain in full force and effect.

Defined Terms

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meaning assigned to them in the General Conditions, unless specifically noted herein.

Modifications and Supplements

The following are instructions that modify or supplement specific paragraphs in the General Conditions and other Contract Documents.

SC-5.01A

Easement limits shown on the Drawing are approximate and were provided to establish a basis for bidding. Upon receiving the final easements descriptions, Contractor shall compare them to the lines shown on the Contract Drawings.

SC-5.01A.1., "Availability of Lands"

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of *February 18, 2026*:

Outstanding Right-Of-Way, and/or Easements to Be Acquired

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
None		

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

If Contractor considers the final easements provided to differ materially from the representations on the Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work, notify City in writing associated with the differing easement line locations.

SC-5.01A.2, "Availability of Lands"

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Utilities or obstructions to be removed, adjusted, and/or relocated

The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of *February 18, 2026*

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
None		

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

SC-5.03A., "Subsurface and Physical Conditions"

The following are reports of explorations and tests of subsurface conditions at the site of the Work:

The following are drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of the Work:
None

SC-5.05 A., "Underground Facilities

The following are additional resources for identification of Underground Facilities which are at or contiguous to the site of the Work, and which are not necessarily shown in the Drawings:
None

SC-5.06A., "Hazardous Environmental Conditions at Site"

The following are reports and drawings of existing hazardous environmental conditions known to the City:
None

SC-6.02, "Performance, Payment, and Maintenance Bonds"

The "Contract Price" for Performance, Payment, and Maintenance Bonds will be the same as indicated in Article 3 as listed in the Agreement.

SC-6.03A., "Certificates of Insurance"

The entities listed below are "additional insureds as their interest may appear" including their respective officers, directors, agents and employees.

(1) City
(2) Consultant: *None*
(3) Other: *None*

SC-6.04A., "Contractor's Insurance"

The limits of liability for the insurance required by Paragraph GC-6.04 shall provide the following coverages for not less than the following amounts or greater where required by laws and regulations:

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6.04A. Workers' Compensation, under Paragraph GC-6.04A.

Statutory limits
Employer's liability
$500,000 each accident/occurrence
$500,000 Disease - each employee
$500,000 Disease - policy limit

SC-6.04B., "Contractor's Insurance"

6.04B. Commercial General Liability, under Paragraph GC-6.04B. Contractor's Liability Insurance under Paragraph GC-6.04B., which shall be on a per project basis covering the Contractor with minimum limits of:

$1,000,000 each occurrence
$2,000,000 aggregate limit

The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site.

The Commercial General Liability Insurance policies shall provide "X", "C", and "U" coverage's. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

SC 6.04C., "Contractor's Insurance"

6.04C. Automobile Liability, under Paragraph GC-6.04C. Contractor's Liability Insurance under Paragraph GC-6.04C., which shall be in an amount not less than the following amounts:

(1) **Automobile Liability** - a commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

$1,000,000 each accident on a combined single limit basis.

SC-6.04D., "Contractor's Insurance"

The Contractor's construction activities will require its employees, agents, subcontractors, equipment, and material deliveries to cross railroad properties and tracks, or perform work within 25 feet of the center line of tracks *None.*

The Contractor shall conduct its operations on railroad properties in such a manner as not to interfere with, hinder, or obstruct the railroad company in any manner whatsoever in the use or operation of its/their trains or other property. Such operations on railroad properties may require that Contractor to execute a "Right of Entry Agreement" with the particular railroad company or companies involved, and to this end the Contractor should satisfy itself as to the requirements of each railroad company and be prepared to execute the right-of-entry (if any) required by a railroad company. The requirements specified herein likewise relate to the Contractor's use of private and/or construction access roads crossing said railroad company's properties.

The Contractual Liability coverage required by Paragraph 5.04D of the General Conditions shall provide coverage for not less than the following amounts, issued by companies satisfactory to the City and to the Railroad Company for a term that continues for so long as the Contractor's operations and work cross, occupy, or touch railroad property:

(1) General Aggregate: *$Confirm Limits with Railroad*

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(2) Each Occurrence: *$Confirm Limits with Railroad*

____ *Required for this Contract* __X__ *Not required for this Contract*

With respect to the above outlined insurance requirements, the following shall govern:

1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.

2. Where more than one railroad company is operating on the same right-of-way or where several railroad companies are involved and operated on their own separate rights-of-way, the Contractor may be required to provide separate insurance policies in the name of each railroad company.

3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a railroad company's right-of-way at a location entirely separate from the grade separation or at-grade crossing, insurance coverage for this work must be included in the policy covering the grade separation.

4. If no grade separation is involved but other work is proposed on a railroad company's right-of-way, all such other work may be covered in a single policy for that railroad, even though the work may be at two or more separate locations.

No work or activities on a railroad company's property to be performed by the Contractor shall be commenced until the Contractor has furnished the City with an original policy or policies of the insurance for each railroad company named, as required above. All such insurance must be approved by the City and each affected Railroad Company prior to the Contractor's beginning work.

The insurance specified above must be carried until all Work to be performed on the railroad right-of-way has been completed and the grade crossing, if any, is no longer used by the Contractor. In addition, insurance must be carried during all maintenance and/or repair work performed in the railroad right-of-way. Such insurance must name the railroad company as the insured, together with any tenant or lessee of the railroad company operating over tracks involved in the Project.

SC 6.04F., "Contractor's Insurance"

Add Paragraph 6.04F. Environmental Impairment/Pollution

Environmental Impairment/Pollution Insurance to include coverage for the handling, receiving, dispensing, removal, storage, testing, transportation, disposal, discharge, dispersal release or escape of any hazardous material into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including ground water, with a minimum combined bodily injury (including death) and property damage limit of *$2,000,000* per occurrence to be obtained upon substantial completion and acceptance of facility by the City.

SC-7.08C., "Concerning Subcontractors and Suppliers"

The following subcontractors shall be required to be utilized by the Contractor for specific portions of the Work as indicated below:

Required Subcontractors

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
None	

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SUBCONTRACTOR COMPANY NAME DESCRIPTION OF WORK TO BE PERFORMED

SC-7.11., "Permits and Utilities"

SC-7.11A., "Contractor obtained permits and licenses"
The following are known permits and/or licenses required by the Contract to be acquired by the Contractor:

None

SC-7.11B. "City obtained permits and licenses"
The following are known permits and/or licenses required by the Contract to be acquired by the City:

1. **Texas Department of Transportation Permit Approval**

SC-7.11C. "Outstanding permits and licenses"

The following is a list of known outstanding permits and/or licenses to be acquired, if any as of *February 18, 2026*:

Outstanding Permits and/or Licenses to Be Acquired

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
None		

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
None		

SC-9.01, "Communications to Contractor"

None

SC-10.01B., "City's Project Manager"

The City's Project Manager for this Contract is *Sheldon Gatewood*, or his/her successor pursuant to **written notification from the City Engineer.**

SC-13.02B., "Tests and Inspections"

None

SC-14.01G, "Reduction in Payment"

Add Paragraph 14.01G.3:

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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.*

SC-16.01C.1, "Methods and Procedures"

None

SC – 17.01, "Documents"

Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

END OF SECTION

Revision Log		
DATE	NAME	SUMMARY OF CHANGE

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CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.
By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

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

1 **Name of vendor who has a business relationship with local governmental entity.**

BRCT LLC, dba Black Rock Construction

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 Signed by: Donny Gamblin B26D9C2217E7496...

Signature of vendor doing business with the governmental entity

4/28/2026

Date

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CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

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

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

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

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

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

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

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

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

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

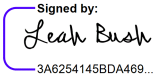
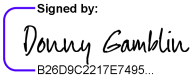
Certificate Of Completion

Envelope Id: 9B28E4F2-8369-4128-8DFF-D3069E7CC229
Status: Sent
Subject: Please DocuSign: City Council Contract 8833 Baker Offsite Sewer
Source Envelope:
Document Pages: 103
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Cori Power
901B Texas Street
Denton, TX 76209
cori.power@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
4/22/2026 10:07:18 AM
Holder: Cori Power
cori.power@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 4/22/2026 10:32:47 AM Viewed: 4/22/2026 10:32:58 AM Signed: 4/22/2026 10:33:09 AM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial  Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/22/2026 10:33:13 AM Viewed: 4/22/2026 2:21:21 PM Signed: 4/22/2026 2:21:55 PM
Leah Bush leah.bush@cityofdenton.com Assistant City Attorney Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Signed by:  3A6254145BDA469... Signature Adoption: Pre-selected Style Using IP Address: 63.196.246.33	Sent: 4/22/2026 2:22:01 PM Resent: 4/28/2026 8:14:42 AM Viewed: 4/28/2026 8:20:16 AM Signed: 4/28/2026 8:30:51 AM
Donny Gamblin donny@blackrockconstructiontx.com operations manager Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/28/2026 8:52:45 AM ID: cf1fe406-892b-45af-aa54-b9d2bbedcd31	Signed by:  B26D9C2217E7495... Signature Adoption: Pre-selected Style Using IP Address: 2600:1700:353:3c10:748f:2f04:4cbd:9b16	Sent: 4/28/2026 8:30:55 AM Viewed: 4/28/2026 8:52:45 AM Signed: 4/28/2026 8:55:21 AM

Signer Events	Signature	Timestamp
Seth Garcia Seth.Garcia@cityofdenton.com Director of Capital Projects Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/28/2026 9:10:13 AM ID: 03c7f62c-a8e2-4838-b8f0-061762d6df9f	Signed by: Seth Garcia A13701F6BC954FC... Signature Adoption: Pre-selected Style Using IP Address: 47.190.47.120 Signed using mobile	Sent: 4/28/2026 8:55:25 AM Viewed: 4/28/2026 9:10:13 AM Signed: 4/28/2026 9:10:55 AM
Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.104	Sent: 4/28/2026 9:11:00 AM Viewed: 4/28/2026 9:30:10 AM Signed: 4/28/2026 9:30:56 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 4/28/2026 9:31:04 AM
Cassey Ogden Cassey.Ogden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 4/22/2026 10:33:14 AM

Carbon Copy Events	Status	Timestamp
Electronic Record and Signature Disclosure: Not Offered via Docusign		
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 4/28/2026 9:31:02 AM Viewed: 4/28/2026 9:34:10 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Sheldon Gatewood sheldon.gatewood@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/28/2026 8:45:29 AM ID: 3d619180-be8b-4762-a474-3cedc1a1537f		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/22/2026 10:32:47 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

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

Required hardware and software

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

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

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

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and

- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and

- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
April 27, 2026

After determining that a quorum was present of the Public Utilities Board of the City of Denton, convened in a Regular Meeting on Monday, April 27, 2026, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Vice Chair Lee Riback, Robert Rayner, Susan Parker, Billy Cheek, and Thomas Plock

Also present: General Manager Antonio Puente, Jr. and First Assistant City Attorney Marcella Lunn

Absent: Chair Devin Taylor, and Aaron Newquist

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

There were no presentations from the public.

2. CONSENT AGENDA

The Consent Agenda consisted of Items 2 A-B.

Board Member Parker moved to recommend adoption of agenda items 2 A-C. Motion seconded by Board Member Riback; motion carried.
YES (5): Vice Chair Lee Riback, Robert Rayner, Susan Parker, Billy Cheek, and Thomas Plock
NO (0):

A. PUB26-066 Consider recommending 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 Burns & McDonnell Engineering Company, Inc., amending the contract approved by City Council on November 19, 2024, in the not-to-exceed amount of $434,596.00; amended by Amendment 1 approved by City Council; said second amendment to provide additional project support services and Maximo support specialists for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-015 - providing for an additional second amendment expenditure amount not-to-exceed $601,448.00, with the total contract amount not-to-exceed $1,181,092.00).

B. PUB26-067 Consider recommending 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 Anixter Inc., amending the contract approved by City Council on March 21, 2023, in the not-to-exceed amount of $1,125,000.00; said first amendment to continue to supply concrete streetlight and aggregate poles for the Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8191 -

providing for an additional first amendment expenditure amount not-to-exceed $281,250.00, with the total contract amount not-to-exceed $1,406,250.00).

3. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB26-070 Consider approval of the April 13, 2026 minutes.

Board Member Rayner moved to recommend adoption of agenda items 3 A. Motion seconded by Board Member Parker; motion carried.
YES (5): Vice Chair Lee Riback, Robert Rayner, Susan Parker, Billy Cheek, and Thomas Plock
NO (0):

B. PUB26-030 Consider recommending adoption of an ordinance the City of Denton, Texas directing the publication of Notice of Intention to issue $82,000,000 in principal amount of Certificates of Obligation of the City of Denton for General Government and Solid Waste projects; and providing an effective date.

Matt Hamilton delivered a presentation that addressed both PUB26-030 and PUB26-031, and he answered questions from the board. Tony Puente also helped in answering questions from the board.

Board Member Parker moved to recommend adoption of agenda items 3 B. Motion seconded by Board Member Plock; motion carried.
YES (5): Vice Chair Lee Riback, Robert Rayner, Susan Parker, Billy Cheek, and Thomas Plock
NO (0):

C. PUB26-031 Consider recommending adoption of an ordinance of the City of Denton, Texas directing the publication of Notice of Intention to issue $243,000,000 in principal amount of Certificates of Obligation of the City of Denton for Waterworks and Wastewater System and Electric System projects; and providing an effective date.

Board Member Cheek moved to recommend adoption of agenda items 3 C. Motion seconded by Board Member Parker; motion carried.
YES (5): Vice Chair Lee Riback, Robert Rayner, Susan Parker, Billy Cheek, and Thomas Plock
NO (0):

D. PUB26-069 Management Reports

1. PUB26-041 Inquiry
2. Future Agenda Items

   May 4, 2026 PUB meeting - cancelled
3. New Business Action Item

4. CONCLUDING ITEMS

WORK SESSION

A. PUB26-071 Receive a report and hold a discussion regarding the quarterly project update from the Water Utilities Planning and Engineering division.

Kyle Pedigo and Katie Koch gave presentations and answered questions from the board.

Billy Cheek was presented with a plaque in gratitude for his years of service as he resigns from the board.

With no further business, the meeting was adjourned at 9:51 AM.

DEVIN TAYLOR
CHAIR
CITY OF DENTON, TEXAS

MONICA SALCEDO
ADMINISTRATIVE ASSISTANT III
CITY OF DENTON, TEXAS

Minutes approved on: 5/18/26

City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: May 18, 2026

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Alderink Enterprises, Inc. dba CI Pavement, Diamond M Construction & Land Services LLC, and Solid Foundations Concrete LLC, for construction services for parking lot repair, reconstruction, and maintenance at City facilities for the Facilities Management Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8983 – awarded to Alderink Enterprises, Inc. dba CI Pavement, Diamond M Construction & Land Services LLC, and Solid Foundations Concrete LLC, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $17,808,000.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The City of Denton's Facilities Management Department is proposing a contract for parking lot repair and replacement services across various City facilities. This effort follows a citywide parking lot assessment completed in August 2023 by the Streets Department, which identified maintenance and reconstruction needs to preserve public safety, prolong asset life, and maintain compliance with accessibility standards. These improvements are consistent with the City Council's adoption of the updated ADA Transition Plan on January 11, 2022. The ADA Transition Plan outlined a 30-plus-year strategy to eliminate accessibility barriers and enhance compliance across municipal infrastructure. At the time of adoption, Council direction was to accelerate the Transition Plan to a 15-year horizon, defining the need to coordinate and sequence associated capital improvements to support the condensed timelines.

The pre-qualified list will allow the City to efficiently procure contractors for projects involving pavement striping and marking, asphalt resurfacing, subgrade stabilization, drainage improvements to mitigate ponding or erosion, and complete reconstruction of existing parking lots. Additional services will include the installation of new signage, ADA-compliant markings, and accessibility upgrades where required. Each contractor will be provided with the opportunity to submit a cost proposal on projects put forth by Facilities. The contractor offering the lowest bid that meets the project's schedule requirements will be awarded the work. These contracts do not guarantee a minimum amount of work. This process will be repeated for each project throughout the duration of the contract.

The proposed contract value is derived from the current FY 2025-2026 City Council approved CIP Budget and five-year forecast, which includes parking lot repair and maintenance, such as reconstruction, ADA compliance, and other concrete or related flatwork. The budgeted amount spans across Facilities Management, Parks and Recreation, Streets, Solid Waste, Water and Wastewater. Projections of future deterioration based on current conditions, anticipated usage patterns, and any planned expansions were considered. The detailed assessment also provided a cost analysis, supporting the requested contract value and ensuring its alignment with projected needs.

Category	FY 25/26	FY 26/27	FY 27/28	FY 28/29	FY 29/30	Total
Repair and Maintenance	$1,825,000	$4,300,000	$3,125,000	$2,325,000	$765,000	$12,340,000
ADA Upgrades	1,900,000	1,200,000	400,000	655,000	465,000	4,620,000
Sub Total	**$3,725,000**	**$5,500,000**	**$3,525,000**	**$2,980,000**	**$1,230,000**	**$16,960,000**
Contingency 5%	186,250	275,000	176,250	149,000	61,500	848,000
Total	**$3,911,250**	**$5,775,000**	**$3,701,250**	**$3,129,000**	**$1,291,500**	**$17,808,000**

Request for Qualifications (RFQ) for parking lot construction services was sent to 224 prospective firms, including 19 Denton firms. In addition, the RFQ was placed on the Procurement website for prospective respondents to download and advertised in the local newspaper. Five (5) statements of qualifications (SOQ) were received. The SOQs were evaluated based on published criteria, including qualifications of the provider's subcontractors, experience and qualifications of the vendor, experience and availability of the proposed personnel, work history with local government, legal history, and references. All firms scoring 80 or higher were placed on the list. The evaluation team is recommending approval of the list with three (3) qualified firms.

NIGP Code Used for Solicitation:	988 - (Service Only) - Roadside, Grounds, Recreational and Park Area Services
Notifications sent for Solicitation sent in IonWave:	224
Number of Suppliers that viewed Solicitation in IonWave:	40
HUB-Historically Underutilized Business Invitations sent out:	31
SBE-Small Business Enterprise Invitations sent out:	100
Responses from Solicitation:	5

RECOMMENDATION

Award contract with Alderink Enterprises, Inc. dba CI Pavement, Diamond M Construction & Land Services LLC, and Solid Foundations Concrete LLC, for construction services for parking lot repair, reconstruction, and maintenance at City facilities for the Facilities Management Department, in a one (1) year, with the option for four (4) additional one (1) year extension, in the total five (5) year not-to-exceed amount of $17,808,000.

PRINCIPAL PLACE OF BUSINESS

Alderink Enterprises, Inc. dba CI Pavement
Grand Prairie, TX

Diamond M Construction & Land Services LLC
Sanger, TX

Solid Foundations Concrete LLC
Richardson, TX

ESTIMATED SCHEDULE OF PROJECT

This is a one (1) year contract with options to extend the contract for four (4) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

These products and services will be funded through General Fund and Utility Fund capital and operating accounts approved through the City's budgeting process. Requisitions will be entered on an as-needed basis. The City will only pay for services rendered and is not obligated to expend the full contract amount.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Evaluation Sheet
Exhibit 3: Presentation
Exhibit 4: Contract and Ordinance

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

For information concerning this acquisition, contact: Tom Gramer, 940-349-7200

Legal point of contact: Leah Bush at 940-349-8333.

Exhibit 2

RFQ 8983 - Evaluation Sheet for Parking Lot Maintenance, Repairs, Construction, and Demolition

Respondent's Business Name:	**Alderink Enterprises, Inc. dba CI Pavement**	**Construction & Land Services LLC**	**Solid Foundations Concrete, LLC**	Cardwell Paving LLC	Prestige Building Group
Principal Place of Business (City and State):	**Grand Prairie, TX**	**Sanger, TX**	**Richardson, TX**	Denton, TX	Houston, TX
Standard Criteria					
Company Experience - 30%	**28.00**	**24.00**	**24.00**	18.00	16.00
Personnel Experience/Resumes - 20%	**18.67**	**16.00**	**14.67**	6.67	9.33
Work History with Local Government - 10%	**9.33**	**7.33**	**8.00**	8.00	4.67
Legal History - 10%	**10.00**	**10.00**	**10.00**	10.00	10.00
Reference Checks - 30%	**24.00**	**26.00**	**26.00**	20.00	14.00
Total Score:	**90.00**	**83.33**	**82.67**	62.67	54.00

Pre-Qualified Vendor List for Municipal Parking Lot Repairs and Maintenance Facilities Management - 8983

Tom Gramer

Director of Facilities and Fleet

5/18/2026

File ID PUB26-068



Information

- The Facilities Management Department maintains and repairs municipal parking lots, with Parks, Streets, and Utilities also able to use this contract for ADA upgrades and other flatwork needs.
- The August 2023 parking lot assessment and ADA Transition Plan adopted on January 11, 2022, identified multiple municipal parking areas requiring repair, maintenance, or rehabilitation to ensure safe and effective facility access.
- The proposed pre-qualified list enables job-specific contractor selection to complete required repairs, maintain adequate accessibility for staff and visitors, and support ADA upgrades identified in the Transition Plan.
- The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

Contract Estimate

Contract Estimate by Year

Category	FY 25/26	FY 26/27	FY 27/28	FY 28/29	FY 29/30	Total
Parking Surface Repair and Maintenance	$1,825,000	$4,300,000	$3,125,000	$2,325,000	$765,000	$12,340,000
ADA Upgrades	$1,900,000	$1,200,000	$400,000	$655,000	$465,000	$4,620,000
Sub Total	**$3,725,000**	**$5,500,000**	**$3,525,000**	**$2,980,000**	**$1,230,000**	**$16,960,000**
Contingency 5%	$186,250	$275,000	$176,250	$149,000	$61,500	$848,000
Total	**$3,911,250**	**$5,775,000**	**$3,701,250**	**$3,129,000**	**$1,291,500**	**$17,808,000**

FY 25-26 Council Adopted CIP Budget and five-year Capital Funds forecast (Parking, ADA, Flatwork)

Department	FY 25/26	FY 26/27	FY 27/28	FY 28/29	FY 29/30	Total
Facilities Management	$3,725,000	$1,200,000	$1,200,000	$2,425,000	$1,825,000	$10,375,000
Parks and Recreation	$50,000	$398,000	$408,000	$1,118,000	$444,000	$2,418,000
Streets (ROW)	$2,500,000	$2,500,000	$2,500,000	$2,500,000	$2,500,000	$12,500,000
Solid Waste	-	-	$350,000	-	-	$350,000
Water/Wastewater	$25,000	$25,000	$25,000	$25,000	$25,000	$125,000
Total	**$6,300,000**	**$4,123,000**	**$4,483,000**	**$6,068,000**	**$4,794,000**	**$25,768,000**

The charts highlight the contract's estimated cost breakdown by fiscal year, the projected project execution schedule based on the assessment and Transition Plan needs and alignment with the FY 2025–2026 City Council adopted CIP and five-year workplan forecast. All work will be routed through, and subject to approval within, the City's collaborative budgeting process.

ADA Upgrade Example



Civic Center ADA Approach
Project Cost: $ 16,391.02

Recommendation

Staff recommends approval of a one-year, with four additional one-year extension, in the total five-year not-to-exceed amount with CI Pavement, Diamond M Construction LLC, and Solid Foundations LLC, Inc, of $17,808,000.

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 ALDERINK ENTERPRISES, INC. DBA CI PAVEMENT, DIAMOND M CONSTRUCTION & LAND SERVICES LLC, AND SOLID FOUNDATIONS CONCRETE LLC, FOR CONSTRUCTION SERVICES FOR PARKING LOT REPAIR, RECONSTRUCTION, AND MAINTENANCE AT CITY FACILITIES FOR THE FACILITIES MANAGEMENT DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8983 – AWARDED TO ALDERINK ENTERPRISES, INC. DBA CI PAVEMENT, DIAMOND M CONSTRUCTION & LAND SERVICES LLC, AND SOLID FOUNDATIONS CONCRETE LLC, FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF $17,808,000.00).

WHEREAS, Alderink Enterprises, Inc. dba CI Pavement, Diamond M Construction & Land Services LLC, and Solid Foundations Concrete LLC, the service providers (the "Provider") set forth in this ordinance, are 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 contracts 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 service contracts attached hereto with Alderink Enterprises, Inc. dba CI Pavement, Diamond M Construction & Land Services LLC, and Solid Foundations Concrete LLC, for construction services for parking lot repair, reconstruction, and maintenance at City facilities for the Facilities Management Department.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contracts.

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:	_____	_____	_____	_____
Jordan Villareal, District 1:	_____	_____	_____	_____
Nick Stevens, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2026.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
KRISTI FOGLE, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

RFQ	8983
File Name	PARKING LOT MAINTENANCE, REPAIRS, CONSTRUCTION & DEMO
Purchasing Contact	Crystal Westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: 41D28787-9709-4C30-8672-25322EDD5AF4

CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND ALDERINK ENTERPRISES, INC. dba CI PAVEMENT, INC.
(CONTRACT 8983)

THIS CONTRACT is made and entered into this date _____, by and between ALDERINK ENTERPRISES, INC. dba CI PAVEMENT a Texas corporation, whose address is 104 EAST PIONEER, IRVING, TX 75061, hereinafter referred to as "Contractor," and the CITY OF DENTON, TEXAS, a Texas Municipal Corporation and Home-Rule City, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and the 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 construction services in accordance with the City's RFQ 8983 – PARKING LOT MAINTENANCE, REPAIRS, CONSTRUCTION AND DEMO SERVICES, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes as "Exhibit B". 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 Request for Proposal #8983 **(Exhibit "B" on file at Office of Purchasing Agent)**
(c) General Provisions-Standard Terms and Conditions **(Exhibit "C");**
(d) Payment and Performance Bond Requirements **(Exhibit "D");**
(e) Insurance Requirements **(Exhibit "E");**
(f) Certificate of Interested Parties Electronic Filing **(Exhibit "F");**
(g) Request for Cost Form **(Exhibit "G")**;
(h) Form CIQ – Conflict of Interest Questionnaire **(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 this written Contract, and then to the Contract documents in the sequential order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

Prohibition on Contracts with Companies Boycotting Israel
Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not***

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boycott Israel; and (2) will not boycott Israel during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Section 2252 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapter 2252, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization***. Failure to meet or maintain the requirements under this provision will be considered a material breach.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

SIGNATURE PAGE TO FOLLOW

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

CONTRACTOR

BY: Signed by: Rob Alderink 74435E46FC7041B...
AUTHORIZED SIGNATURE

Printed Name: Rob Alderink

Title: VP

972-721-9796
PHONE NUMBER

rob@cipavement.com
EMAIL ADDRESS

2026- 1438058
TEXAS ETHICS COMMISSION CERTIFICATE NUMBER

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

ATTEST:
INGRID REX, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:

By: Signed by: Leah Bush 3A6254145BDA469...

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

Docusigned by: Tom Gramer 7B58DA8FCE5F49C...
SIGNATURE

Tom Gramer
PRINTED NAME

Director
TITLE

Facilities
DEPARTMENT

Docusign Envelope ID: 41D28787-9709-4C30-8672-25322EDD5AF4

EXHIBIT A
SPECIAL TERMS AND CONDITIONS

1. **Total Contract Amount**
   ALDERINK ENTERPRISES, INC. dba CI PAVEMENT is pre-qualified for RFP 8983 – PARKING LOT MAINTENANCE, REPAIRS, CONSTRUCTION AND DEMO SERVICES. All pre-qualified contractors will be issued a Request for Cost, Exhibit G, that defines the scope of work and project dates. The pre-qualified contractors will have (5) days to respond to such Request for Cost. Thereafter, the City will select the pre-qualified contractor with the lowest price and ability to meet the City's time schedule requirements. The cumulative contract total for all awarded projects to all pre-qualified contractors for contract 8983 shall not exceed $17,808,000. If a response to the Request of Cost is not received in the applicable time period, such pre-qualified contractor will be disqualified from that Request of Cost.

2. **Contract Terms**
   The contract term will be one (1) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional four (4) one-year periods.

   The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. **Price Escalation and De-escalation**
   On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

   Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

   Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon

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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.

4. **Performance Liquidated Damages**

Contractor recognizes that time is of the essence of this Agreement and that City will suffer financial loss if the Work is not completed within the times specified in each task order, plus any extension thereof allowed in accordance with Article 12 of the General Conditions. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City one thousand dollars ($1,000) for each day that expires after the time specified in each task order for Final Acceptance until the City issues the Final Letter of Acceptance.

Public Works Construction Standards

NCTCOG 5th Edition

Section 108.8

Schedule 109.8.1 Liquidate Damages

Amount of contract ($)	**Amount of liquidated damages ($)**
Less than 25,000.000	200.00 Per Day
25,000.00 to 99,999.99	350.00 Per Day
100,000.00 to 999,999.99	500.00 Per Day
More Than 1,000,000.00	1000.00 Per Day

5. **Post Award Additional Requirements**

Pre-Construction Meeting: Prior to commencement of the services, the City and the Contractor will conduct a pre-construction meeting to review the overall scope, schedule, deliverables, planning process, and to ensure that all relevant parties to the project are introduced.

Environmental Hazards: There are no known safety or environmental hazards existing on the project site at the time of issue of this solicitation. The City does not warrant or guarantee against the possibility that safety or environmental hazards or potential hazards may exist at

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the City's facilities. The Contractor shall be responsible for identifying any hazardous conditions and notifying the City verbally of such conditions as soon as possible after discovery and shall follow up in writing within 10 days of such discovery. The costs for necessary investigations or any potential corrective actions will be negotiated between the City and the Contractor.

Contractor Standards of Performance: The contractor shall prosecute the work diligently with skilled craftsmen and with state-of-the-art methods to complete the work within the time stated in the contract or such time extensions as may be grant
Monthly Reports: The awarded Contractor shall provide to the City of Denton, detailed reports of daily work conditions, daily man power availability, equipment problems, and work accomplished on a monthly basis.

Safety: All contractors to the City of Denton are required to ensure absolute safety standards are applied and enforced. The City of Denton will not be responsible for individual contractor safety, and the awarded contractor shall not hold the City of Denton responsible. Known hazards shall immediately be reported to the Project Manager and all safety precautions shall be taken to prevent potential safety issues from occurring.

6. **Asbestos Free Materials**
The contractor shall provide asbestos-free materials as represented by the Manufacturer's "Materials Safety Data Sheets".

7. **Prevailing Wage Rates**
In accordance with Texas Government Code 2258, the awarded 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).

Notwithstanding any other provision of this Contract, the awarded contractor hereby represents and warrants that the contractor shall pay to each of its employees a wage not less than what is currently known as the "Federal Minimum Wage" and any increase or amendments thereto. Furthermore, contractor shall produce proof of compliance with this provision by contractor to the City. The City shall withhold payments due to contractor until contractor has complied with this provision. Prior to any payment being made for work satisfactorily completed and accepted, contractor shall submit wage rate affidavits with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage".

8. **Remedies**
a. COMPLETION OF CONTRACTOR'S DEFAULT: If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this proposal, the City, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety or Sureties upon the Contractor's bond or bonds a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the City

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and/or Engineer shall be made by the Contractor or its Surety or Sureties, the City may take over the construction of the project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor and its Surety or Sureties shall be liable to the City for any cost or expense in excess of the contract price occasioned thereby. In such event the City may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the project. The City in such contingency may exercise any rights, claims or demands which the Contractor may have against third persons in connection with this contract and for such purpose the Contractor does hereby assign, transfer and set over unto the City all such rights claims and demands.

b. LIQUIDATED DAMAGES: Respondent must agree to commence work on or before a date to be specified in written "Notice to Proceed" by the Owner, and to fully complete the project within the time stated on proposal. As failure to complete project within the stated time, respondent agrees to pay as liquidated damages, the sums indicated in the Solicitation Main Document Section 10, for each working day of delay until work is completed and accepted. Delays because of strikes, fire, weather, or any cause beyond the contractors control shall be granted but claims for extension shall be in writing within a reasonable time after the occurrence. Contractor shall submit request for delay on a monthly basis in a letter form indicating reason and date of delay. Failure to do so on a monthly basis means contractor will forfeit those delay days. Liquidated damages in the amount per day shown in Main Solicitation Document, Section 10 “Liquidated Damages”, will be assessed against the Contractor for each calendar day or portion thereof that:

(1) the Contractor has not fully and timely completed the specific portion or part of the work to be completed by the end of the current month as provided in the detailed description of work and/or schedule previously submitted by the Contractor on the first day of that particular month, after accounting for any agreed-upon changed orders, which will entitle the Owner to withhold the liquidated damages from the payment otherwise owed to the Contractor for work completed in that particular month;

(2) the Contractor has not substantially completed all work following the expiration of the number of calendar days to complete the work as agreed upon in the contract, after accounting for any agreed-upon changed orders; or

(3) all items listed as incomplete and attached to the Certificate of Substantial Completion are not completed or corrected after expiration of the agreed time allotted for completion and correction, including any approved extensions of time granted. These liquidated damages are cumulative. The sum of the liquidated damages will be deducted from any monies due the Contractor. If no money is due the Contractor, said sum may be recovered by the Owner from the Contractor or the Contractor's surety, or from both combined. These deductions are to cover liquidated damages to the Owner for losses to Owner that include, but are not limited to, additional expenses of Contract administration, overhead and other costs resulting from failure of the Contractor to complete the Work within the designated time, and are not to be

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considered as penalties. The Owner shall not be considered liable for any extra or additional payment to the Contractor as a bonus or premium for early completion. Any failure on the part of the Owner to request or require payment or withholding of liquidated damages in any particular month shall not constitute a waiver of Contractor's requirement to pay, or the Owner's ability to withhold from payments owed to Contractor, any liquidated damages for work performed or completed in that particular month, in any prior or subsequent month, or at the time all work has been completed.

c. CUMULATIVE REMEDIES: Every right or remedy herein conferred upon or reserved to the City shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election. Provided, however, that the provisions of the REMEDIES SECTION shall be the exclusive measure of damages for failure by the Contractor to complete the construction of the project within the time herein agreed upon.

9. Payment and Performance Requirements

a. PAYMENT AND INVOICES:

Payment processing: The City review, inspection, and processing procedures for invoices ordinarily require thirty (30) days after receipt of invoices, materials, or services. Submissions which call for payment before thirty (30) days from receipt of invoice, or cash discounts given on such payment, will be considered only if, in the opinion of the Purchasing Manager, the review, inspection, and processing procedures can be completed as specified. It is the intention of the City of Denton to make payment within thirty days after receipt of valid invoices for which items or services have been received unless unusual circumstances arise. The 30 day processing period for invoices will begin on the date the invoice is received or the date the items or services are received, whichever is later.

Direct deposit for payments: Contractors are encouraged to arrange for receiving payments through direct deposit. Information regarding direct deposit payments is available from the City of Denton Purchasing website: www.dentonpurchasing.com.

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 as identified in the Notice to Proceed. 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.**

b. PAYMENT TO PERFORMANCE MILESTONES: Awarded contractor shall prepare and submit invoices after completion of specific project milestones. The invoice shall detail the major milestones accomplished and detailed cost information for project. These milestones shall be submitted to the City of Denton and the City's Project Staff shall review

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such for completion and accuracy, prior to payment authorization.

c. TAX EXEMPTION: The City of Denton qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. Any Contractor performing work under this contract for the City of Denton may purchase materials and supplies and rent or lease equipment sales tax free. This is accomplished by issuing exemption certificates to suppliers. Certificates must comply with State Comptroller's ruling #95-0.07 and #95-0.09.

d. RELEASE OF LIENS AND CERTIFICATE OF CONTRACTOR: Upon award of the contract, the Contractor shall inform the City of the subcontractors and material sources that will be used. Upon the completion by the Contractor of the construction of the project, but prior to final payment to the Contractor, the Contractor shall deliver to the City releases of all liens, and of rights to claim any lien, from all manufacturers, material-men, and subcontractors furnishing services or materials for the project, to the effect that all materials or services used on or for the project have been paid for and indicating that the City is released from all such claims.

e. PAYMENTS TO MATERIAL-MEN AND SUBCONTRACTORS: The Contractor shall pay each material-men, and each subcontractor, if any, not later than five (5) days after receipt of any payment from the City, the amount thereof allowed the Contractor for and on account of materials furnished or construction performed by each material-men or each subcontractor.

10. General Provisions – Special Notices and Requirements

a. CONTRACT ADMINISTRATION SUBMITTALS AND REQUIREMENTS:

General: The General Conditions, Supplementary Conditions and Special Conditions provide definite times for Contractor to submit certain lists, qualifications, price breakdowns and schedules for administrative procedures including but not necessarily limited to the following:

List of Subcontractors: Before the execution of the Contract, the respondent awarded the contract will submit to the City for approval a list of all Subcontractors, and/or his major Subcontractors, proposed to use. This list will include each Subcontractor's correct name, mailing address and phone number.

Contractor's Superintendent: The Contractor shall submit the name and qualifications of the person designated as Project Superintendent within ten (10) days of the receipt of the Notice of Award Letter.

Contract Price Breakdown: Upon execution of the Contract, the Contractor shall submit to the City for approval a breakdown of the Contract price, itemizing material and labor for various classifications of work.

1. The City will provide forms for the Contractor to use to prepare the schedule of values.
2. Unit Price items will be multiplied by the estimated quantities to give the item totals. The total item will then be divided into "material" and "labor" and listed on

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the breakdown. The breakdown of unit price items into material and labor is required so the City may make progress payments on materials delivered before the labor is performed.

Work Progress Schedule: Within three (3) weeks after receipt of a work order, the Contractor shall submit in duplicate to the City for approval an estimated progress schedule for the work in relation to the entire project, over the total contract time. Schedules showing less than the stipulated contract time will be rejected. See details for this requirement in the attached STANDARD PURCHASE TERMS AND CONDITIONS FOR FACILITY CONSTRUCTION SERVICES, Article1, paragraph 3.10 “Contractors Construction Schedule”.

Testing and Quality Control: Observation of the Contractor's work to determine compliance with the plans and specifications may include testing of material installed on the project. A Testing Laboratory located by the Contractor shall do testing of materials furnished and work performed. The Contractor shall use only materials in the work, which meet the requirements of the specifications. The Contractor shall furnish at his own expense all necessary tests and specimens for testing of the material and when requested shall furnish a complete written statement of the origin, composition, and/or manufacturer of any or all materials that are to be used in the work. All materials not conforming to the requirements of the specifications will be rejected.

THIS QUALITY CONTROL SERVICE DOES NOT RELIEVE THE CONTRACTOR OF HIS RESPONSIBILITY WITH REGARD TO CONSTRUCTING THE WORK IN ACCORDANCE WITH THE CONTRACT.

Contractor shall submit appropriate tests including, but not limited to:

- Any test required in the technical specifications
- Any structural element called for on the plans, including, but not limited to dam construction, concrete asphalt roads or paths, shelters, bridges or other structure tests, pressure test of irrigation.
- Test to prove adequacy of design and construction of any feature that may have been accepted by Owner under contractor's "Alternate Proposal".
- Any test that may be occasioned by any local, state, or federal law.

As-Built Drawings: The contractor shall maintain a complete set of contract drawings in his possession, upon which he is required to note in red, or other clear manner, all deviations, final dimensions and explanatory notes arising out of actual work installed or performed in the field, and showing exact locations of such work, including trades. Notes on these drawings shall indicate installed locations and dimensioned clearances. Contractor to furnish an as- built drawn from an aerial photo identifying course, irrigation (including all components, buried or otherwise), major and minor drainage lines and related structures, all underground utilities, location of buried trees and debris, limits of topsoil, extra borrow areas, and other significant construction which could reasonably be foreseen to affect future operation. All as-built(s) shall be supplied in CAD format.

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Project Manuals: Contractor shall supply City a project manual for operations of all mechanical systems to be included under this contract in a manner satisfactory to the design professional, his sub-consultants and City's representatives.

Schedule of Tests, Submittals: A schedule of anticipated tests and submittals begins on the next page. Additional submittals may be required.

b. MEETINGS:

Pre-Construction Conference: Prior to start of work, a conference between the City and Contractor will be held to discuss provisions of the contract documents, explain administrative procedures and coordinate the work effort. Time of pre-construction conference will be stated in the Work Order letter for the Contractor. Attendance by Contractor and Contractor's Superintendents is mandatory.

1. City will schedule meeting and provide meeting place.
2. Attendance: The following are expected to attend:
    - City's Representative.
    - Consultant's Construction Administrator.
    - Representatives from Sub-Consultants Contractor's Project Manager, Project Superintendent and Project Coordinator Representatives of major subcontractors
3. Agenda Items:
    - List of major Subcontractors and Suppliers
    - Tentative construction schedule
    - Critical work sequencing
    - Major equipment deliveries
    - Designation of responsible personnel
    - Procedures and processing of field decisions, proposal requests, submittals color coordination, change orders, and applications for payment.
    - Adequacy of distribution of Contract Documents.
    - Procedures for maintaining Record Documents
    - Use of Premises: office, work, storage, staging areas; Owner's requirements
    - Construction facilities, controls and construction aids
    - Temporary utilities
    - Safety and first aid procedures
    - Security procedures
    - Housekeeping procedures
    - Other business
4. The City's Representative will preside over the meeting.

Progress Meetings: Construction progress meetings may be called by the Project Manager, Project Inspector or the General Contractor to review job progress or problems.

1. Schedule meeting and notify in writing those concerned at least one week in advance of meeting.

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2. Provide a convenient, comfortable meeting place.
3. Contractor's Project Superintendent or Project Manager shall preside over meeting.
4. Attendance: The following are expected to attend: City's Representative Consultant's Construction Administrator Sub-consultant's unless notified otherwise Contractor's General Superintendent, Project Superintendent and Project Coordinator. Subcontractors having work in progress Subcontractors whose work will start within the next month Others as requested by City, A/E, or Contractor
5. Agenda Review, approval of minutes or previous meeting Review of work progress since previous meeting Field observation, problems, conflicts Problems which impede construction schedule Review of off-site fabrication, and delivery schedules Corrective measures and procedures to regain projected schedule. Revisions to construction schedules Progress schedules for succeeding period Schedule coordination Review proposed changes for effect on construction schedule, on completion date, and effect on other contracts of project Maintenance of quality standards Pending changes and substitutions Other business
6. The Contractors Project Manager will preside over the meeting. C. Minutes of Meetings: Contractor shall take notes at pre- construction and progress meetings and distribute them to those concerned in the form of minutes within four (4) calendar days after meeting.

c. SURVEYS, MEASUREMENTS AND LAYOUTS

General: The City will provide property surveys. The Contractor shall be responsible for all control point staking as required. The Contractor's responsibility for verifying conditions is defined in the Standard General Conditions.

Surveys, Measurements and Layout Out of Work: The Contractor will establish from survey information on drawings all lines, grades, and levels and will be responsible for maintenance and accuracy thereof.

d. MISCELLANEOUS REQUIREMENTS

Additional safety precautions shall be instituted by the awarded contractor, as the work environment will be in an area where citizens and employees may be present, and work safety must be coordinated with the owner.

The Contractor shall be responsible for all spoil removals, and any excess soil that will require removal.

It is understood that the basis for payment on the work to be done according to the final plans and specifications shall be a lump sum fee as set forth in Contractor's submission. Any quantity estimates supplied by Designer or City are intended only as a guide to the respondent. Respondent is responsible for making his own quantity estimates and pricing from his own examination of the work to be done.

A schedule of Respondent's Quantities and Unit Prices is to be filled out as a part of this solicitation. Extensions of units and unit prices must total up correctly.

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EXHIBIT C

CITY OF DENTON STANDARD PURCHASE TERMS AND CONDITIONS FOR CONSTRUCTION SERVICES

ARTICLE 1 GENERAL PROVISIONS

GENERAL DEFINITIONS

1.1 The following definitions apply throughout these General Conditions and to the other Contract Documents:

a) THE CONTRACT DOCUMENTS

The Contract Documents consist of the formal Building Construction Services Agreement between the Owner and the Prime Contractor, these General Conditions and other supplementary conditions included by special provisions or addenda, drawings, specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract, and Amendments issued after execution of the Contract. For purposes of these General Conditions, an Amendment is:

(1) a written Supplemental Agreement to the Contract signed by authorized representatives of both parties;

(2) a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1(b) and Subparagraph 7.1(e); or

(3) a written order for a minor change in the Work issued by the Architect/Engineer as described in Paragraph 7.3.

The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Prime Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Prime Contractor.

b) THE CONTRACT

The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and made a part of the formal Building Construction Services Agreement between the Owner and the Prime Contractor by reference in this Paragraph and Paragraph 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Prime Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the

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Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

(1) between the Architect/Engineer and Prime Contractor;

(2) between the Owner and a Subcontractor or -subcontractor; or

(3) between any persons or entities other than the Owner and Prime Contractor.

The Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect/Engineer's duties.

c) THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Prime Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Prime Contractor is responsible, to fulfill the Prime Contractor's obligations. The Work may constitute the whole or a part of the Project.

d) THE PROJECT

The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

e) THE DRAWINGS

The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

f) THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

g) THE PROJECT MANUAL

The Project Manual is the volume or volumes which contain the bidding requirements,

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sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

h) ALTERNATE

An Alternate is a variation in the Work on which the Owner requires a price separate from the City Building General Conditions Base Bid. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted prior to any Work under the alternate being performed or materials delivered to the Project site, the Owner will be entitled to a credit in the full value of the alternate as priced in the Prime Contractor's Bid.

i) BASE BID

The Base Bid is the price quoted for the Work before Alternates are considered.

j) HAZARDOUS SUBSTANCE

The term Hazardous Substance is defined to include the following:

(1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;

(2) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

(3) radon;

(4) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

(5) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

(6) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(7) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901

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et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

(8) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

k) OTHER DEFINITIONS

As used in the Contract Documents, the following additional terms have the following meanings:

(1) "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;

(2) "shall" means the action of the party to which reference is being made is mandatory;

(3) "as required" means as prescribed in the Contract Documents; and

(4) "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.2 EXECUTION, CORRELATION AND INTENT

(a) The Building Construction Services Agreement shall be signed by duly authorized representatives of the Owner and Prime Contractor as provided in the Agreement.

(b) Execution of the Building Construction Services Agreement by the Prime Contractor is a representation that the Prime Contractor has visited the site, has become familiar with local conditions, including but not limited to subsurface conditions, under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

(c) The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Prime Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Prime Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

(d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Prime Contractor in dividing the Work among Subcontractor(s) or in establishing the extent of Work to be performed by any trade.

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(e) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

(f) The Drawings and Specifications are intended to agree with one another, and Work called for by Drawings and not mentioned in Specifications, or vice versa, shall be furnished as if set forth by both. Specifications shall govern materials, methods and quality of work. In the event of a conflict on the Drawings between scale and dimension, figured dimensions shall govern over scale dimensions and large scale drawings shall govern over small scale drawings. Conflict between two or more dimensions applying to a common point shall be referred to the Architect/Engineer/Engineer for final adjustment. If discrepancies or conflicts occur within or between the Drawings and Specifications regarding the Work, or within or between other Contract Documents, the Prime Contractor shall not perform such Work without having obtained a clarification from the Architect/Engineer and resolution by the Owner. The Owner's decision as to the appropriate resolution of a conflict or discrepancy shall be final. Should the Drawings or the Specifications disagree within themselves or with each other; the Base Bid will be based on the most expensive combination of quality and quantity of Work indicated.

(g) Deviations from Contract Documents shall be made only after written approval is obtained from Architect/Engineer and Owner, as provided in Article 7.

(h) The intention of the Contract Documents is to include all materials, labor, tools, equipment, utilities, appliances, accessories, services, transportation, and supervision required to completely perform the fabrication, erection and execution of the Work in its final position.

(i) The most recently issued Drawing or Specification takes precedence over previous issues of the same Drawing or Specification. In the event of a conflict, the order of precedence of interpretation of the Contract Documents is as follows:

(1) Amendments (see Paragraph 7.2 for order of precedence between Amendments);

(2) the Building Construction Services Agreement;

(3) addenda, with those addenda of later date having precedence over those of an earlier date;

(4) the Supplementary General Conditions and Special Provisions, if any;

(5) the General Conditions for Building Construction;

(6) 0the Specifications and Drawings.

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1.3OWNERSHIP AND USE OF ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications, and copies thereof furnished by the Architect/Engineer are and shall remain the property of the Owner and are, with the exception of the Contract set for each party, to be returned to the Owner upon request at the completion of the Work.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are:

(1) specifically defined in these General Conditions (except the terms defined in Subparagraph 1.1(j), which terms are of common grammatical usage and are not normally capitalized);

(2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses;

(3) the titles of other documents published or used by the Owner as manuals or official policy statements; or

(4) proper nouns or other words required under standard grammatical rules to be capitalized.

ARTICLE 2 - THE OWNER

2.1 DEFINITION OF OWNER

The Owner is the City of Denton, a Texas municipal corporation, and is identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

(a) The Owner shall furnish the most recent survey describing the physical characteristics, legal limits, utility locations, and a permanent benchmark for the site of the Project. The Owner shall also furnish any environmental site assessments that may have been given to the Owner or conducted for the property upon which the Project is to be constructed. THIS INFORMATION IS FURNISHED TO THE PRIME CONTRACTOR ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.

(b) Except for permits and fees which are provided for in Subparagraph 3.7(a), the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for

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construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

(c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Prime Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval, as required in Paragraph 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Prime Contractor as scheduled and Prime Contractor is not prepared to accept or act on such information or services, then Prime Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

(d) Unless otherwise provided in the Contract Documents, the Prime Contractor will be furnished electronic copies of the Drawings and Specifications for bid purposes and one hard copy approved by Building Inspections upon execution of the Contract. Prime Contractor may obtain additional copies by paying the cost of additional printing or reproduction.

(e) The obligations described above are in addition to other duties and responsibilities of the Owner enumerated in the Contract Documents and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

(f) The Owner shall forward all instructions to the Prime Contractor through the Architect/Engineer, except for the Owner's Notice to Proceed and the Owner's decision to carry out Work as described in Paragraph 2.4.

(g) The Owner's employees, agents, and consultants may be present at the Project site during performance of the Work to assist the Architect/Engineer in the performance of the Architect/Engineer's duties and to verify the Prime Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, the equipment used in the performance of the Work, and for purpose of verification of Prime Contractor's Applications for Payment.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Prime Contractor fails to correct any portion of the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or refuses or fails to carry out all or any part of the Work in accordance with the Contract Documents, the Owner, by written order, may order the Prime Contractor to stop the Work, or any portion of the Work, until the cause for the order has been eliminated. The right of the Owner however, to stop the Work shall not create or imply a duty on the part of the Owner to exercise this right for the benefit of the Prime Contractor or any other person or entity. The rights of the Owner under this Paragraph 2.3 shall be in addition to, and not in restriction of, the Owner's rights under Paragraph 12.2.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Prime Contractor fails or refuses to carry out the Work or perform any of the terms, covenants, or obligations of the Contract Documents, and fails or refuses to correct any failure

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or refusal with diligence and promptness within fourteen (14) days after receipt of written notice from the Owner, the Owner may correct the Prime Contractor's failure or refusal or cause such failure or refusal to be corrected, without affecting, superseding, or waiving any other contractual, legal, or equitable remedies the Owner has, including but not limited to the Owner's termination rights under Article 13. In that case, an appropriate Change Order will be issued deducting the Owner's cost of correction, including Architect/Engineer's compensation for additional services and expenses made necessary by the failure or refusal of the Prime Contractor from payments then or thereafter due to the Prime Contractor. The cost of correction is subject to verification (but not approval) by the Architect/Engineer. If payments then or thereafter due the Prime Contractor are not sufficient to cover the cost of correction, the Prime Contractor shall pay the difference to the Owner.

2.5 NOTICE TO PROCEED

After final execution of the Contract and receipt and approval of the required performance and payment bonds and evidence of required insurance, the Owner will issue a written Notice to Proceed with the Work, including the designated Contract Time within which Substantial Completion of the Work must be achieved. If the Owner unreasonably delays issuance of a written Notice to Proceed through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable adjustment of the Contract Time, if properly claimed pursuant to the requirements of Paragraph 4.3; but the Prime Contractor shall not be entitled to any increase to the Contract Sum whatsoever for this reason.

ARTICLE 3 - THE CONTRACTOR

3.1 DEFINITION OF CONTRACTOR

The Prime Contractor is the person or business entity identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Prime Contractor" means the Prime Contractor or the Prime Contractor's authorized employees or representatives.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

(a) The Prime Contractor shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Architect/Engineer in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Prime Contractor may discover. The Prime Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Prime Contractor will be held responsible for any subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the Prime Contractor continues to work on an item where an inconsistency, ambiguity, error, omission, conflict, or discrepancy exists without obtaining such clarification or resolution or commences an item of the Work without giving written notice of an error, omission, conflict, or discrepancy that might have been avoided by the check, study, and

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comparison required above, it shall be deemed that the Prime Contractor bid and intended to execute the more stringent, higher quality, or state of the art requirement, or accepted the condition "as is" in the Contract Documents, without any increase to the Contract Sum or Contract Time. The Prime Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Prime Contractor's failure to give notice of and obtain a clarification or resolution of any error, omission, conflict, or discrepancy, without any right to any increase to the Contract Sum or Contract Time.

(b) The Prime Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

(a) The Prime Contractor shall supervise and direct the Work, using the Prime Contractor's best skill and attention. The Prime Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents set forth specific instructions concerning these matters.

(b) The Prime Contractor shall be responsible to the Owner for the acts and omissions of the Prime Contractor's employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Prime Contractor, or with any Subcontractor, and all other persons or entities for which the Prime Contractor is legally responsible. All labor shall be performed by mechanics that are trained and skilled in their respective trades. Standards of work required throughout shall be of a quality that will bring only first class results. Mechanics whose work is unsatisfactory, or who are considered careless, incompetent, unskilled, or otherwise objectionable shall be dismissed promptly from the Work and immediately replaced with competent, skilled personnel. Any part of the Work adversely affected by the acts or omissions of incompetent, unskilled, careless, or objectionable personnel shall be immediately corrected by the Prime Contractor.

(c) The Prime Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Prime Contractor.

(d) The Prime Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Prime Contractor's responsibility under this paragraph will not in any way eliminate the Architect/Engineer's responsibility to the Owner under the Architect/Engineer/Owner Agreement.

(e) Any Prime Contractor, Subcontractor, Sub-subcontractor, or separate contractor who commences Work over, in, or under any surface prepared by the Owner or by any other

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contractor, subcontractor, sub-subcontractor or any separate contractor, without the Prime Contractor having given written notice to the Architect/Engineer of the existence of any faulty surface or condition in the surface that prevents achieving the quality of workmanship specified by the Contract Documents and without having obtained the prior approval of the Architect/Engineer and the Owner to proceed is deemed to have accepted the surface or condition in the surface as satisfactory at the commencement of such Work. Any unsatisfactory Work subsequently resulting from such a faulty surface or condition in the surface that was not pre-approved by the Architect/Engineer or the Owner after notice as provided above may be rejected and replacement required, without any increase to the Contract Sum or Contract Time.

(f) All grades, lines, levels, and benchmarks shall be established and maintained on an ongoing basis by the Prime Contractor. The Prime Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Contractor shall verify all grades, lines, levels, and dimensions as indicated on Drawings. He shall report any errors, omissions, conflicts, or inconsistencies to Architect/Engineer before commencing any Work affected by these conditions. Contractor shall establish and safeguard benchmarks in at least two widely separated places and, as Work progresses, establish benchmarks at each level and lay out partitions on rough floor in exact locations as guides to all trades. The Contractor shall, from the permanent benchmark provided by the Owner, establish and maintain adequate horizontal and vertical control.

3.4 LABOR AND MATERIALS

(a) Except as is otherwise specifically provided in the Contract Documents as being the responsibility of the Owner, the Prime Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

(b) The Prime Contractor shall enforce strict discipline and good order among the Prime Contractor's employees and all other persons carrying out the Contract. The Prime Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

(c) The Prime Contractor shall give preference, when qualified labor is available to perform the Work to which the employment relates, to all labor hired for the Project in the following order:

(1) residents of the City of Denton, Texas;

(2) residents of the County of Denton, Texas;

3.5 WARRANTY

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(a) General Warranty. The Contractor warrants to the Owner that all Work shall be accomplished in a good and workmanlike manner and that all materials and equipment furnished under the Contract will be of good quality, new (unless otherwise specified), and free from faults or defects, and that the Work will otherwise conform to the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective or nonconforming. The Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The commencement date, duration, and other conditions related to the scope of this general warranty are established in Subparagraphs 9.9 (a) and 12.2(b) of these General Conditions. THE GENERAL WARRANTY PROVIDED IN THIS SUBPARAGRAPH IS IN ADDITION TO AND DOES NOT LIMIT OR DISCLAIM ANY OTHER WARRANTY OR REMEDY REQUIRED OR PROVIDED BY LAW OR THE CONTRACT DOCUMENTS AND SUCH WARRANTY SHALL REQUIRE THE CONTRACTOR TO REPLACE DEFECTIVE MATERIALS AND RE-EXECUTE DEFECTIVE WORK THAT IS DISCLOSED BY THE OWNER TO THE CONTRACTOR WITHIN A PERIOD OF TWO (2) YEARS AFTER SUBSTANTIAL COMPLETION OF THE ENTIRE WORK; OR, IF A LATENT DEFECT IS DISCOVERED WITHIN TWO YEARS OF SUBSTATIONAL COMPLETION OF THE ENTIRE WORK.

(b) Special Warranties. The Contractor shall assign to the Owner in writing, as a condition precedent to final payment, the terms and conditions of all special warranties required under the Contract Documents.

3.6 TAXES

The Owner qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the Owner shall not be liable for, or pay the Contractor's cost of, such sales and use taxes which would otherwise be payable in connection with the purchase of tangible personal property furnished and incorporated into the real property being improved under the Contract Documents or the purchase of materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for performance of the Contract which is to be completely consumed at the job site. The Contractor shall issue an exemption certificate in lieu of the tax on such purchases.

3.7 PERMITS, FEES AND NOTICES

(a) The Architect/Engineer will apply and arrange for the issuance of the City of Denton Building Permit. The Prime Contractor and Subcontractors will apply and arrange for the issuance of all other required permits, and will not be required to pay a fee for any City of Denton permits required for the Project. The Owner will pay all service extension charges, including tap fees, assessed by the Water Utilities Department.

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(b) The Prime Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of governmental entities or agencies applying to performance of the Work.

(c) Except as provided in Subparagraph (d) below, it is not the Prime Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Prime Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Prime Contractor shall promptly notify the Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.

(d) If the Prime Contractor performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Architect/Engineer and the Owner, the Prime Contractor shall assume full responsibility for the Work and shall bear the attributable costs of the correction of the Work and any other Work in place that may be adversely affected by the corrective work.

3.8 ALLOWANCES

(a) The Prime Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for the amounts identified in the Contract and by persons or entities as the Owner may direct, but the Prime Contractor shall not be required to employ persons or entities against which the Prime Contractor makes reasonable objection.

(b) Unless otherwise provided in the Contract Documents:

(1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

(2) the amount of each allowance shall cover the cost to the Prime Contractor of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts;

(3) the amount of each allowance includes the Prime Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance Work;

(4) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect:

(i) the difference between actual costs and the allowances under Clause (b) (2); and

(ii) changes in Contractor's costs under Clause (b) (3);

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(5) the Owner retains the right to review and approve Subcontractors selected by the Prime Contractor to perform work activities covered by allowances.

3.9 SUPERINTENDENT

The Prime Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Prime Contractor, and communications given to the superintendent shall be as binding as if given to the Prime Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to request that the Prime Contractor replace its superintendent at any time and the Prime Contractor will replace said superintendent at the Owner's direction.

3.10 PRIME CONTRACTOR'S CONSTRUCTION SCHEDULES

(a) The Prime Contractor shall, immediately after award of the Contract and before submittal of the first Application for Payment, prepare and submit the construction schedule for the Architect/Engineer's and Owner's information, review, and approval in accordance with the following provisions:

(1) Unless otherwise approved in writing by the Owner, the construction schedule shall not exceed the Contract Time limits currently in effect under the Contract Documents and shall provide for expeditious and practicable execution of the Work.

(2) The construction schedule shall include all shop drawing and submittal data requirements, indicating for each:
(i) the latest date to be submitted by the Prime Contractor; and
(ii) the latest date for approval by the Architect/Engineer.

(3) The construction schedule shall be in the form of a critical path management schedule, and shall indicate each critical task (the "predecessor") of all the major construction activities of the Work in a logical and sequential order (the "project network") which requires completion prior to commencement of the task next following (the "successor"). Each task shall be identified with:

(i) actual work time, exclusive of slack time, for accomplishment;

(ii) the latest start date;

(iii) the latest finish date;

(iv) the amount of float associated with each task;

(v) the amount of labor, material, and equipment associated with each task; and

(vi) the percentage of completion as of the date of the current schedule.

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(4) The construction schedule shall be revised and updated monthly to reflect the actual status of the Work and shall be submitted with each Application for Payment.

(5) On or before the first day of each month, following the date of commencement of the Work as stated in the notice to proceed, the Prime Contractor shall prepare and submit to the Architect/Engineer and the Owner an up-to-date status report of the progress of the various construction phases of the Work in the form of an updated construction schedule. This status report shall consist of a time scale drawing indicating actual progress of the various phases of the Work and the percentage of completion of the entire Work. The original construction schedule shall be updated or changed to indicate any adjustments to the Contract Time granted by the Owner. The updated schedule must be submitted with the Prime Contractor's Application for Payment. No such application will be certified without a satisfactory update to the construction schedule.

(6) The construction schedule will also be revised to show the effect of change orders and other events on Contract Time. No request for an increase in Contract Time will be considered unless it is accompanied by a schedule revision demonstrating the amount of time related to the cause of the request. If the Contractor's status schedules reflect that the Prime Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Prime Contractor shall prepare a recovery schedule demonstrating how it intends to bring its progress back within the Contract Time. This recovery schedule shall be in a form acceptable to the Owner.

(7) Costs incurred by the Prime Contractor in preparing and maintaining the required construction schedule, any updated schedule, and any recovery schedule required by the Owner will not be paid as an additional or extra cost and shall be included in the Contract Sum.

(8) The Contract Sum is deemed to be based upon a construction schedule requiring the full Contract Time. NO CLAIM FOR ADDITIONAL COMPENSATION SHALL BE ALLOWED AS A RESULT OF THE PRIME CONTRACTOR BASING HIS BID ON AN EARLY COMPLETION SCHEDULE, OR AS A RESULT OF DELAYS AND COSTS ATTRIBUTABLE TO COMPLETION LATER THAN THE PLANNED EARLY COMPLETION DATE.

(b) The Prime Contractor shall also prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Prime Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.

(c) The Prime Contractor shall conform to the most recent schedules approved as to form by the Architect/Engineer and the Owner. Any subsequent revisions made by the Prime Contractor to schedules in effect shall conform to the provisions of Subparagraph 3.10(a)

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(d) If the Work falls behind the approved construction schedule, the Prime Contractor shall take such steps as may be necessary to improve his progress, and the Architect/Engineer and the Owner may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, and to submit for approval revised schedules in the form required above in order to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

(a) Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, materialmen, manufacturer(s), supplier(s), or distributor(s) to illustrate some portion of the Work.
(b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
(c) Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
(d) Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Paragraph 4.2.
(e) The Prime Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner, or of separate contractors. Submittals made by the Prime Contractor which are not required by the Contract Documents may be returned without action.
(f) The Prime Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect/Engineer. Work requiring this submittal and review shall be in accordance with approved submittals and any identified exceptions noted by the Architect/Engineer.
(g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Prime Contractor represents that the Prime Contractor has determined and verified materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within submittals with the

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requirements of the Work and of the Contract Documents. The Prime Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.

(h) The Prime Contractor shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Prime Contractor has specifically informed the Architect/Engineer in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Architect/Engineer, subject to a formal Change Order signed by the Owner, Architect/Engineer and Prime Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Prime Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect/Engineer's approval thereof. Further, notwithstanding any approval of a submittal by the Architect/Engineer, the Prime Contractor shall be responsible for all associated Project costs, including costs of coordination's, modifications, or impacts, direct or indirect, resulting from any and all substitutions, changes, additions, deletions, omissions, or deviations, whether or not specifically identified by the Prime Contractor to the Architect/Engineer at the time of the above-mentioned submittals, including additional consulting fees, if any, in any and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.

(i) The Prime Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to additional revisions other than those requested by the Architect/Engineer on previous submittals. In the absence of such written notice, the Architect/Engineer's approval of a resubmission shall not apply to the additional revisions not requested.

(j) Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.

(k) When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF THE PROJECT SITE

The Prime Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

3.14 CUTTING AND PATCHING

(a) The Prime Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Prime Contractor shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering the construction, or by excavating. The Prime Contractor

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shall not cut or otherwise alter the construction by the Owner or a separate contractor except with the written consent of the Owner and of the separate contractor; consent shall not be unreasonably withheld. The Prime Contractor shall not unreasonably withhold from the Owner or a separate contractor the Prime Contractor's consent to cutting or otherwise altering the Work.

(c) A "Hot Work Permit" must be obtained from the City of Denton's Facilities Management Department, 869 S. Woodrow Lane, Denton, Texas (940 349-7200) for any temporary operation involving open flames or producing heat and/or sparks. This includes, but is not limited to: Brazing, Cutting, Grinding, Soldering, Torch Applied Roofing and Welding.

3.15 CLEANING UP

(a) The Prime Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon the completion of the Work the Prime Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Prime Contractor's tools, construction equipment, machinery, and surplus materials.

(b) If the Prime Contractor fails to clean up as provided in the Contract Documents, the Owner may, at Owner's option, clean up the Project site, and the Owner's cost of cleaning up shall be charged to the Contractor.

3.16 ACCESS TO WORK

The Prime Contractor shall provide the Owner and the Architect/Engineer access to the Work in preparation and progress wherever located during the course of construction.

3.17 TESTS AND INSPECTIONS

(a) Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of governmental entities or agencies having jurisdiction over the Work shall be made at appropriate times. Unless otherwise provided, the Prime Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate governmental entity or agency, and the Prime Contractor shall bear all related costs of tests, inspections, and approvals. The Prime Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals which become requirements after bids or proposals are received.

(b) If the Architect/Engineer, the Owner or other public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 3.17(a), the Architect/Engineer will, upon written authorization from the Owner, instruct the Prime Contractor to make arrangements

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for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Prime Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so that the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 3.17(c).

(c) If procedures for testing, inspection, or approval under Subparagraphs 3.17(a) and 3.17(b) reveal deficiencies or nonconformities in the Work, the Prime Contractor shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Architect/Engineer's services and expenses, if any. The Prime Contractor shall bear the costs of any subsequent testing, inspection, or approval of the corrected Work.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Prime Contractor and promptly delivered to the Architect/Engineer.

(e) If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing or inspection.

(f) Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

3.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. CONTRACTOR SHALL COMPLETELY DEFEND, INDEMNIFY AND HOLD OWNER AND ARCHITECT/ENGINEER HARMLESS FROM ANY AND ALL LIABILITIES, SUITS OR CLAIMS FOR INFRINGEMENT OF PATENT RIGHTS, REGARDLESS OF WHETHER OR NOT THE OWNER OR THE ARCHITECT/ENGINEER SPECIFIED A PARTICULAR DESIGN, PROCESS OR PRODUCT IN THE CONTRACT DOCUMENTS THAT MAY BE THE SUBJECT OF A PATENT INFRINGEMENT OR OTHERWISE ACTIVELY INDUCED OR CONTRIBUTED TO THE PATENT INFRINGEMENT. In the event the Prime Contractor has reason to believe that a particular design, process or product specified infringes a patent, the Prime Contractor shall immediately notify the Owner and the Architect/Engineer of same.

3.19 INDEMNIFICATION

(a) THE PRIME CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT/ENGINEER, HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITIES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S

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BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE PRIME CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE PRIME CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR OF THE ARCHITECT/ENGINEER, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CONTRACTOR, THE OWNER, AND THE ARCHITECT/ENGINEER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW, AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER THIRD PERSON OR ENTITY.

(b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Prime Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.19 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Prime Contractor or any Subcontractor, under workers compensation acts, disability benefit acts or other employee benefit acts.

(c) Indemnification under this Paragraph 3.19 shall include, but is not limited to, liability which could result to or be created for the Owner, its officers, agents, or employees, or the Architect/Engineer pursuant to State or Federal laws or regulations relating to pollution of the environment and State or Federal laws or regulations relating to the occupational safety and health of workers. The Prime Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Prime Contractor and that the obligations of the Owner, its officers, agents, and employees, and the Architect/Engineer under the above-mentioned laws and regulations are secondary to those of the Prime Contractor.

ARTICLE 4 - CONTRACT ADMINISTRATION

4.1 THE DESIGN PROFESSIONAL (ARCHITECT/ENGINEER)

(a) The design professional is the person lawfully licensed to practice architecture or engineering or a firm or other business entity lawfully practicing architecture/engineering identified as such in the formal Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in number. The term

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"Architect/Engineer" means the Architect/Engineer or the Architect/Engineer's authorized representative. The Owner may, at its option, designate a qualified Owner representative to serve as the Architect/Engineer on the Project instead of an outside firm or person. In such event, the references in these General Conditions that refer to the Architect/Engineer shall apply to the Owner-designated Architect/Engineer representative and the Owner-designated Architect/Engineer representative shall be accorded that same status by the Prime Contractor.

(b) In the event the Architect/Engineer is an outside person or firm and the Architect/Engineer's employment is terminated, the Owner may, at its option, contract with a new outside Architect/Engineer to replace the former, or may designate a qualified Owner representative to serve as the Architect/Engineer. The replacement Architect/Engineer, whether an Owner representative, an independent Architect/Engineer or any other qualified person or entity, shall be regarded as the Architect/Engineer for all purposes under the Contract Documents and shall be accorded that same status by the Prime Contractor. Any dispute in connection with such appointment shall be reviewed and settled by the Owner, whose decision shall be final and binding.

(c) Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect/Engineer's Construction Phase responsibility. Similarly, from time to time the Owner may expand or reduce the Owner's delegation of powers to the Architect/Engineer, with the Owner notifying the Prime Contractor of any such changes. The Architect/Engineer shall not be construed as a third party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth in this Subparagraph (c). In no event, however, shall the Owner have control over charge of, or be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of Prime Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2 ARCHITECT/ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION

(a) The Architect/Engineer will administer the Contract as described in the Contract Documents and in accordance with the terms of the Architect/Engineer's agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Prime Contractor, the provisions of the Owner/Architect/Engineer Agreement will be made available to the Prime Contractor.

(b) The Architect/Engineer shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent necessary to personally familiarize themselves with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents. The Architect/Engineer shall not, however, be required to make continuous on-site inspections to check the Work. Field reports of each visit shall be prepared by the

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Architect/Engineer and submitted to the Owner. The Architect/Engineer shall employ all reasonable measures to safeguard the Owner against defects and nonconformities in the Work. The Architect/Engineer shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Work. The Architect/Engineer will, however, immediately inform the Owner whenever defects or nonconformities in the Work are observed, or when any observed actions or omissions are undertaken by the Prime Contractor or any Subcontractor which are not in the best interests of the Owner or the Project.

(c) The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Prime Contractor's responsibility as provided in Paragraph 4.3. The Architect/Engineer and the Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Prime Contractor, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Prime Contractor is responsible.

(d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Prime Contractor shall endeavor to communicate through the Architect/Engineer. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Prime Contractor. Communications by and with separate contractors will be through the Owner. The Prime Contractor shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Architect/Engineer.

(e) Based on the Architect/Engineer's observations and evaluations of the Prime Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Prime Contractor and will issue Certificates for Payment in such amounts.

(f) The Architect/Engineer and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 3.17(b) and 3.17(c), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer to the Prime Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

(g) The Architect/Engineer will review and approve or take other appropriate action upon the Prime Contractor's submittals such as Shop Drawings, Product Data, and Samples, but

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only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such reasonable promptness as to not delay the Work or the activities of the Owner, Contractor, or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Prime Contractor as required by the Contract Documents. The Architect/Engineer's review of the Prime Contractor's submittals shall not relieve the Prime Contractor of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work as provided in Paragraph 7.3.

(i) The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Prime Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

(j) If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more Project representatives to assist in carrying out the Architect/Engineer's responsibilities at the site. The duties, responsibilities, and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated into the Contract Documents.

(k) The Architect/Engineer will interpret and make recommendations to the Owner concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Architect/Engineer shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Prime Contractor which change the scope of the Work or which modify or change the terms and conditions of any of the Contract Documents.

(l) Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by the Prime Contractor.

(m) The Architect/Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents; provided that the Architect/Engineer has the prior written approval of the Owner.

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4.3 CLAIMS AND DISPUTES

(a) Definition; General Notice of Claim Procedure. As used in these General Conditions, a "Claim" means a demand or assertion by one of the parties to the Contract seeking an adjustment of the terms of the Contract Documents, of the Contract Sum, of the Contract Time, or some other relief in respect to the terms of the Contract Documents. The term also includes all other disputes between the Owner and the Contractor arising out of or relating to the Project or the Contract Documents, including but not limited to claims that work was outside the scope of the Contract Documents. The responsibility to substantiate the Claim and the burden of demonstrating compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, WITHOUT EXCEPTION, MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT/ENGINEER AND TO THE OWNER WITHIN FOURTEEN (14) DAYS IMMEDIATELY AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM. Every Claim of the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Prime Contractor by his signature) of the Prime Contractor, verifying the truth and accuracy of the Claim. THE PRIME CONTRACTOR SHALL BE CONCLUSIVELY DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURES AND TIME LIMITS SET OUT IN THIS PARAGRAPH.

(b) Referral to the Architect/Engineer. Claims, disputes, and other matters in question between the Prime Contractor and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Architect/Engineer for recommendation to the Owner, which recommendation the Architect/Engineer will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Prime Contractor to submit the Claim to the Architect/Engineer for rendering of a recommendation to the Owner shall constitute a waiver of the Claim.

(c) Continuing Contract Performance. Pending final resolution of a claim the Prime Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents.

(d) Claims for Concealed or Unknown Conditions. No adjustment in the Contract Sum or Time associated with concealed or unknown conditions will normally be considered or allowed; provided, however, that the Contract Sum or Time may be adjusted by the Owner in such circumstances only if:

(1) a concealed subsurface condition is encountered in the course of performance of the Work;
(2) a concealed or unknown condition in an existing structure is at variance with conditions indicated by the Contract Documents; or

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(3) an unknown physical condition is encountered below the surface of the ground or in an existing structure which is of an unusual nature and materially different from those ordinarily encountered and generally recognized as inherent in the character of the Work; and
(4) a notice of claim with proper and adequate substantiation is presented pursuant to Subparagraph 4.3(a) of these General Conditions; and
(5) the Owner and the Architect/Engineer determine that:

(i) prior to submitting its bid for the Work, the Contractor used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and

(ii) the work caused or required by the concealed or unknown condition at issue can be considered extra work to the extent that additional new Drawings must be prepared and issued and new construction beyond the scope of the Contract Documents is required.

(e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE ARCHITECT/ENGINEER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE PRIME CONTRACTOR AT THE PRIME CONTRACTOR'S OWN RISK. THE OWNER AND THE ARCHITECT/ENGINEER DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.

(f) Claims for Additional Cost. If the Prime Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided in this Paragraph 4.3 shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. In addition, the Prime Contractor's request for an increase in the Contract Sum for any reason (other than work performed under emergency conditions) shall be made far enough in advance of required work to allow the Owner and the Architect/Engineer a sufficient amount of time, without adversely affecting the construction schedule, to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates or proposals and to negotiate, execute and distribute a Change Order for the required work if the Prime Contractor believes that additional cost is involved for reasons including but not limited to:

(1) a written interpretation from the Architect/Engineer;

(2) a written order for a minor change in the Work issued by the Architect/Engineer;

(3) failure of payment by the Owner;

(4) termination of the Contract by the Owner;

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(5) the Owner's temporary suspension of all or any portion of the Work where the Prime Contractor was not at fault; or

(6) other reasonable grounds.

(g) Injury or Damage to Person or Property. If the Prime Contractor suffers injury or damages to person or property because of an act or omission of the Owner, or of any of the Owner's officers, employees or agents, written, sworn-to notice of any claim for damages or injury shall be given as provided in Subparagraph 4.3(a). The notice shall provide sufficient detail to enable the Architect/Engineer and the Owner to investigate the matter.

(h) Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Prime Contractor asserts a claim to the Prime Contractor, that the Prime Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the Prime Contractor to submit and assert the claim against the Owner shall be subject to:

(1) the requirements of Paragraph 4.3 of these General Conditions; and

(2) the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Prime Contractor to seek and assert such claim against the Owner:

(ii) The Prime Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Prime Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Prime Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Prime Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Prime Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Prime Contractor in the claim submittal materials.

(ii) The Prime Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Prime Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Prime Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed by the Contractor to be valid.

(iii) The Subcontractor making the claim to the Prime Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Prime Contractor in the claim submittal materials made by Contractor to the Owner..

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(3) Any failure of the Prime Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim against Owner.

(4) Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or by applicable law.

(i) Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part. The Prime Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If the Prime Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Prime Contractor to develop a recovery schedule as described in Paragraph 3.10 or to accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as the Owner may reasonably direct and, upon receipt, the Prime Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Prime Contractor to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).

(2) In the event that the Prime Contractor is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Subparagraph 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to the Prime Contractor provided within fourteen (14) days after receipt of the Prime Contractor's Claim. If the Owner denies the Prime Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Prime Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(3) If the Prime Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by the Owner if not for the need and right to accelerate, the Prime Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Prime Contractor under Subparagraph 4.3(a) above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and

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required insurance; provided however, not to exceed five (5%) per cent, will be allowed on the claimed acceleration costs. NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM. The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (i)(3).

(i) Waiver of Claims; Final Payment. The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

(1) claims, security interests, purported liens, or other attempted encumbrances arising out of the Contract and remaining unsettled;

(2) defective or nonconforming Work appearing after Substantial Completion;

(3) latent defects, as defined in Subparagraph 12.2(d), appearing after Final Completion; or

(4) the terms of general and special warranties required by the Contract Documents or allowed or implied by law.

(k) THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING.

(l) No Waiver of Governmental Immunity. NOTHING IN THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY APPLICABLE STATE LAW.

ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS OF SUBCONTRACTOR

(a) A Subcontractor is person or entity who has a direct Contract with the Prime Contractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Prime Contractor by purchase or lease for use in performance of or incorporation into the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(b) A Sub-subcontractor is a person or entity who has a direct or indirect Contract with a Subcontractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Subcontractor or another Sub-subcontractor by purchase or lease for use

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in performance of or incorporation into the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

(a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Prime Contractor and the Owner, the Prime Contractor shall furnish to the Architect/Engineer in writing, for acceptance by the Owner and the Architect/Engineer, a list of the names, addresses, telephone numbers, M/WBE certification numbers (where applicable), and type of work of the Subcontractors (including those who are to furnish materials or equipment fabricated to a special design), proposed for the principal portions of the Work, including furnishings when made a part of the Contract. The Prime Contractor shall immediately notify the Owner in writing of any changes in the list as they occur. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.

(b) The Prime Contractor shall not Contract with a proposed person or entity to whom the Owner or Architect/Engineer has made reasonable and timely objection.

(c) Architect/Engineer's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Prime Contractor of his responsibility for performance of Work as called for under the Contract Documents, and shall not provide a basis for any claim for additional time or money on the part of the Prime Contractor. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the Owner or Architect/Engineer. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.

(d) The Prime Contractor shall not change a Subcontractor previously selected if the Owner or Architect/Engineer makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

(a) By appropriate agreement, written where legally required for validity, the Prime Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Prime Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Prime Contractor all the obligations and responsibilities which the Prime Contractor, by the Contract Documents, assumes toward the Owner and the Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Contract Documents (including but not limited to these General Conditions) with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the rights of the Owner and the Architect/Engineer.

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Where appropriate, the Prime Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Prime Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.

(b) The Prime Contractor is solely responsible for making payments properly to the Prime Contractor's Subcontractors on the Project. During performance of the Work, the Prime Contractor shall comply with the following additional rules regarding Subcontractor payments:

(1) The Prime Contractor shall submit, beginning with the Second Application and Certificate for Payment, a Subcontractor Payment Report (the "Report") with each Application and Certificate for Payment. The Report shall show all payments made to date by the Prime Contractor (plus existing retainage) to each Subcontractor involved in the Project. The Report shall be made on a form approved and supplied by the Owner. As an alternative to the Report, the Prime Contractor may furnish Affidavits of Payment Received with the Application and Certificate for Payment, which affidavits shall be executed by each Subcontractor owed money and paid by Subcontractor during the previous progress payment period for work or materials furnished on the Project. RECEIPT BY THE OWNER OF THE REPORT OR AFFIDAVITS OF PAYMENT RECEIVED SHALL BE A CONDITION PRECEDENT TO PAYMENT ON ANY APPLICATION FOR PAYMENT.

(2) If, for any reason, the Prime Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Prime Contractor shall note the amount withheld and further note that the payment is in dispute. The Owner may, in its sole discretion, require the Prime Contractor to document and verify the dispute or other problem in question.

(3) The Owner reserves the right in its sole discretion, to withhold payment to the Prime Contractor pursuant to Paragraph 9.5(a) of the General Conditions, should it appear from the Report, statements of payment received or other information furnished to the Owner that:

(i) the Report has not been properly completed;

(ii) the Prime Contractor has knowingly provided false information regarding payment of any Subcontractor; or

(iii) the Prime Contractor has otherwise failed to make payments properly to any Subcontractor.

(4) THE PRIME CONTRACTOR SHALL NOT HAVE ANY RIGHT TO MAKE A CLAIM FOR ADDITIONAL TIME OR ADDITIONAL COMPENSATION AS A RESULT OF THE OWNER'S OR ARCHITECT/ENGINEER'S ENFORCEMENT OF

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THIS SUBPARAGRAPH 5.3(b). NO PROVISION OF THIS SUBPARAGRAPH OR ANY OF THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO CREATE A CONTRACTUAL RELATIONSHIP, EXPRESS OR IMPLIED, BETWEEN ANY SUBCONTRACTOR AND EITHER THE OWNER OR THE ARCHITECT/ENGINEER AND SHALL NOT BE CONSTRUED TO MAKE ANY SUBCONTRACTOR OR ANY OTHER PERSON OR ENTITY, A THIRD-PARTY BENEFICIARY OF THE CONTRACT BETWEEN THE OWNER AND THE PRIME CONTRACTOR.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of a termination of this Contract by the Owner under Article 14, the Prime Contractor shall, if requested in writing by the Owner, within fifteen (15) days after the date notice of termination is sent, deliver and assign to Owner, or any person or entity acting on the Owner's behalf, any or all subcontracts made by Prime Contractor in the performance of the Work, and deliver to the Owner true and correct originals and copies of the subcontract documents. In the event assignment is not requested by the Owner, Prime Contractor shall terminate all subcontracts to the extent that Owner has not directed assignment of same and to the extent that they relate to the performance of Work terminated by the notice of termination.

ARTICLE 6 - CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

(a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Prime Contractor claims that delay or additional cost is involved because of such action by the Owner, the Prime Contractor shall make a claim as provided elsewhere in, and in accordance with the Contract Documents.

(b) When separate Contracts are awarded for different portions of the Project or other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Building Construction Services Agreement with the Owner.

(c) The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Prime Contractor, who shall cooperate with them. The Prime Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Prime Contractor shall, with the approval of the Owner, make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Prime Contractor, separate

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contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Prime Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Prime Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Prime Contractor's Change Order proposal is denied by the Owner, the Prime Contractor must submit any Claim pursuant to Paragraph 4.3 of the General Conditions.

(d) Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Prime Contractor under these General Conditions, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

(a) The Prime Contractor shall afford the Owner and separate contractors' reasonable opportunity for access to and storage of their materials and equipment and the performance of their activities and shall coordinate the Prime Contractor's construction and operations with the separate contractors as required by the Contract Documents.

(b) If part of the Prime Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Prime Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for proper execution and results. Failure of the Prime Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Prime Contractor's Work, except as to defects not then reasonably discoverable.

(c) The Owner shall not be liable to the prime Contractor for damages suffered by the Prime Contractor due to the fault or negligence of a separate contractor or through failure of a separate contractor to carry out the directions of the Owner or the Architect/Engineer. Should any interference occur between the Prime Contractor and a separate contractor, the Architect/Engineer or the Owner may furnish the Prime Contractor with written instructions designating priority of effort or change in methods, whereupon the Prime Contractor shall immediately comply with such direction. In such event, the Prime Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Prime Contractor.

(d) The Prime Contractor shall promptly remedy damage wrongfully caused by the Prime Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2(e).

(e) Should the Prime Contractor cause damage to the work or property of any separate contractor on the Project, the Prime Contractor shall, upon due notice, settle with the separate contractor by agreement, if the separate contractor will so settle. If the separate

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contractor sues the Owner or submits a claim on account of any damage alleged to have been so sustained, the Owner shall notify the Prime Contractor who shall defend such proceedings, at the Prime Contractor's sole expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Prime Contractor shall fully pay or satisfy it and shall reimburse the Owner for any and all attorney's fees and costs which the Owner has incurred.

(f) The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Prime Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project Site and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up, but is not obligated to do so, and Owner shall allocate the cost among those parties responsible, as the Architect/Engineer recommends to be just.

ARTICLE 7 - AMENDMENTS

7.1 CHANGE ORDERS

(a) A Change Order is a written order to the Contractor, signed by the Owner and the Architect/Engineer, issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, or an adjustment to the Contract Time, consistent with other applicable provisions of this Contract. The Owner, without invalidating the Contract and without requiring notice of any kind to the sureties, may order changes to the scope of Work under the Contract by additions, deletions, or other revisions, the Contract Sum and Contract Time to be adjusted consistent with other applicable provisions of this Contract. All Change Orders shall be executed on a Change Order form approved by the Owner and the Owner's City Attorney.

(b) In addition to the Owner and the Architect/Engineer, the Contractor shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Contractor refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Architect/Engineer to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Contractor indicates his agreement with all of the changes approved, including the adjustment in the Contract Sum or the Contract Time. EACH CHANGE ORDER SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. The Contractor forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the

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executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on other Work.

(c) No extra work (except under emergency conditions) or changes shall be made nor shall any substitutions, changes or additions to or omissions or deviations from the requirements of the Drawings and Specifications be made unless pursuant to a written Change Order signed by the Owner and the Architect/Engineer, it being expressly understood that the Owner shall not be liable for the cost of extra work or any substitution, change, addition, omission or deviation from the requirements of the Drawings or Specifications unless the same shall have been authorized in writing by the Owner and the Architect/Engineer in a written change order or other Amendment. The provisions of this Paragraph 7.1 shall control in the event of any inconsistency between such provisions and the other provisions of this Article 7. See Subparagraph 10.3(a) of the General Conditions for Change Orders under emergency conditions.

(d) The method of determining the cost or credit to the Owner for any change in the Work shall be one of the following:

(1) mutual acceptance of a not-to-exceed lump-sum amount properly itemized and supported by sufficient substantiating data to permit evaluation; or

(2) unit prices stated in the Contract Documents or subsequently agreed upon; or

(3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

(4) the force account method provided in Subparagraph 7.1(e)

(e) If the parties cannot agree to one of the methods of calculating cost provided in Clauses (d) (1), (d) (2), or (d) (3), or if the parties agree to a method but cannot agree on a final dollar figure; or if the Contractor for whatever reason refuses to sign the Change Order in question; the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of the Work involved shall then be calculated on the basis of the reasonable jobsite expenditures and savings of those performing the Work attributable to the changes, including a reasonable allowance for overhead and profit, such allowance in any case never to exceed fifteen (15%) per cent. In such case, the Contractor shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Architect/Engineer and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to the Architect/Engineer each day during the performance of force account work, with copies to the Owner.

FAILURE OF THE CONTRACTOR TO SUBMIT THE SWORN-TO ITEMIZED ACCOUNTING DAILY AS REQUIRED HEREIN SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY RIGHT TO DISPUTE THE OWNER'S DETERMINATION OF THE AMOUNT DUE THE CONTRACTOR FOR FORCE ACCOUNT WORK. Costs to be charged under this Subparagraph for force account work

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are limited to the following:

(1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;

(2) costs of materials, supplies and equipment (but not to include off-site storage unless approved in writing by the Owner), whether incorporated or consumed;

(3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

(4) costs of premiums for all bonds and insurance related to the Work; and

(5) additional costs of supervision and field office personnel directly attributable to the changed Work. Pending final determination of cost to the Owner, payment of undisputed amounts on force account shall be included on the Architect/Engineer's Certificate of Payment as work is completed.

(f) The amount of credit to be allowed to the Owner for any deletion of Work or any other change which results in a net decrease of the Contract Sum shall be the amount of actual net cost confirmed by the Architect/Engineer plus the stated percentage for overhead and profit. When both additions and deletions or credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease with respect to that change.

7.2 SUPPLEMENTAL AGREEMENTS

A written Supplemental Agreement can also be used to implement changes in the Work instead of a Change Order form, including but not limited to situations involving partial occupancy of the Work under Paragraph 9.8, a change made to the Drawings or the Specifications without an increase in the Contract Sum, or special circumstances where it is necessary or more appropriate for the Owner to use a Supplemental Agreement. Written Supplemental Agreements shall have a status equal to that of Change Orders for purposes of priority of Contract Documents interpretation, except that to the extent of a conflict, later Supplemental Agreements in time control over earlier Supplemental Agreements, and the latest Change Order or Supplemental Agreement in time controls over earlier dated Change Orders and Supplemental Agreements. The rules of Subparagraphs 7.1(b) through (f) shall also apply to the negotiation and execution of Supplemental Agreements.

7.3 MINOR CHANGES IN THE WORK

The Architect/Engineer, after notifying the Owner, shall be authorized to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Minor changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly. These written orders shall not be deemed to change or impact the Contract Sum or the Contract Time. Contractor shall have no

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Claim for any minor change ordered to the Work under this Paragraph 7.3 unless the Contractor submits its change proposal, prior to complying with the minor change ordered and in no event later than ten (10) working days from the date the minor change was ordered, to the Owner for approval.

7.4 TIME REQUIRED TO PROCESS AMENDMENTS

(a) All of the Contractor's responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Architect/Engineer a minimum of thirty (30) calendar days after receipt by the Architect/Engineer to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. All of the Prime Contractor's responses to proposal requests shall include a statement that the cost described in the response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation under the Contract Documents, without reservation or further recourse.

(b) All Amendments require approval by either the City Council or, where authorized by the State law and City ordinance, by the City Manager pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution, Ordinance or Administrative Action. THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS. Pending the approval described above, the Contractor will proceed with the work under a pending Amendment only if directed in writing by the Owner.

ARTICLE 8 - CONTRACT TIME

8.1 DEFINITIONS

(a) Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

(b) The date of commencement of the Work is the date established in the Notice to Proceed from the Owner. The date of commencement shall not be postponed by the failure of the Prime Contractor, or of persons or entities for whom the Prime Contractor is responsible to act promptly to commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed, through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable extension of the Contract Time; the Contract Sum shall remain unchanged.

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(c) The date of Substantial Completion is the date certified by the Architect/Engineer in accordance with Paragraph 9.7.

(d) The term "day" as used in the Contract Documents shall mean a calendar day, beginning and ending at 12:00 midnight, unless otherwise specifically defined by special provision.

8.2 PROGRESS AND COMPLETION

(a) **Time limits stated in the Contract Documents are of the essence of the Contract**. By executing the Building Construction Services Agreement, the Prime Contractor confirms that the Contract Time is a reasonable period for performing the Work.

(b) The Prime Contractor shall not knowingly, except by agreement with or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance to be furnished by the Prime Contractor as required by Article 11. The date of commencement of the Work shall not be changed by the effective date of insurance required by Article 11.

8.3 DELAYS AND EXTENSIONS OF TIME

(a) If the Prime Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Prime Contractor's control, or by delay authorized by the Owner pending a claim, or by other causes which the Architect/Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer and Owner may determine.

(b) Claims relating to Contract Time and time extensions shall be made in accordance with the applicable provisions of Paragraph 4.3.

(c) No Damages for Delay. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, INCLUDING THE GENERAL CONDITIONS, NO ADJUSTMENT SHALL BE MADE TO THE CONTRACT SUM AND THE PRIME CONTRACTOR SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR UNFORESEEN, WHICH INCREASES THE TIME TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE ARCHITECT/ENGINEER, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE PRIME CONTRACTOR'S SOLE REMEDY.

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(d) The Owner shall have the right to occupy, without prejudice to the right of either party, any completed or largely completed portions of the structure or Work, notwithstanding the fact that the Contract Time for completing all or a portion of the Work may not have expired. Partial occupancy and use shall not be deemed as an acceptance of the Work taken or used.

(e) The Prime Contractor shall promptly suspend the Work when either the Prime Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Prime Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Prime Contractor will also not be liable to the Owner for a delay caused in fact by the Work being suspended by a court order.

(f) The Architect/Engineer, with the consent of the Owner, shall have the authority to suspend the Work, in whole or in part, for such period or periods as the Architect/Engineer deems necessary due to unusual or severe weather conditions as are considered unfavorable for the suitable prosecution of the Work, or due to failure on the part of the Prime Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop the Work for an indefinite period, the Prime Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way, and shall take every precaution to prevent damage or deterioration of the Work performed. In cases of suspension of the Work under this Subparagraph, the Prime Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Prime Contractor shall not suspend the Work in whole or in part without written authority from the Architect/Engineer or the Owner, and shall resume the Work promptly when notified by the Architect/Engineer or the Owner to resume operations.

(g) In the event of a delay that is the responsibility of the Prime Contractor or any of the Subcontractors, for which the Prime Contractor is not entitled to a time extension under the provisions of this Contract, the Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts, or resequencing. This acceleration shall be at no cost to the Owner and will continue until the Contract Time is restored. In the event of a delay for which the Prime Contractor is entitled to a time extension, as determined by the Architect/Engineer, Owner may similarly direct acceleration and the Prime Contractor agrees to perform same on the basis that the Prime Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). THE PRIME CONTRACTOR EXPRESSLY WAIVES ANY OTHER COMPENSATION RESULTING FROM ACCELERATION, SUCH AS LOSS OF LABOR PRODUCTIVITY OR EFFICIENCY.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Building Construction Services Agreement and, including authorized adjustments, is the total amount of compensation payable by the Owner to the Prime Contractor for the performance of the Work under the Contract Documents.

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9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Prime Contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, when approved by the Architect/Engineer and the Owner, shall be used as a basis for the Prime Contractor's Application for Payment. The schedule of values shall follow the trade division of the Specifications. Prime Contractor's Application for Payment shall be filed on the current version of AIA Form G702 (Application and Certificate for Payment), as approved by the Owner.

9.3 APPLICATIONS FOR PAYMENT

(a) At least ten (10) days before the date established for each progress payment, the Prime Contractor shall submit to the Architect/Engineer an itemized Application for Payment for Work completed in accordance with the schedule of values. The Application shall be notarized, if required, and supported by data substantiating the Prime Contractor's right to payment as the Owner or Architect/Engineer may require, including but not limited to copies of requisitions from Subcontractors and material suppliers, and reflecting the applicable retainage as required in the Contract Documents. Prime Contractor's Application for Payment shall also provide other supporting documentation as the Owner or the other applicable provisions of the Contract Documents may require.

(b) Applications for Payment may not include requests for payment of amounts the Prime Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Prime Contractor complies with Clause 5.3(b) (2) of these General Conditions and the Prime Contractor's Payment Bond Surety consents in writing to payment to the Prime Contractor of the funds deemed to be in dispute.

(c) Unless otherwise provided in the Contract Documents, progress payments shall include payment for materials and equipment delivered and suitably stored at the Project site for subsequent incorporation into the Work within thirty (30) days after delivery to the Project site. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored away from the Project site at a location agreed upon in writing. Payment for costs incurred in storage of materials or equipment away from the Project site will NOT be made by Owner unless:

(1) the Owner has given prior approval of such off-site storage in writing;
(2) the materials or equipment are stored in a bonded warehouse located in Denton County and identified with the Project for which they are stored, as evidenced by warehouse receipts and appropriate documents of title; and
(3) the materials or equipment stored off-site will be incorporated into the Work within thirty (30) days after delivery. STORAGE IN FACILITIES OF THE MANUFACTURER OR THE PRIME CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.

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(d) The Prime Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Prime Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Prime Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

(e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an "early delivery." All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Prime Contractor shall, at Prime Contractor's expense or at the expense of the responsible Subcontractor or Supplier, cause such early delivery to be removed from the Project site and stored off-site until required at the Project site. All costs of labor, transportation and storage will be included as part of the expense. If the Prime Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Prime Contractor's sole expense, and amounts may be withheld from the Prime Contractor's Application for Payment to reimburse the Owner for any costs incurred in removing unauthorized early delivery materials. OWNER WILL NOT BE RESPONSIBLE FOR THE PROTECTION OF OR RISK OF LOSS ON ANY EARLY DELIVERY MATERIALS OR EQUIPMENT, NOR WILL OWNER BE LIABLE FOR ANY PAYMENT FOR THE EARLY DELIVERY MATERIALS OR EQUIPMENT. Any materials or equipment classified as early delivery will not be approved for payment as stored materials prior to thirty (30) days before the incorporation of the materials or equipment into the Work, unless storage and payment at an earlier date is expressly approved in writing by the Owner.

(f) If the Contract Sum is equal to or less than $25,000, and if performance and payment bonds are not furnished by the Contractor, then no payment applied for will be payable under the Contract until the Work has been finally completed and accepted.

9.4 CERTIFICATES FOR PAYMENT

(a) The Architect/Engineer will, within ten (10) days after receipt of the Prime Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Prime Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Prime Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in:
(a) City of Denton "General Conditions for Building Construction."
(b) Subparagraph 9.5(a). The Certificate for Payment shall be issued on the current version of AIA Form G702 (Application and Certificate for Payment) as approved by the Owner.
(c) The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The

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foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Final Completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Prime Contractor is entitled to payment in the amount certified, subject to the Owner's approval. The issuance of a Certificate for Payment is not a representation that the Architect/Engineer has:

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(2) reviewed construction means, methods, techniques, sequences or procedures;

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Prime Contractor's right to payment; or

(4) made examination to ascertain how or for what purpose the Prime Contractor has used money previously paid on account of the Contract Sum.

(d) Whenever the Application for Payment for Work done since the last previous Application for Payment exceeds one hundred dollars ($100.00) in amount, Owner will pay a percentage of the Application, less applicable retainage, to the Prime Contractor within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Architect/Engineer. The Application may include acceptable nonperishable materials delivered to the Work or stored as provided for in Paragraph 9.3(c) and the payment will be allowed on the net invoice value, less taxes and applicable retainage.

(e) The City is required to withhold retainage for public works contracts in which the total contract price estimate at the time of execution is more than $400,000; however, this requirement is applied by the City for all public works contracts in excess of $50,000. The retainage will be withheld by the Owner from each progress payment until final completion of the Work by the Contractor, approval of final completion by the Architect/Engineer, and final acceptance of the Work by the Owner. Unless otherwise required by state law, the retainage percentage as specified in Exhibit A is based upon the original Contract Sum, and will not be affected in the event the original Contract Sum is subsequently increased by Change Order.

(f) No progress payments shall be made on contracts where performance and payment bonds are not required or furnished. In such instances, payment for the Work performed will be made upon final completion and acceptance by the Owner of all Work.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

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(a) The Architect/Engineer or the Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner's interest, if in the Architect/Engineer's or Owner's opinion the representations to the Owner required by Subparagraph 9.4(b) cannot be made. If the Architect/Engineer or the Owner is unable to certify payment in the amount of the Application, the Architect/Engineer or the Owner will notify the Prime Contractor as provided in Subparagraph 9.4(a). If the Prime Contractor and Architect/Engineer or the Owner cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make the required representations to the Owner. The Architect/Engineer or the Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary, in the Architect/Engineer's or Owner's opinion, to protect the Owner from loss because of:

(1) defective or nonconforming Work not remedied;

(2) third-party claims filed or reasonable evidence indicating probable filing of such claims;

(3) failure of the Prime Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;

(4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

(5) damage to the Owner or another contractor;

(6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;

(7) persistent failure to carry out the Work in accordance with the Contract Documents; or

(8) mathematical or other errors that are discovered in the Application for Payment.

(b) When all of the above reasons that existed for withholding certification are removed or remedied, then, at that time, certification will be made for amounts previously withheld.

(c) The Owner may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to the Owner from the Prime Contractor, regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise, and regardless of whether or not the debt due to the Owner has been reduced to judgment by a court.

9.6 PROGRESS PAYMENTS

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(a) After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect/Engineer. The Owner shall not be liable for interest on any late or delayed progress payment or final payment caused by any claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the Application for Payment or as a precondition to payment under the Contract Documents, or due to any payment the Owner or the Architect/Engineer has a right to withhold or not certify under the Contract Documents. Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contract Documents, including but not limited to those defaults set forth in Subparagraph 9.5(a), Clauses (1) through (7). The Owner shall not be deemed in default by reason of withholding payment while any Prime Contractor default remains uncured.

(b) The Prime Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Prime Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Prime Contractor on account of such Subcontractors portion of the Work. The Prime Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

(c) The Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Prime Contractor and action taken thereon by the Architect/Engineer and the Owner on account of portions of the Work done by such Subcontractor.

(d) Neither the Owner nor the Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. That obligation belongs to the Prime Contractor or, in the event of the Prime Contractor's failure to pay a Subcontractor, to the Surety on the Payment Bond as required under Paragraph 11.3.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6(b), (c), and (d).

(f) A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not performed in accordance with the Contract Documents.

9.7 SUBSTANTIAL COMPLETION

(a) The Date of Substantial Completion of the Work, or designated portion of the Work, is the date certified by the Architect/Engineer when construction is sufficiently completed in accordance with the City Of Denton General Conditions For Building Construction.

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(a) the Contract Documents such that the Owner may beneficially occupy and use the Work, or designated portions of the Work, for the purposes for which it is intended and only trivial and insignificant items remain which do not affect the Work as a whole.

(b) When the Prime Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Prime Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The Prime Contractor shall proceed promptly to complete and correct items on the list (hereinafter called the "punch list"). Failure to include an item on the punch list does not alter the responsibility of the Prime Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Architect/Engineer will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Architect/Engineer's inspection discloses any item, whether or not included on the punch list, which is not in accordance with the requirements of the Contract Documents and which renders the Work inspected not Substantially Complete the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Architect/Engineer. The Prime Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and the Prime Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Prime Contractor shall finish all items on the punch list accompanying the Certificate.

(c) The Certificate of Substantial Completion shall be submitted to the Owner and the Prime Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

(d) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Prime Contractor and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

9.8 PARTIAL OCCUPANCY OR USE

(a) The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate Supplemental Agreement with the Prime Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.2(e) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Prime Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of

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warranties required by the Contract Documents. When the Prime Contractor considers a portion Substantially Complete, the Prime Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Prime Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Prime Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

(b) Immediately prior to such partial occupancy or use, the Owner, Prime Contractor, and Architect/Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

(c) Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

(a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer, accompanied by the Owner's representative, will promptly make final inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Prime Contractor and noted in said final Certificate is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9(b) as a condition precedent to the Prime Contractor's being entitled to final payment have been fulfilled. Owner will normally make final payment within thirty (30) days after Owner's receipt and approval of the final Certificate for Payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided by separate agreement between the Owner and the Prime Contractor.

(b) Neither final payment nor any remaining retained percentage shall become due until the Prime Contractor submits to the Architect/Engineer:

(1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
(2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;

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(3) a written statement that the Prime Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
(4) a consent of surety to final payment; and
(5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

(c) As a precondition to final payment by the Owner under this Contract, the Prime Contractor's affidavit under Clause (b)(1) shall state that the Prime Contractor has paid each of his subcontractors, laborers or materialmen in full for all labor and materials provided to Contractor for the Work performed under this Contract. In the event the Prime Contractor has not paid each of his subcontractors, laborers or materialmen in full, the Prime Contractor shall state in the affidavit the amount owed and the name of each subcontractor, laborer or materialmen to whom such payment is owed. IN ANY EVENT, THE PRIME CONTRACTOR SHALL BE REQUIRED TO EXECUTE THE OWNER'S STANDARD AFFIDAVIT OF FINAL PAYMENT AND RELEASE AS A PRECONDITION TO RECEIPT OF FINAL PAYMENT.

(d) If, after Substantial Completion of the Work, final completion of the Work is materially delayed through no fault of the Prime Contractor or by issuance of Change Orders affecting final completion and the Architect/Engineer confirms the delay, the Owner shall, upon application by the Prime Contractor and certification by the Architect/Engineer, 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 for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of payment. Payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

(e) The acceptance by the Prime Contractor of the final payment shall operate as and shall be a complete release of the Owner from all claims or liabilities under the Contract, for anything done or furnished or relating to the Work or the Project, or for any act or neglect of the Owner relating to or connected with the Work or the Project.

ARTICLE 10 - SAFETY, SECURITY AND UTILITY PROVISIONS; ENVIRONMENTAL COMPLIANCE

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Prime Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and will comply with all applicable City, County, State and Federal health and safety regulations.

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10.2 SAFETY OF PERSONS AND PROPERTY

(a) The Prime Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(1) employees on the Work and other persons who may be affected thereby;

(2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Prime Contractor or the Prime Contractor's Subcontractors or Sub-subcontractors; and

(3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Prime Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

(c) The Prime Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(d) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Prime Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

(e) USE OF EXPLOSIVES - CLAIMS AND TOTAL INDEMNIFICATION. The Owner shall have the right to pre-approve the use of any explosives on the Project; the Prime Contractor shall not assume in its bid that permission to use explosives will be granted. The Owner shall NOT be liable for any claim for additional time or compensation as a result of the Owner's denial of permission to use explosives. Where use of explosives is permitted by the Owner, the Prime Contractor EXPRESSLY AGREES TO BE SOLELY RESPONSIBLE for the determination as to whether explosives shall actually be used, and for any result from the use, handling or storage of explosives, and shall INDEMNIFY, DEFEND AND HOLD COMPLETELY HARMLESS the Owner, its officers, agents and employees, and the Architect/Engineer against any and all claims, lawsuits, judgments, costs or expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, as the result of the use, handling or storage of the explosives by the Prime Contractor or any Subcontractor, REGARDLESS OF WHETHER SAID USE, HANDLING OR STORAGE WAS NEGLIGENT OR NOT, AND REGARDLESS OF WHETHER THE DAMAGE OR INJURY WAS CONTRIBUTED TO IN ANY WAY BY THE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES, OR THE ARCHITECT/ENGINEER AND ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. In the event of conflict with any

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other indemnity paragraph in this Contract, this paragraph controls. This indemnity paragraph is intended solely for the benefit of the parties to this Contract and is not intended to create or grant any rights, contractual or otherwise, to or for any other person or entity. The Prime Contractor shall furnish the Owner and the Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury, which insurance shall either include the Owner and the Architect/Engineer as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Architect/Engineer. All explosives shall be stored in a safe and secure manner, under the care of a competent watchman at all times, and all storage places shall be marked clearly and conspicuously: "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives and highly flammable materials shall conform to Federal and State laws, City of Denton ordinances, and the City of Denton Fire Department regulations. The Prime Contractor shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Prime Contractor's intention to use explosives, and such notice shall be given sufficiently in advance to enable the telecommunications and public utility companies and private property owners to take such steps as they may deem necessary to protect their property from injury. The notice shall not relieve the Prime Contractor of any responsibility for damage resulting from any blasting operations.

(f) The Prime Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the Prime Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Prime Contractor is responsible under Clauses 10.2(a)(2) and 10.2(a)(3), except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Prime Contractor or any of its Subcontractors. The foregoing obligations of the Prime Contractor are in addition to the Prime Contractor's obligations under Paragraph 3.l9. To the extent that any such damage or loss may be covered by property insurance or other insurance required by the Contract Documents, the Owner and the Prime Contractor shall exercise their best efforts to make a claim and obtain recovery from the insurers to provide for the cost, in whole or in part, of the repair work or to provide for reimbursement for such damage or loss.

(g) The Prime Contractor shall designate a responsible member of the Prime Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Prime Contractor's superintendent unless otherwise designated by the Prime Contractor in writing to the Owner and Architect/Engineer.

(h) The Prime Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In an emergency affecting safety, health, or security of persons or property, the Prime

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Contractor shall act, at the Prime Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Prime Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.4 PUBLIC CONVENIENCE AND SAFETY

(a) The Prime Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

(b) The Owner reserves the right to remedy any neglect on the part of the Prime Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Prime Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Prime Contractor's neglect shall be deducted from the Contract Sum. The Prime Contractor shall notify the City Traffic Control Department when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Prime Contractor shall, when directed by the Architect/Engineer or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Prime Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Prime Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN

If the Work is carried on or adjacent to any street, alley or public place, the Prime Contractor shall, at the Prime Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon the Prime Contractor's name and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Paragraph, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Prime Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and

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watchmen to protect the Work. Whenever evidence is found of such damage, the Architect/Engineer may order the damaged portion immediately removed and replaced by the Prime Contractor at Prime Contractor's cost and expense. The Prime Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect/Engineer. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Prime Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Prime Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, the Prime Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Prime Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers; for this purpose, the Prime Contractor shall provide and maintain, at the Prime Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. The Prime Contractor shall, at the Prime Contractor's own expense, construct such troughs, pipes, or other structures necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Architect/Engineer. All storm water and sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT

(a) When the Prime Contractor desires to use the Owner's water in connection with the Work, the Prime Contractor shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the Prime Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the Denton Water Utilities Department.

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(b) The Prime Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner or with Denton Municipal Electric in the event that separately metered electrical connections are required for the Project. The Prime Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Prime Contractor through the City of Denton.

10.9 USE OF FIRE HYDRANTS

The Prime Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the Denton Water Utilities Department in accordance with the Denton City Code.

10.10 ENVIRONMENTAL COMPLIANCE

(a) The Prime Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

(b) In the event the Prime Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Prime Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Architect/Engineer and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a Change Order with the Prime Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Prime Contractor or any of its Subcontractors, the Prime Contractor shall be responsible for remediating the condition at the sole expense of the Prime Contractor in accordance with the Prime Contractor's APPROVED Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a

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Hazardous Substance may be granted by the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Paragraph 4.3 and Article 8.

(c) The Prime Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Prime Contractor or any Subcontractor or Supplier. The Prime Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Architect/Engineer so that they may observe the activities; provided, however, that it shall be the Prime Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

(d) Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Prime Contractor shall submit to the Owner for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Prime Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Owner's Project Manager or other designated representative. The Prime Contractor shall not commence any field work prior to approval of such plan by the Owner. The following additional rules shall apply with respect to spills caused by the Prime Contractor or a Subcontractor:

(1) The Prime Contractor shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the Prime Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.

(2) The Prime Contractor shall immediately respond in accordance with the SPRP in the event of a spill.

(3) The Prime Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the Prime Contractor shall use only those transporters and

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disposal facilities that are approved in advance in writing by the Owner. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request of the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter. ALL COSTS OF COLLECTION, CONTAINMENT, AND DISPOSAL OF SPILLED MATERIALS SHALL BE THE SOLE RESPONSIBILITY OF THE PRIME CONTRACTOR.

(4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.

(e) Clean Air Management Plan. The Prime Contractor shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the contractor selection process. The Owner reserves the right, at the Prime Contractor's sole expense, to require the removal or retrofitting of any equipment used in the course of construction that does not comply with the Plan submitted to and approved by the Owner.

(f) The Prime Contractor shall deposit surplus or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Prime Contractor shall submit to the Owner for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request to the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter.

(g) The Prime Contractor is responsible for obtaining all TXPDES Storm Water Permits from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities promulgated by EPA, including but not limited to cleaning, grading, and excavation that disturb the applicable amount of total land area. In addition, the Prime Contractor shall comply with all regulations of the Owner relating to storm water and storm water runoff management at the Project site pursuant to Chapter 19, Article IX, Denton City Code, as amended.

(h) The Prime Contractor shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable.

(i) The Owner reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the Owner and without an extension of the Contract Time, in the

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event the Prime Contractor fails or refuses after seven (7) days advance written notice from the Owner to comply with the provisions of this Paragraph 10.10, the terms of the SPRP, the terms of the Clean Air Management Plan, any storm water permit or other environmental permit issued in connection with the Work, or any applicable environmental law, rule, regulation, or ordinance:

(1) suspend all or any portion of the Work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the Prime Contractor and approved by the Owner;

(2) if the Prime Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and backcharge the Prime Contractor for the cost of the remediation or correction; or

(3) terminate the Contract for cause as provided in Article 13.

ARTICLE 11 INSURANCE AND BONDS

11.1 PRIME CONTRACTOR'S INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.2 PROPERTY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.3 'UMBRELLA' LIABILITY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.4 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.5 PERFORMANCE AND PAYMENT BONDS

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(a) Subject to the provisions of Subparagraph 11.5(b), the Prime Contractor shall, with the execution and delivery of the Construction Services Agreement, furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses (a)(1) and (a)(2) below, which surety bonds shall be in accordance with the Charter of the City of Denton and the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Prime Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.5(c) and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:

(1) Performance Bond. A good and sufficient bond in the amount of $1,000,000, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any Amendments thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of final completion and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

(2) Payment Bond. A good and sufficient bond in the amount of $1,000,000, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract Documents and any Amendments thereto, and for the use and protection of each claimant.

(b) No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Prime Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Denton County, Texas. Each surety shall designate an agent resident in Denton County, Texas to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

(c) Contractor will be required to furnish original performance and payment bonds for $1,000,000 before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000. The contractor shall obtain an independent payment and performance bonds for 100% of the project value for any single project in excess of $400,000.

Bond forms are attached and shall be returned upon notice of contract award by the City. Bonds

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should be forwarded to the City of Denton within fourteen (14) calendar days from contract award. This contract is not fully executed until payment and performance bonds are received and accepted by the City. Upon approval, a purchase order will be issued.

(d) The failure of the Contractor to deliver the required statutory bonds and evidence of insurance within fourteen (14) calendar days after the Contract is awarded shall constitute a material breach of the Prime Contractor's bid proposal and the Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Prime Contractor's failure to execute and furnish the statutory bonds within fourteen (14) calendar days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.5(e). In the event the Owner should re-advertise for bids, the defaulting Prime Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this Paragraph.

ARTICLE 12 DEFECTIVE AND NONCONFORMING WORK

12.1 UNCOVERING OF WORK

(a) If a portion of the Work is covered contrary to the Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, the Work must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer's observation and be replaced at the Prime Contractor's expense without change in the Contract Time.

(b) If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to it being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Prime Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If any Work is not in accordance with the Contract Documents, the Prime Contractor shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

(a) The Prime Contractor shall promptly correct Work rejected by the Architect/Engineer as failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Prime Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby.

(b) If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Prime Contractor shall correct it promptly after receipt of

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written notice from the Architect/Engineer or the Owner to do so unless the Owner has previously given the Prime Contractor a written acceptance or waiver of the defect or nonconformity. The Prime Contractor's obligation to correct defective or nonconforming Work remains in effect for:

(1) one year after the date of Substantial Completion of the Work or designated portion of the Work;

(2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or

(3) the stipulated duration of any applicable special warranty required by the Contract Documents.

(c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.

(d) The obligations of the Prime Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Prime Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Clauses (b)(1) and (b)(2) does not limit the ability of the Owner to require the Prime Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect/Engineer at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one year period also does not relieve the Prime Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

(e) The Prime Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Prime Contractor nor accepted by the Owner.

(f) If the Prime Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.4. If the Prime Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Prime Contractor's expense. If the Prime Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Prime Contractor, including compensation for the Architect/Engineer's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover

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costs which the Prime Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Prime Contractor then or thereafter are not sufficient to cover the deficiency, the Prime Contractor shall pay the difference to the Owner.

(g) The Prime Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Prime Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

(h) Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Prime Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2(b) relates only to the specific obligation of the Prime Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Prime Contractor's liability with respect to the Prime Contractor's obligations other than specifically to correct the Work.

(i) Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13 - COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 FINAL COMPLETION OF CONTRACT

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Architect/Engineer, and final acceptance and final payment is made by the Owner.

13.2 WARRANTY FULFILLMENT

Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Architect/Engineer will make a detailed inspection of the Work and will advise the Prime Contractor and the Prime Contractor's Surety of the items that require correction. The Architect/Engineer will make a subsequent inspection and if the corrections have been properly performed, the Architect/Engineer will issue a letter of release on the

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maintenance stipulations to the Prime Contractor and the Surety. If for any reason the Prime Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

(a) Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Prime Contractor, including but not limited to the following causes:

(1) Failure or refusal of the Prime Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

(2) A reasonable belief that the progress of the Work being made by the Prime Contractor is insufficient to complete the Work within the specified time.

(3) Failure or refusal of the Prime Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

(4) A reasonable belief that the Prime Contractor has abandoned the Work.

(5) A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

(6) Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect/Engineer or the Owner as provided for in the Contract Documents.

(7) Failure or refusal of the Prime Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect/Engineer.

(8) A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.

(9) Repeated and flagrant violation of safe working procedures.

(10) The filing by the Prime Contractor of litigation against the Owner prior to completion of the Work.

(b) When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3(e), the Prime Contractor shall, as of the date specified by the Owner,

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discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Prime Contractor and the surety or its authorized agents, assume the obligations of the Prime Contractor for the Work or that portion of the Work which the Owner has ordered the Prime Contractor to discontinue and may:

(1) perform the Work with forces employed by the surety;

(2) with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

(3) with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming Work, and compensate the Owner for any other loss sustained as a result of Prime Contractor's default.

In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the Prime Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Architect/Engineer and attorneys fees, as a result of such termination.

(c) The balance of the Contract Sum remaining at the time of the Prime Contractor’s default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Subparagraph 13.3(b), exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Prime Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Prime Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Prime Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Prime Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Prime Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of

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the Architect/Engineer and attorney's fees), and damages incurred as a result of the termination.

(d) The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3(c), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Prime Contractor, then the Owner may pay to the Prime Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Prime Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Prime Contractor, then the Prime Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the Prime Contractor shall continue the remainder of the Work in conformity with the terms of the Contract, and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

(e) The unconditional right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of termination for convenience to the Prime Contractor. Upon the Prime Contractor's receipt of such written notice, the Prime Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Prime Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Prime Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Prime Contractor for lost or anticipated profits.

13.4 TEMPORARY SUSPENSION OF THE WORK

(a) The Work or any portion of the Work may be temporarily suspended by the Owner immediately upon written notice to the Prime Contractor for any reason, including but not limited to:
(1) the causes described in Clauses 13.1(a)(1) through (a)(10) above;

(2) where other provisions in the Contract Documents require or permit temporary suspension of the Work;

(3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or

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(4) other unforeseen conditions or circumstances.

(b) The Prime Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Prime Contractor arising from a temporary suspension due to a cause described in Clause (a)(1) above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses (a)(2) through (a)(4), where the Prime Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Prime Contractor under Subparagraph 4.3 of these General Conditions:

(1) an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Architect/Engineer and the Owner;

(2) an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and

(3) if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

(a) This Contract shall be in all things governed by the laws of the State of Texas without regard to conflict of laws principles.

(b) The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Prime Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Prime Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without written consent of the Owner. If the Prime Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not

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assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Prime Contractor, except where assignment is compelled or allowed by court order, the terms of the Contract Documents, or other operation of law.

14.3 WRITTEN NOTICE

Except as otherwise provided in Article 16, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid to the Project Manager or Superintendent of either party, or to an officer, partner, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

(a) The duties and obligations imposed on the Prime Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.

(b) No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Prime Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

14.5 INTEREST

The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Paragraph 9.6(a) of these General Conditions.

14.6 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

No officer or employee of the Owner shall have a financial interest, direct or indirect, in any Contract with the Owner, or be financially interested, directly or indirectly, in the sale to the Owner of any land, materials, supplies or services, except on behalf of the Owner as an officer or employee as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.7 VENUE

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This Contract is deemed to be performed in Denton County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Denton County, Texas.

14.8 INDEPENDENT CONTRACTOR

In performing the Work under this Contract, the relationship between the Owner and the Prime Contractor is that of an independent contractor. The Prime Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Prime Contractor an agent, servant, or employee of the Owner, or making the Prime Contractor or any of the Prime Contractor's employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

14.9 NONDISCRIMINATION

As a condition of this Contract, the Prime Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Prime Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, sexual orientation, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Prime Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Prime Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.10 GIFTS TO PUBLIC SERVANTS

(a) The Owner may terminate this Contract immediately if the Prime Contractor has offered, conferred, or agreed to confer any benefit on a City of Denton employee or official that the City of Denton employee or official is prohibited by law from accepting.

(b) For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

(c) Notwithstanding any other legal remedies, the Owner may require the Prime Contractor to remove any employee of the Prime Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Prime Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.

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ARTICLE 15 RIGHT TO AUDIT CONTRACTOR'S RECORDS

By execution of the Building Construction Services Agreement, the Prime Contractor grants the Owner the right to audit, at the Owner's election, all of the Prime Contractor's records and billings relating to the performance of the Work under the Contract Documents. The Prime Contractor agrees to retain its Project records for a minimum of five (5) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Prime Contractor under this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this section.

ARTICLE 16 NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of the Denton City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Prime Contractor shall comply with the requirements of this ordinance as a precondition of any litigation relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

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EXHIBIT D
PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Contractor will be required to furnish original performance and payment bonds for $1,000,000 before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The contractor shall obtain an independent payment and performance bonds for 100% of the project value for any single project in excess of $400,000. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms shall be returned upon notice of contract award by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from contract award. This contract is not fully executed until payment and performance bonds are received and accepted by the City. Upon approval, a purchase order will be issued.

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EXHIBIT E
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.

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- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

[X] A. **General Liability Insurance:**

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

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

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.

- Coverage B shall include personal injury.

- Coverage C, medical payments, is not required.

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

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- 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 **$1,000,000** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

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

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

[X] **Workers' Compensation Insurance**

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

[X] **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 **$1,000,000.00** combined bodily injury and property damage per occurrence with a **$2,000,000.00** aggregate.

[ ] **Fire Damage Legal Liability Insurance**

Coverage is required if Broad form General Liability is not provided or is unavailable to

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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.

[X] **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.

[X] **Environmental Liability Insurance**

Environmental liability insurance for $2,000,000 to cover all hazards contemplated by this contract.

[ ] **Riggers Insurance**

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

[ ] **Commercial Crime**

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

[ ] **Additional Insurance**

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

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ATTACHMENT 1

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

A. Definitions:

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

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

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

B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any overage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
   1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

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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

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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.

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Exhibit F
Certificate of Interested Parties Electronic Filing

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

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

The contractor shall:

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

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

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EXHIBIT G

FACILITIES MANAGEMENT
869 S. Woodrow Lane
Denton, Texas 76205

Date Issued:

REQUEST FOR COST			
Project Name:		**Building:**	
Physical Address:			
Legal Description:			

Insert Picture of Building	*Insert Picture*

EXISTING CONDITIONS:	PROPOSED CONDITIONS:

SCOPE OF WORK:			
Project Manager:		**Email:**	

ATTACHMENTS		
☐ **Floor Plans**	☐ **Photos**	☐ **Specifications**

The undersigned hereby proposes to complete the scope of services detailed herein by the specified time frame. By submitting this Request for Costs, they acknowledge they have received all attachments, have reviewed all attachments, and have performed a site visit. All work will be performed in accordance with the Contract between the Vendor and the City of Denton.

Company Name:		**Contact Name:**	
Contingencies:		**Email:**	

COST/SCHEDULE ESTIMATE			
Days For Mobilization:		**Name:**	
Days For Construction:		**Job Title:**	
Labor Costs:	$		
Material Costs:	$	**Signature:**	
Equipment/Rental Costs:	$		
TOTAL COST:	$		
REQUEST FOR COST DUE:		**DATE SIGNED:**	

Docusign Envelope ID: 41D28787-9709-4C30-8672-25322EDD5AF4

EXHIBIT H

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. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person 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 person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

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

1 **Name of person who has a business relationship with local governmental entity.**
ALERINK ENTERPRISES, INC. dba CI PAVEMENT

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 the originally filed questionnaire becomes incomplete or inaccurate.)

3 **Name of local government officer with whom filer has an employment or business relationship.**
N/A

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer 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 filer of the questionnaire?

☐ Yes ☒ No

B. Is the filer of the questionnaire 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 10 percent or more?

☐ Yes ☒ No

D. Describe each affiliation or business relationship.

4 ☒ **I have no Conflict of Interest to disclose.**

5 Signed by:
Rob Alderink
74435E46FC7041B...
Signature of person doing business with the governmental entity

3/25/2026
Date

File # 8983

Certificate Of Completion

Envelope Id: 41D28787-9709-4C30-8672-25322EDD5AF4
Status: Sent
Subject: Please DocuSign: City Council Contract 8983 Parking Lot Maintenance, Repairs, Construction & Demo
Source Envelope:
Document Pages: 88
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Crystal Westbrook
901B Texas Street
Denton, TX 76209
crystal.westbrook@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
3/24/2026 10:43:55 AM
Holder: Crystal Westbrook
crystal.westbrook@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 3/24/2026 11:28:41 AM Viewed: 3/24/2026 11:28:56 AM Signed: 3/24/2026 11:34:50 AM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/24/2026 11:34:53 AM Viewed: 3/24/2026 1:37:51 PM Signed: 3/24/2026 1:38:24 PM
Leah Bush leah.bush@cityofdenton.com Assistant City Attorney Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Signed by: Leah Bush 3A6254145BDA469... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/24/2026 1:38:26 PM Viewed: 3/25/2026 9:00:12 AM Signed: 3/25/2026 9:33:15 AM
Rob Alderink rob@cipavement.com VP Rob Alderink Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/25/2026 12:23:55 PM ID: 01fb1d84-668a-4a7f-b500-ad5c87641901	Signed by: Rob Alderink 74435E46FC7041B... Signature Adoption: Pre-selected Style Using IP Address: 47.183.215.100	Sent: 3/25/2026 9:33:18 AM Viewed: 3/25/2026 12:23:55 PM Signed: 3/25/2026 12:29:00 PM

Signer Events	Signature	Timestamp
Tom Gramer tom.gramer@cityofdenton.com Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by:  7B58DA8FCE5F49C... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/25/2026 12:29:03 PM Viewed: 3/25/2026 12:30:23 PM Signed: 3/25/2026 12:30:43 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 3/25/2026 12:30:46 PM
Cassey Ogden Cassey.Ogden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 3/24/2026 11:34:53 AM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:**	COPIED	Sent: 3/25/2026 12:30:46 PM Viewed: 4/1/2026 10:57:20 AM

Carbon Copy Events	Status	Timestamp
Not Offered via Docusign		

City Secretary Office

citysecretary@cityofdenton.com

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via Docusign

Danny Defee

daniel.defee@cityofdenton.com

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via Docusign

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/24/2026 11:28:41 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

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

Required hardware and software

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

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

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

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and

- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and

- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

Docusign Envelope ID: CB4810EC-68E3-4258-BF3D-D204FBD2FF3E

Docusign City Council Transmittal Coversheet

RFQ	8983
File Name	PARKING LOT MAINTENANCE, REPAIRS, CONSTRUCTION & DEMO
Purchasing Contact	Crystal Westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: CB4810EC-68E3-4258-BF3D-D204FBD2FF3E

CONTRACT BY AND BETWEEN CITY OF DENTON, TEXAS AND DIAMOND M CONSTRUCTION & LAND SERVICES, LLC (CONTRACT 8983)

THIS CONTRACT is made and entered into this date _____, by and between DIAMOND M CONSTRUCTION & LAND SERVICES LLC a Texas limited liability company, whose address is 11948 FM 2153, SANGER, TX 76266, hereinafter referred to as "Contractor," and the CITY OF DENTON, TEXAS, a Texas Municipal Corporation and Home-Rule City, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and the 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 construction services in accordance with the City's RFQ 8983 – PARKING LOT MAINTENANCE, REPAIRS, CONSTRUCTION AND DEMO SERVICES, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes as "Exhibit B". 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 Request for Proposal #8983 **(Exhibit "B" on file at Office of Purchasing Agent)**
(c) General Provisions-Standard Terms and Conditions **(Exhibit "C");**
(d) Payment and Performance Bond Requirements **(Exhibit "D");**
(e) Insurance Requirements **(Exhibit "E");**
(f) Certificate of Interested Parties Electronic Filing **(Exhibit "F");**
(g) Request for Cost Form **(Exhibit "G")**;
(h) Form CIQ – Conflict of Interest Questionnaire **(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 this written Contract, and then to the Contract documents in the sequential order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

Prohibition on Contracts with Companies Boycotting Israel
Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not***

Docusign Envelope ID: CB4810EC-68E3-4258-BF3D-D204FBD2FF3E

boycott Israel; and (2) will not boycott Israel during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Section 2252 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapter 2252, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization***. Failure to meet or maintain the requirements under this provision will be considered a material breach.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

SIGNATURE PAGE TO FOLLOW

Docusign Envelope ID: CB4810EC-68E3-4258-BF3D-D204FBD2FF3E

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

CONTRACTOR

BY: DocuSigned by: 6D336167DDFF410...
AUTHORIZED SIGNATURE

Printed Name: Shane McCune

Title: Onwer

8322262503
PHONE NUMBER

diamondmconstructionllc@gmail.com
EMAIL ADDRESS

2026- 1439051
TEXAS ETHICS COMMISSION CERTIFICATE NUMBER

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

ATTEST:
INGRID REX, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:

By: Signed by: Leah Bush 3A6254145BDA469...

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

DocuSigned by: Tom Gramer 7B58DA8FCE5F49C...
SIGNATURE

Tom Gramer
PRINTED NAME

Director
TITLE

Facilities
DEPARTMENT

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EXHIBIT A
SPECIAL TERMS AND CONDITIONS

1. **Total Contract Amount**
DIAMOND M CONSTRUCTION & LAND SERVICES LLC is pre-qualified for RFP 8983 – PARKING LOT MAINTENANCE, REPAIRS, CONSTRUCTION AND DEMO SERVICES. All pre-qualified contractors will be issued a Request for Cost, Exhibit G, that defines the scope of work and project dates. The pre-qualified contractors will have (5) days to respond to such Request for Cost. Thereafter, the City will select the pre-qualified contractor with the lowest price and ability to meet the City's time schedule requirements. The cumulative contract total for all awarded projects to all pre-qualified contractors for contract 8983 shall not exceed $17,808,000. If a response to the Request of Cost is not received in the applicable time period, such pre-qualified contractor will be disqualified from that Request of Cost.

2. **Contract Terms**
The contract term will be one (1) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional four (4) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. **Price Escalation and De-escalation**
On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon

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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.

4. Performance Liquidated Damages

Contractor recognizes that time is of the essence of this Agreement and that City will suffer financial loss if the Work is not completed within the times specified in each task order, plus any extension thereof allowed in accordance with Article 12 of the General Conditions. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City one thousand dollars ($1,000) for each day that expires after the time specified in each task order for Final Acceptance until the City issues the Final Letter of Acceptance.

Public Works Construction Standards

NCTCOG 5th Edition

Section 108.8

Schedule 109.8.1 Liquidate Damages

Amount of contract ($)	**Amount of liquidated damages ($)**
Less than 25,000.000	200.00 Per Day
25,000.00 to 99,999.99	350.00 Per Day
100,000.00 to 999,999.99	500.00 Per Day
More Than 1,000,000.00	1000.00 Per Day

5. Post Award Additional Requirements

Pre-Construction Meeting: Prior to commencement of the services, the City and the Contractor will conduct a pre-construction meeting to review the overall scope, schedule, deliverables, planning process, and to ensure that all relevant parties to the project are introduced.

Environmental Hazards: There are no known safety or environmental hazards existing on the project site at the time of issue of this solicitation. The City does not warrant or guarantee against the possibility that safety or environmental hazards or potential hazards may exist at

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the City's facilities. The Contractor shall be responsible for identifying any hazardous conditions and notifying the City verbally of such conditions as soon as possible after discovery and shall follow up in writing within 10 days of such discovery. The costs for necessary investigations or any potential corrective actions will be negotiated between the City and the Contractor.

Contractor Standards of Performance: The contractor shall prosecute the work diligently with skilled craftsmen and with state-of-the-art methods to complete the work within the time stated in the contract or such time extensions as may be grant
Monthly Reports: The awarded Contractor shall provide to the City of Denton, detailed reports of daily work conditions, daily man power availability, equipment problems, and work accomplished on a monthly basis.

Safety: All contractors to the City of Denton are required to ensure absolute safety standards are applied and enforced. The City of Denton will not be responsible for individual contractor safety, and the awarded contractor shall not hold the City of Denton responsible. Known hazards shall immediately be reported to the Project Manager and all safety precautions shall be taken to prevent potential safety issues from occurring.

6. **Asbestos Free Materials**
The contractor shall provide asbestos-free materials as represented by the Manufacturer's "Materials Safety Data Sheets".

7. **Prevailing Wage Rates**
In accordance with Texas Government Code 2258, the awarded 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).

Notwithstanding any other provision of this Contract, the awarded contractor hereby represents and warrants that the contractor shall pay to each of its employees a wage not less than what is currently known as the "Federal Minimum Wage" and any increase or amendments thereto. Furthermore, contractor shall produce proof of compliance with this provision by contractor to the City. The City shall withhold payments due to contractor until contractor has complied with this provision. Prior to any payment being made for work satisfactorily completed and accepted, contractor shall submit wage rate affidavits with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage".

8. **Remedies**
a. COMPLETION OF CONTRACTOR'S DEFAULT: If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this proposal, the City, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety or Sureties upon the Contractor's bond or bonds a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the City

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and/or Engineer shall be made by the Contractor or its Surety or Sureties, the City may take over the construction of the project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor and its Surety or Sureties shall be liable to the City for any cost or expense in excess of the contract price occasioned thereby. In such event the City may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the project. The City in such contingency may exercise any rights, claims or demands which the Contractor may have against third persons in connection with this contract and for such purpose the Contractor does hereby assign, transfer and set over unto the City all such rights claims and demands.

b. LIQUIDATED DAMAGES: Respondent must agree to commence work on or before a date to be specified in written "Notice to Proceed" by the Owner, and to fully complete the project within the time stated on proposal. As failure to complete project within the stated time, respondent agrees to pay as liquidated damages, the sums indicated in the Solicitation Main Document Section 10, for each working day of delay until work is completed and accepted. Delays because of strikes, fire, weather, or any cause beyond the contractors control shall be granted but claims for extension shall be in writing within a reasonable time after the occurrence. Contractor shall submit request for delay on a monthly basis in a letter form indicating reason and date of delay. Failure to do so on a monthly basis means contractor will forfeit those delay days. Liquidated damages in the amount per day shown in Main Solicitation Document, Section 10 “Liquidated Damages”, will be assessed against the Contractor for each calendar day or portion thereof that:

(1) the Contractor has not fully and timely completed the specific portion or part of the work to be completed by the end of the current month as provided in the detailed description of work and/or schedule previously submitted by the Contractor on the first day of that particular month, after accounting for any agreed-upon changed orders, which will entitle the Owner to withhold the liquidated damages from the payment otherwise owed to the Contractor for work completed in that particular month;

(2) the Contractor has not substantially completed all work following the expiration of the number of calendar days to complete the work as agreed upon in the contract, after accounting for any agreed-upon changed orders; or

(3) all items listed as incomplete and attached to the Certificate of Substantial Completion are not completed or corrected after expiration of the agreed time allotted for completion and correction, including any approved extensions of time granted. These liquidated damages are cumulative. The sum of the liquidated damages will be deducted from any monies due the Contractor. If no money is due the Contractor, said sum may be recovered by the Owner from the Contractor or the Contractor's surety, or from both combined. These deductions are to cover liquidated damages to the Owner for losses to Owner that include, but are not limited to, additional expenses of Contract administration, overhead and other costs resulting from failure of the Contractor to complete the Work within the designated time, and are not to be

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considered as penalties. The Owner shall not be considered liable for any extra or additional payment to the Contractor as a bonus or premium for early completion. Any failure on the part of the Owner to request or require payment or withholding of liquidated damages in any particular month shall not constitute a waiver of Contractor's requirement to pay, or the Owner's ability to withhold from payments owed to Contractor, any liquidated damages for work performed or completed in that particular month, in any prior or subsequent month, or at the time all work has been completed.

c. CUMULATIVE REMEDIES: Every right or remedy herein conferred upon or reserved to the City shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election. Provided, however, that the provisions of the REMEDIES SECTION shall be the exclusive measure of damages for failure by the Contractor to complete the construction of the project within the time herein agreed upon.

9. Payment and Performance Requirements

a. PAYMENT AND INVOICES:

Payment processing: The City review, inspection, and processing procedures for invoices ordinarily require thirty (30) days after receipt of invoices, materials, or services. Submissions which call for payment before thirty (30) days from receipt of invoice, or cash discounts given on such payment, will be considered only if, in the opinion of the Purchasing Manager, the review, inspection, and processing procedures can be completed as specified. It is the intention of the City of Denton to make payment within thirty days after receipt of valid invoices for which items or services have been received unless unusual circumstances arise. The 30 day processing period for invoices will begin on the date the invoice is received or the date the items or services are received, whichever is later.

Direct deposit for payments: Contractors are encouraged to arrange for receiving payments through direct deposit. Information regarding direct deposit payments is available from the City of Denton Purchasing website: www.dentonpurchasing.com.

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 as identified in the Notice to Proceed. 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.**

b. PAYMENT TO PERFORMANCE MILESTONES: Awarded contractor shall prepare and submit invoices after completion of specific project milestones. The invoice shall detail the major milestones accomplished and detailed cost information for project. These milestones shall be submitted to the City of Denton and the City's Project Staff shall review

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such for completion and accuracy, prior to payment authorization.

c. TAX EXEMPTION: The City of Denton qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. Any Contractor performing work under this contract for the City of Denton may purchase materials and supplies and rent or lease equipment sales tax free. This is accomplished by issuing exemption certificates to suppliers. Certificates must comply with State Comptroller's ruling #95-0.07 and #95-0.09.

d. RELEASE OF LIENS AND CERTIFICATE OF CONTRACTOR: Upon award of the contract, the Contractor shall inform the City of the subcontractors and material sources that will be used. Upon the completion by the Contractor of the construction of the project, but prior to final payment to the Contractor, the Contractor shall deliver to the City releases of all liens, and of rights to claim any lien, from all manufacturers, material-men, and subcontractors furnishing services or materials for the project, to the effect that all materials or services used on or for the project have been paid for and indicating that the City is released from all such claims.

e. PAYMENTS TO MATERIAL-MEN AND SUBCONTRACTORS: The Contractor shall pay each material-men, and each subcontractor, if any, not later than five (5) days after receipt of any payment from the City, the amount thereof allowed the Contractor for and on account of materials furnished or construction performed by each material-men or each subcontractor.

10. General Provisions – Special Notices and Requirements

a. CONTRACT ADMINISTRATION SUBMITTALS AND REQUIREMENTS:

General: The General Conditions, Supplementary Conditions and Special Conditions provide definite times for Contractor to submit certain lists, qualifications, price breakdowns and schedules for administrative procedures including but not necessarily limited to the following:

List of Subcontractors: Before the execution of the Contract, the respondent awarded the contract will submit to the City for approval a list of all Subcontractors, and/or his major Subcontractors, proposed to use. This list will include each Subcontractor's correct name, mailing address and phone number.

Contractor's Superintendent: The Contractor shall submit the name and qualifications of the person designated as Project Superintendent within ten (10) days of the receipt of the Notice of Award Letter.

Contract Price Breakdown: Upon execution of the Contract, the Contractor shall submit to the City for approval a breakdown of the Contract price, itemizing material and labor for various classifications of work.

1. The City will provide forms for the Contractor to use to prepare the schedule of values.
2. Unit Price items will be multiplied by the estimated quantities to give the item totals. The total item will then be divided into "material" and "labor" and listed on

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the breakdown. The breakdown of unit price items into material and labor is required so the City may make progress payments on materials delivered before the labor is performed.

Work Progress Schedule: Within three (3) weeks after receipt of a work order, the Contractor shall submit in duplicate to the City for approval an estimated progress schedule for the work in relation to the entire project, over the total contract time. Schedules showing less than the stipulated contract time will be rejected. See details for this requirement in the attached STANDARD PURCHASE TERMS AND CONDITIONS FOR FACILITY CONSTRUCTION SERVICES, Article1, paragraph 3.10 “Contractors Construction Schedule”.

Testing and Quality Control: Observation of the Contractor's work to determine compliance with the plans and specifications may include testing of material installed on the project. A Testing Laboratory located by the Contractor shall do testing of materials furnished and work performed. The Contractor shall use only materials in the work, which meet the requirements of the specifications. The Contractor shall furnish at his own expense all necessary tests and specimens for testing of the material and when requested shall furnish a complete written statement of the origin, composition, and/or manufacturer of any or all materials that are to be used in the work. All materials not conforming to the requirements of the specifications will be rejected.

THIS QUALITY CONTROL SERVICE DOES NOT RELIEVE THE CONTRACTOR OF HIS RESPONSIBILITY WITH REGARD TO CONSTRUCTING THE WORK IN ACCORDANCE WITH THE CONTRACT.

Contractor shall submit appropriate tests including, but not limited to:

- Any test required in the technical specifications
- Any structural element called for on the plans, including, but not limited to dam construction, concrete asphalt roads or paths, shelters, bridges or other structure tests, pressure test of irrigation.
- Test to prove adequacy of design and construction of any feature that may have been accepted by Owner under contractor's "Alternate Proposal".
- Any test that may be occasioned by any local, state, or federal law.

As-Built Drawings: The contractor shall maintain a complete set of contract drawings in his possession, upon which he is required to note in red, or other clear manner, all deviations, final dimensions and explanatory notes arising out of actual work installed or performed in the field, and showing exact locations of such work, including trades. Notes on these drawings shall indicate installed locations and dimensioned clearances. Contractor to furnish an as- built drawn from an aerial photo identifying course, irrigation (including all components, buried or otherwise), major and minor drainage lines and related structures, all underground utilities, location of buried trees and debris, limits of topsoil, extra borrow areas, and other significant construction which could reasonably be foreseen to affect future operation. All as-built(s) shall be supplied in CAD format.

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Project Manuals: Contractor shall supply City a project manual for operations of all mechanical systems to be included under this contract in a manner satisfactory to the design professional, his sub-consultants and City's representatives.

Schedule of Tests, Submittals: A schedule of anticipated tests and submittals begins on the next page. Additional submittals may be required.

b. MEETINGS:

Pre-Construction Conference: Prior to start of work, a conference between the City and Contractor will be held to discuss provisions of the contract documents, explain administrative procedures and coordinate the work effort. Time of pre-construction conference will be stated in the Work Order letter for the Contractor. Attendance by Contractor and Contractor's Superintendents is mandatory.

1. City will schedule meeting and provide meeting place.
2. Attendance: The following are expected to attend:
    - City's Representative.
    - Consultant's Construction Administrator.
    - Representatives from Sub-Consultants Contractor's Project Manager, Project Superintendent and Project Coordinator Representatives of major subcontractors
3. Agenda Items:
    - List of major Subcontractors and Suppliers
    - Tentative construction schedule
    - Critical work sequencing
    - Major equipment deliveries
    - Designation of responsible personnel
    - Procedures and processing of field decisions, proposal requests, submittals color coordination, change orders, and applications for payment.
    - Adequacy of distribution of Contract Documents.
    - Procedures for maintaining Record Documents
    - Use of Premises: office, work, storage, staging areas; Owner's requirements
    - Construction facilities, controls and construction aids
    - Temporary utilities
    - Safety and first aid procedures
    - Security procedures
    - Housekeeping procedures
    - Other business

4. The City's Representative will preside over the meeting.

Progress Meetings: Construction progress meetings may be called by the Project Manager, Project Inspector or the General Contractor to review job progress or problems.

1. Schedule meeting and notify in writing those concerned at least one week in advance of meeting.

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2. Provide a convenient, comfortable meeting place.
3. Contractor's Project Superintendent or Project Manager shall preside over meeting.
4. Attendance: The following are expected to attend: City's Representative Consultant's Construction Administrator Sub-consultant's unless notified otherwise Contractor's General Superintendent, Project Superintendent and Project Coordinator. Subcontractors having work in progress Subcontractors whose work will start within the next month Others as requested by City, A/E, or Contractor
5. Agenda Review, approval of minutes or previous meeting Review of work progress since previous meeting Field observation, problems, conflicts Problems which impede construction schedule Review of off-site fabrication, and delivery schedules Corrective measures and procedures to regain projected schedule. Revisions to construction schedules Progress schedules for succeeding period Schedule coordination Review proposed changes for effect on construction schedule, on completion date, and effect on other contracts of project Maintenance of quality standards Pending changes and substitutions Other business
6. The Contractors Project Manager will preside over the meeting. C. Minutes of Meetings: Contractor shall take notes at pre- construction and progress meetings and distribute them to those concerned in the form of minutes within four (4) calendar days after meeting.

c. SURVEYS, MEASUREMENTS AND LAYOUTS

General: The City will provide property surveys. The Contractor shall be responsible for all control point staking as required. The Contractor's responsibility for verifying conditions is defined in the Standard General Conditions.

Surveys, Measurements and Layout Out of Work: The Contractor will establish from survey information on drawings all lines, grades, and levels and will be responsible for maintenance and accuracy thereof.

d. MISCELLANEOUS REQUIREMENTS

Additional safety precautions shall be instituted by the awarded contractor, as the work environment will be in an area where citizens and employees may be present, and work safety must be coordinated with the owner.

The Contractor shall be responsible for all spoil removals, and any excess soil that will require removal.

It is understood that the basis for payment on the work to be done according to the final plans and specifications shall be a lump sum fee as set forth in Contractor's submission. Any quantity estimates supplied by Designer or City are intended only as a guide to the respondent. Respondent is responsible for making his own quantity estimates and pricing from his own examination of the work to be done.

A schedule of Respondent's Quantities and Unit Prices is to be filled out as a part of this solicitation. Extensions of units and unit prices must total up correctly.

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EXHIBIT C

CITY OF DENTON STANDARD PURCHASE TERMS AND CONDITIONS FOR CONSTRUCTION SERVICES

ARTICLE 1 GENERAL PROVISIONS

GENERAL DEFINITIONS

1.1 The following definitions apply throughout these General Conditions and to the other Contract Documents:

a) THE CONTRACT DOCUMENTS

The Contract Documents consist of the formal Building Construction Services Agreement between the Owner and the Prime Contractor, these General Conditions and other supplementary conditions included by special provisions or addenda, drawings, specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract, and Amendments issued after execution of the Contract. For purposes of these General Conditions, an Amendment is:

(1) a written Supplemental Agreement to the Contract signed by authorized representatives of both parties;

(2) a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1(b) and Subparagraph 7.1(e); or

(3) a written order for a minor change in the Work issued by the Architect/Engineer as described in Paragraph 7.3.

The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Prime Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Prime Contractor.

b) THE CONTRACT

The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and made a part of the formal Building Construction Services Agreement between the Owner and the Prime Contractor by reference in this Paragraph and Paragraph 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Prime Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the

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Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

(1) between the Architect/Engineer and Prime Contractor;

(2) between the Owner and a Subcontractor or -subcontractor; or

(3) between any persons or entities other than the Owner and Prime Contractor.

The Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect/Engineer's duties.

c) THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Prime Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Prime Contractor is responsible, to fulfill the Prime Contractor's obligations. The Work may constitute the whole or a part of the Project.

d) THE PROJECT

The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

e) THE DRAWINGS

The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

f) THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

g) THE PROJECT MANUAL

The Project Manual is the volume or volumes which contain the bidding requirements,

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sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

h) ALTERNATE

An Alternate is a variation in the Work on which the Owner requires a price separate from the City Building General Conditions Base Bid. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted prior to any Work under the alternate being performed or materials delivered to the Project site, the Owner will be entitled to a credit in the full value of the alternate as priced in the Prime Contractor's Bid.

i) BASE BID

The Base Bid is the price quoted for the Work before Alternates are considered.

j) HAZARDOUS SUBSTANCE

The term Hazardous Substance is defined to include the following:

(1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;

(2) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

(3) radon;

(4) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

(5) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

(6) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(7) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901

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et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

(8) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

k) OTHER DEFINITIONS

As used in the Contract Documents, the following additional terms have the following meanings:

(1) "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;

(2) "shall" means the action of the party to which reference is being made is mandatory;

(3) "as required" means as prescribed in the Contract Documents; and

(4) "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.2 EXECUTION, CORRELATION AND INTENT

(a) The Building Construction Services Agreement shall be signed by duly authorized representatives of the Owner and Prime Contractor as provided in the Agreement.

(b) Execution of the Building Construction Services Agreement by the Prime Contractor is a representation that the Prime Contractor has visited the site, has become familiar with local conditions, including but not limited to subsurface conditions, under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

(c) The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Prime Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Prime Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

(d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Prime Contractor in dividing the Work among Subcontractor(s) or in establishing the extent of Work to be performed by any trade.

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(e) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

(f) The Drawings and Specifications are intended to agree with one another, and Work called for by Drawings and not mentioned in Specifications, or vice versa, shall be furnished as if set forth by both. Specifications shall govern materials, methods and quality of work. In the event of a conflict on the Drawings between scale and dimension, figured dimensions shall govern over scale dimensions and large scale drawings shall govern over small scale drawings. Conflict between two or more dimensions applying to a common point shall be referred to the Architect/Engineer/Engineer for final adjustment. If discrepancies or conflicts occur within or between the Drawings and Specifications regarding the Work, or within or between other Contract Documents, the Prime Contractor shall not perform such Work without having obtained a clarification from the Architect/Engineer and resolution by the Owner. The Owner's decision as to the appropriate resolution of a conflict or discrepancy shall be final. Should the Drawings or the Specifications disagree within themselves or with each other; the Base Bid will be based on the most expensive combination of quality and quantity of Work indicated.

(g) Deviations from Contract Documents shall be made only after written approval is obtained from Architect/Engineer and Owner, as provided in Article 7.

(h) The intention of the Contract Documents is to include all materials, labor, tools, equipment, utilities, appliances, accessories, services, transportation, and supervision required to completely perform the fabrication, erection and execution of the Work in its final position.

(i) The most recently issued Drawing or Specification takes precedence over previous issues of the same Drawing or Specification. In the event of a conflict, the order of precedence of interpretation of the Contract Documents is as follows:

(1) Amendments (see Paragraph 7.2 for order of precedence between Amendments);

(2) the Building Construction Services Agreement;

(3) addenda, with those addenda of later date having precedence over those of an earlier date;

(4) the Supplementary General Conditions and Special Provisions, if any;

(5) the General Conditions for Building Construction;

(6) 0the Specifications and Drawings.

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1.3OWNERSHIP AND USE OF ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications, and copies thereof furnished by the Architect/Engineer are and shall remain the property of the Owner and are, with the exception of the Contract set for each party, to be returned to the Owner upon request at the completion of the Work.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are:

(1) specifically defined in these General Conditions (except the terms defined in Subparagraph 1.1(j), which terms are of common grammatical usage and are not normally capitalized);

(2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses;

(3) the titles of other documents published or used by the Owner as manuals or official policy statements; or

(4) proper nouns or other words required under standard grammatical rules to be capitalized.

ARTICLE 2 - THE OWNER

2.1 DEFINITION OF OWNER

The Owner is the City of Denton, a Texas municipal corporation, and is identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

(a) The Owner shall furnish the most recent survey describing the physical characteristics, legal limits, utility locations, and a permanent benchmark for the site of the Project. The Owner shall also furnish any environmental site assessments that may have been given to the Owner or conducted for the property upon which the Project is to be constructed. THIS INFORMATION IS FURNISHED TO THE PRIME CONTRACTOR ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.

(b) Except for permits and fees which are provided for in Subparagraph 3.7(a), the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for

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construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

(c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Prime Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval, as required in Paragraph 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Prime Contractor as scheduled and Prime Contractor is not prepared to accept or act on such information or services, then Prime Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

(d) Unless otherwise provided in the Contract Documents, the Prime Contractor will be furnished electronic copies of the Drawings and Specifications for bid purposes and one hard copy approved by Building Inspections upon execution of the Contract. Prime Contractor may obtain additional copies by paying the cost of additional printing or reproduction.

(e) The obligations described above are in addition to other duties and responsibilities of the Owner enumerated in the Contract Documents and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

(f) The Owner shall forward all instructions to the Prime Contractor through the Architect/Engineer, except for the Owner's Notice to Proceed and the Owner's decision to carry out Work as described in Paragraph 2.4.

(g) The Owner's employees, agents, and consultants may be present at the Project site during performance of the Work to assist the Architect/Engineer in the performance of the Architect/Engineer's duties and to verify the Prime Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, the equipment used in the performance of the Work, and for purpose of verification of Prime Contractor's Applications for Payment.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Prime Contractor fails to correct any portion of the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or refuses or fails to carry out all or any part of the Work in accordance with the Contract Documents, the Owner, by written order, may order the Prime Contractor to stop the Work, or any portion of the Work, until the cause for the order has been eliminated. The right of the Owner however, to stop the Work shall not create or imply a duty on the part of the Owner to exercise this right for the benefit of the Prime Contractor or any other person or entity. The rights of the Owner under this Paragraph 2.3 shall be in addition to, and not in restriction of, the Owner's rights under Paragraph 12.2.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Prime Contractor fails or refuses to carry out the Work or perform any of the terms, covenants, or obligations of the Contract Documents, and fails or refuses to correct any failure

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or refusal with diligence and promptness within fourteen (14) days after receipt of written notice from the Owner, the Owner may correct the Prime Contractor's failure or refusal or cause such failure or refusal to be corrected, without affecting, superseding, or waiving any other contractual, legal, or equitable remedies the Owner has, including but not limited to the Owner's termination rights under Article 13. In that case, an appropriate Change Order will be issued deducting the Owner's cost of correction, including Architect/Engineer's compensation for additional services and expenses made necessary by the failure or refusal of the Prime Contractor from payments then or thereafter due to the Prime Contractor. The cost of correction is subject to verification (but not approval) by the Architect/Engineer. If payments then or thereafter due the Prime Contractor are not sufficient to cover the cost of correction, the Prime Contractor shall pay the difference to the Owner.

2.5 NOTICE TO PROCEED

After final execution of the Contract and receipt and approval of the required performance and payment bonds and evidence of required insurance, the Owner will issue a written Notice to Proceed with the Work, including the designated Contract Time within which Substantial Completion of the Work must be achieved. If the Owner unreasonably delays issuance of a written Notice to Proceed through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable adjustment of the Contract Time, if properly claimed pursuant to the requirements of Paragraph 4.3; but the Prime Contractor shall not be entitled to any increase to the Contract Sum whatsoever for this reason.

ARTICLE 3 - THE CONTRACTOR

3.1 DEFINITION OF CONTRACTOR

The Prime Contractor is the person or business entity identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Prime Contractor" means the Prime Contractor or the Prime Contractor's authorized employees or representatives.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

(a) The Prime Contractor shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Architect/Engineer in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Prime Contractor may discover. The Prime Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Prime Contractor will be held responsible for any subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the Prime Contractor continues to work on an item where an inconsistency, ambiguity, error, omission, conflict, or discrepancy exists without obtaining such clarification or resolution or commences an item of the Work without giving written notice of an error, omission, conflict, or discrepancy that might have been avoided by the check, study, and

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comparison required above, it shall be deemed that the Prime Contractor bid and intended to execute the more stringent, higher quality, or state of the art requirement, or accepted the condition "as is" in the Contract Documents, without any increase to the Contract Sum or Contract Time. The Prime Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Prime Contractor's failure to give notice of and obtain a clarification or resolution of any error, omission, conflict, or discrepancy, without any right to any increase to the Contract Sum or Contract Time.

(b) The Prime Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

(a) The Prime Contractor shall supervise and direct the Work, using the Prime Contractor's best skill and attention. The Prime Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents set forth specific instructions concerning these matters.

(b) The Prime Contractor shall be responsible to the Owner for the acts and omissions of the Prime Contractor's employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Prime Contractor, or with any Subcontractor, and all other persons or entities for which the Prime Contractor is legally responsible. All labor shall be performed by mechanics that are trained and skilled in their respective trades. Standards of work required throughout shall be of a quality that will bring only first class results. Mechanics whose work is unsatisfactory, or who are considered careless, incompetent, unskilled, or otherwise objectionable shall be dismissed promptly from the Work and immediately replaced with competent, skilled personnel. Any part of the Work adversely affected by the acts or omissions of incompetent, unskilled, careless, or objectionable personnel shall be immediately corrected by the Prime Contractor.

(c) The Prime Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Prime Contractor.

(d) The Prime Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Prime Contractor's responsibility under this paragraph will not in any way eliminate the Architect/Engineer's responsibility to the Owner under the Architect/Engineer/Owner Agreement.

(e) Any Prime Contractor, Subcontractor, Sub-subcontractor, or separate contractor who commences Work over, in, or under any surface prepared by the Owner or by any other

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contractor, subcontractor, sub-subcontractor or any separate contractor, without the Prime Contractor having given written notice to the Architect/Engineer of the existence of any faulty surface or condition in the surface that prevents achieving the quality of workmanship specified by the Contract Documents and without having obtained the prior approval of the Architect/Engineer and the Owner to proceed is deemed to have accepted the surface or condition in the surface as satisfactory at the commencement of such Work. Any unsatisfactory Work subsequently resulting from such a faulty surface or condition in the surface that was not pre-approved by the Architect/Engineer or the Owner after notice as provided above may be rejected and replacement required, without any increase to the Contract Sum or Contract Time.

(f) All grades, lines, levels, and benchmarks shall be established and maintained on an ongoing basis by the Prime Contractor. The Prime Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Contractor shall verify all grades, lines, levels, and dimensions as indicated on Drawings. He shall report any errors, omissions, conflicts, or inconsistencies to Architect/Engineer before commencing any Work affected by these conditions. Contractor shall establish and safeguard benchmarks in at least two widely separated places and, as Work progresses, establish benchmarks at each level and lay out partitions on rough floor in exact locations as guides to all trades. The Contractor shall, from the permanent benchmark provided by the Owner, establish and maintain adequate horizontal and vertical control.

3.4 LABOR AND MATERIALS

(a) Except as is otherwise specifically provided in the Contract Documents as being the responsibility of the Owner, the Prime Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

(b) The Prime Contractor shall enforce strict discipline and good order among the Prime Contractor's employees and all other persons carrying out the Contract. The Prime Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

(c) The Prime Contractor shall give preference, when qualified labor is available to perform the Work to which the employment relates, to all labor hired for the Project in the following order:

(1) residents of the City of Denton, Texas;

(2) residents of the County of Denton, Texas;

3.5 WARRANTY

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(a) General Warranty. The Contractor warrants to the Owner that all Work shall be accomplished in a good and workmanlike manner and that all materials and equipment furnished under the Contract will be of good quality, new (unless otherwise specified), and free from faults or defects, and that the Work will otherwise conform to the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective or nonconforming. The Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The commencement date, duration, and other conditions related to the scope of this general warranty are established in Subparagraphs 9.9 (a) and 12.2(b) of these General Conditions. THE GENERAL WARRANTY PROVIDED IN THIS SUBPARAGRAPH IS IN ADDITION TO AND DOES NOT LIMIT OR DISCLAIM ANY OTHER WARRANTY OR REMEDY REQUIRED OR PROVIDED BY LAW OR THE CONTRACT DOCUMENTS AND SUCH WARRANTY SHALL REQUIRE THE CONTRACTOR TO REPLACE DEFECTIVE MATERIALS AND RE-EXECUTE DEFECTIVE WORK THAT IS DISCLOSED BY THE OWNER TO THE CONTRACTOR WITHIN A PERIOD OF TWO (2) YEARS AFTER SUBSTANTIAL COMPLETION OF THE ENTIRE WORK; OR, IF A LATENT DEFECT IS DISCOVERED WITHIN TWO YEARS OF SUBSTATIONAL COMPLETION OF THE ENTIRE WORK.

(b) Special Warranties. The Contractor shall assign to the Owner in writing, as a condition precedent to final payment, the terms and conditions of all special warranties required under the Contract Documents.

3.6 TAXES

The Owner qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the Owner shall not be liable for, or pay the Contractor's cost of, such sales and use taxes which would otherwise be payable in connection with the purchase of tangible personal property furnished and incorporated into the real property being improved under the Contract Documents or the purchase of materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for performance of the Contract which is to be completely consumed at the job site. The Contractor shall issue an exemption certificate in lieu of the tax on such purchases.

3.7 PERMITS, FEES AND NOTICES

(a) The Architect/Engineer will apply and arrange for the issuance of the City of Denton Building Permit. The Prime Contractor and Subcontractors will apply and arrange for the issuance of all other required permits, and will not be required to pay a fee for any City of Denton permits required for the Project. The Owner will pay all service extension charges, including tap fees, assessed by the Water Utilities Department.

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(b) The Prime Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of governmental entities or agencies applying to performance of the Work.

(c) Except as provided in Subparagraph (d) below, it is not the Prime Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Prime Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Prime Contractor shall promptly notify the Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.

(d) If the Prime Contractor performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Architect/Engineer and the Owner, the Prime Contractor shall assume full responsibility for the Work and shall bear the attributable costs of the correction of the Work and any other Work in place that may be adversely affected by the corrective work.

3.8 ALLOWANCES

(a) The Prime Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for the amounts identified in the Contract and by persons or entities as the Owner may direct, but the Prime Contractor shall not be required to employ persons or entities against which the Prime Contractor makes reasonable objection.

(b) Unless otherwise provided in the Contract Documents:

(1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

(2) the amount of each allowance shall cover the cost to the Prime Contractor of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts;

(3) the amount of each allowance includes the Prime Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance Work;

(4) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect:

(i) the difference between actual costs and the allowances under Clause (b) (2); and

(ii) changes in Contractor's costs under Clause (b) (3);

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(5) the Owner retains the right to review and approve Subcontractors selected by the Prime Contractor to perform work activities covered by allowances.

3.9 SUPERINTENDENT

The Prime Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Prime Contractor, and communications given to the superintendent shall be as binding as if given to the Prime Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to request that the Prime Contractor replace its superintendent at any time and the Prime Contractor will replace said superintendent at the Owner's direction.

3.10 PRIME CONTRACTOR'S CONSTRUCTION SCHEDULES

(a) The Prime Contractor shall, immediately after award of the Contract and before submittal of the first Application for Payment, prepare and submit the construction schedule for the Architect/Engineer's and Owner's information, review, and approval in accordance with the following provisions:

(1) Unless otherwise approved in writing by the Owner, the construction schedule shall not exceed the Contract Time limits currently in effect under the Contract Documents and shall provide for expeditious and practicable execution of the Work.

(2) The construction schedule shall include all shop drawing and submittal data requirements, indicating for each:
(i) the latest date to be submitted by the Prime Contractor; and
(ii) the latest date for approval by the Architect/Engineer.

(3) The construction schedule shall be in the form of a critical path management schedule, and shall indicate each critical task (the "predecessor") of all the major construction activities of the Work in a logical and sequential order (the "project network") which requires completion prior to commencement of the task next following (the "successor"). Each task shall be identified with:

(i) actual work time, exclusive of slack time, for accomplishment;

(ii) the latest start date;

(iii) the latest finish date;

(iv) the amount of float associated with each task;

(v) the amount of labor, material, and equipment associated with each task; and

(vi) the percentage of completion as of the date of the current schedule.

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(4) The construction schedule shall be revised and updated monthly to reflect the actual status of the Work and shall be submitted with each Application for Payment.

(5) On or before the first day of each month, following the date of commencement of the Work as stated in the notice to proceed, the Prime Contractor shall prepare and submit to the Architect/Engineer and the Owner an up-to-date status report of the progress of the various construction phases of the Work in the form of an updated construction schedule. This status report shall consist of a time scale drawing indicating actual progress of the various phases of the Work and the percentage of completion of the entire Work. The original construction schedule shall be updated or changed to indicate any adjustments to the Contract Time granted by the Owner. The updated schedule must be submitted with the Prime Contractor's Application for Payment. No such application will be certified without a satisfactory update to the construction schedule.

(6) The construction schedule will also be revised to show the effect of change orders and other events on Contract Time. No request for an increase in Contract Time will be considered unless it is accompanied by a schedule revision demonstrating the amount of time related to the cause of the request. If the Contractor's status schedules reflect that the Prime Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Prime Contractor shall prepare a recovery schedule demonstrating how it intends to bring its progress back within the Contract Time. This recovery schedule shall be in a form acceptable to the Owner.

(7) Costs incurred by the Prime Contractor in preparing and maintaining the required construction schedule, any updated schedule, and any recovery schedule required by the Owner will not be paid as an additional or extra cost and shall be included in the Contract Sum.

(8) The Contract Sum is deemed to be based upon a construction schedule requiring the full Contract Time. NO CLAIM FOR ADDITIONAL COMPENSATION SHALL BE ALLOWED AS A RESULT OF THE PRIME CONTRACTOR BASING HIS BID ON AN EARLY COMPLETION SCHEDULE, OR AS A RESULT OF DELAYS AND COSTS ATTRIBUTABLE TO COMPLETION LATER THAN THE PLANNED EARLY COMPLETION DATE.

(b) The Prime Contractor shall also prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Prime Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.

(c) The Prime Contractor shall conform to the most recent schedules approved as to form by the Architect/Engineer and the Owner. Any subsequent revisions made by the Prime Contractor to schedules in effect shall conform to the provisions of Subparagraph 3.10(a)

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(d) If the Work falls behind the approved construction schedule, the Prime Contractor shall take such steps as may be necessary to improve his progress, and the Architect/Engineer and the Owner may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, and to submit for approval revised schedules in the form required above in order to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

(a) Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, materialmen, manufacturer(s), supplier(s), or distributor(s) to illustrate some portion of the Work.
(b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
(c) Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
(d) Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Paragraph 4.2.
(e) The Prime Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner, or of separate contractors. Submittals made by the Prime Contractor which are not required by the Contract Documents may be returned without action.
(f) The Prime Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect/Engineer. Work requiring this submittal and review shall be in accordance with approved submittals and any identified exceptions noted by the Architect/Engineer.
(g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Prime Contractor represents that the Prime Contractor has determined and verified materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within submittals with the

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requirements of the Work and of the Contract Documents. The Prime Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.

(h) The Prime Contractor shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Prime Contractor has specifically informed the Architect/Engineer in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Architect/Engineer, subject to a formal Change Order signed by the Owner, Architect/Engineer and Prime Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Prime Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect/Engineer's approval thereof. Further, notwithstanding any approval of a submittal by the Architect/Engineer, the Prime Contractor shall be responsible for all associated Project costs, including costs of coordination's, modifications, or impacts, direct or indirect, resulting from any and all substitutions, changes, additions, deletions, omissions, or deviations, whether or not specifically identified by the Prime Contractor to the Architect/Engineer at the time of the above-mentioned submittals, including additional consulting fees, if any, in any and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.

(i) The Prime Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to additional revisions other than those requested by the Architect/Engineer on previous submittals. In the absence of such written notice, the Architect/Engineer's approval of a resubmission shall not apply to the additional revisions not requested.

(j) Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.

(k) When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF THE PROJECT SITE

The Prime Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

3.14 CUTTING AND PATCHING

(a) The Prime Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Prime Contractor shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering the construction, or by excavating. The Prime Contractor

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shall not cut or otherwise alter the construction by the Owner or a separate contractor except with the written consent of the Owner and of the separate contractor; consent shall not be unreasonably withheld. The Prime Contractor shall not unreasonably withhold from the Owner or a separate contractor the Prime Contractor's consent to cutting or otherwise altering the Work.

(c) A "Hot Work Permit" must be obtained from the City of Denton's Facilities Management Department, 869 S. Woodrow Lane, Denton, Texas (940 349-7200) for any temporary operation involving open flames or producing heat and/or sparks. This includes, but is not limited to: Brazing, Cutting, Grinding, Soldering, Torch Applied Roofing and Welding.

3.15 CLEANING UP

(a) The Prime Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon the completion of the Work the Prime Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Prime Contractor's tools, construction equipment, machinery, and surplus materials.

(b) If the Prime Contractor fails to clean up as provided in the Contract Documents, the Owner may, at Owner's option, clean up the Project site, and the Owner's cost of cleaning up shall be charged to the Contractor.

3.16 ACCESS TO WORK

The Prime Contractor shall provide the Owner and the Architect/Engineer access to the Work in preparation and progress wherever located during the course of construction.

3.17 TESTS AND INSPECTIONS

(a) Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of governmental entities or agencies having jurisdiction over the Work shall be made at appropriate times. Unless otherwise provided, the Prime Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate governmental entity or agency, and the Prime Contractor shall bear all related costs of tests, inspections, and approvals. The Prime Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals which become requirements after bids or proposals are received.

(b) If the Architect/Engineer, the Owner or other public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 3.17(a), the Architect/Engineer will, upon written authorization from the Owner, instruct the Prime Contractor to make arrangements

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for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Prime Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so that the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 3.17(c).

(c) If procedures for testing, inspection, or approval under Subparagraphs 3.17(a) and 3.17(b) reveal deficiencies or nonconformities in the Work, the Prime Contractor shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Architect/Engineer's services and expenses, if any. The Prime Contractor shall bear the costs of any subsequent testing, inspection, or approval of the corrected Work.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Prime Contractor and promptly delivered to the Architect/Engineer.

(e) If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing or inspection.

(f) Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

3.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. CONTRACTOR SHALL COMPLETELY DEFEND, INDEMNIFY AND HOLD OWNER AND ARCHITECT/ENGINEER HARMLESS FROM ANY AND ALL LIABILITIES, SUITS OR CLAIMS FOR INFRINGEMENT OF PATENT RIGHTS, REGARDLESS OF WHETHER OR NOT THE OWNER OR THE ARCHITECT/ENGINEER SPECIFIED A PARTICULAR DESIGN, PROCESS OR PRODUCT IN THE CONTRACT DOCUMENTS THAT MAY BE THE SUBJECT OF A PATENT INFRINGEMENT OR OTHERWISE ACTIVELY INDUCED OR CONTRIBUTED TO THE PATENT INFRINGEMENT. In the event the Prime Contractor has reason to believe that a particular design, process or product specified infringes a patent, the Prime Contractor shall immediately notify the Owner and the Architect/Engineer of same.

3.19 INDEMNIFICATION

(a) THE PRIME CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT/ENGINEER, HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITIES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S

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BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE PRIME CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE PRIME CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR OF THE ARCHITECT/ENGINEER, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CONTRACTOR, THE OWNER, AND THE ARCHITECT/ENGINEER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW, AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER THIRD PERSON OR ENTITY.

(b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Prime Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.19 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Prime Contractor or any Subcontractor, under workers compensation acts, disability benefit acts or other employee benefit acts.

(c) Indemnification under this Paragraph 3.19 shall include, but is not limited to, liability which could result to or be created for the Owner, its officers, agents, or employees, or the Architect/Engineer pursuant to State or Federal laws or regulations relating to pollution of the environment and State or Federal laws or regulations relating to the occupational safety and health of workers. The Prime Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Prime Contractor and that the obligations of the Owner, its officers, agents, and employees, and the Architect/Engineer under the above-mentioned laws and regulations are secondary to those of the Prime Contractor.

ARTICLE 4 - CONTRACT ADMINISTRATION

4.1 THE DESIGN PROFESSIONAL (ARCHITECT/ENGINEER)

(a) The design professional is the person lawfully licensed to practice architecture or engineering or a firm or other business entity lawfully practicing architecture/engineering identified as such in the formal Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in number. The term

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"Architect/Engineer" means the Architect/Engineer or the Architect/Engineer's authorized representative. The Owner may, at its option, designate a qualified Owner representative to serve as the Architect/Engineer on the Project instead of an outside firm or person. In such event, the references in these General Conditions that refer to the Architect/Engineer shall apply to the Owner-designated Architect/Engineer representative and the Owner-designated Architect/Engineer representative shall be accorded that same status by the Prime Contractor.

(b) In the event the Architect/Engineer is an outside person or firm and the Architect/Engineer's employment is terminated, the Owner may, at its option, contract with a new outside Architect/Engineer to replace the former, or may designate a qualified Owner representative to serve as the Architect/Engineer. The replacement Architect/Engineer, whether an Owner representative, an independent Architect/Engineer or any other qualified person or entity, shall be regarded as the Architect/Engineer for all purposes under the Contract Documents and shall be accorded that same status by the Prime Contractor. Any dispute in connection with such appointment shall be reviewed and settled by the Owner, whose decision shall be final and binding.

(c) Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect/Engineer's Construction Phase responsibility. Similarly, from time to time the Owner may expand or reduce the Owner's delegation of powers to the Architect/Engineer, with the Owner notifying the Prime Contractor of any such changes. The Architect/Engineer shall not be construed as a third party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth in this Subparagraph (c). In no event, however, shall the Owner have control over charge of, or be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of Prime Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2 ARCHITECT/ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION

(a) The Architect/Engineer will administer the Contract as described in the Contract Documents and in accordance with the terms of the Architect/Engineer's agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Prime Contractor, the provisions of the Owner/Architect/Engineer Agreement will be made available to the Prime Contractor.

(b) The Architect/Engineer shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent necessary to personally familiarize themselves with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents. The Architect/Engineer shall not, however, be required to make continuous on-site inspections to check the Work. Field reports of each visit shall be prepared by the

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Architect/Engineer and submitted to the Owner. The Architect/Engineer shall employ all reasonable measures to safeguard the Owner against defects and nonconformities in the Work. The Architect/Engineer shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Work. The Architect/Engineer will, however, immediately inform the Owner whenever defects or nonconformities in the Work are observed, or when any observed actions or omissions are undertaken by the Prime Contractor or any Subcontractor which are not in the best interests of the Owner or the Project.

(c) The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Prime Contractor's responsibility as provided in Paragraph 4.3. The Architect/Engineer and the Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Prime Contractor, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Prime Contractor is responsible.

(d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Prime Contractor shall endeavor to communicate through the Architect/Engineer. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Prime Contractor. Communications by and with separate contractors will be through the Owner. The Prime Contractor shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Architect/Engineer.

(e) Based on the Architect/Engineer's observations and evaluations of the Prime Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Prime Contractor and will issue Certificates for Payment in such amounts.

(f) The Architect/Engineer and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 3.17(b) and 3.17(c), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer to the Prime Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

(g) The Architect/Engineer will review and approve or take other appropriate action upon the Prime Contractor's submittals such as Shop Drawings, Product Data, and Samples, but

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only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such reasonable promptness as to not delay the Work or the activities of the Owner, Contractor, or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Prime Contractor as required by the Contract Documents. The Architect/Engineer's review of the Prime Contractor's submittals shall not relieve the Prime Contractor of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work as provided in Paragraph 7.3.

(i) The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Prime Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

(j) If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more Project representatives to assist in carrying out the Architect/Engineer's responsibilities at the site. The duties, responsibilities, and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated into the Contract Documents.

(k) The Architect/Engineer will interpret and make recommendations to the Owner concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Architect/Engineer shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Prime Contractor which change the scope of the Work or which modify or change the terms and conditions of any of the Contract Documents.

(l) Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by the Prime Contractor.

(m) The Architect/Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents; provided that the Architect/Engineer has the prior written approval of the Owner.

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4.3 CLAIMS AND DISPUTES

(a) Definition; General Notice of Claim Procedure. As used in these General Conditions, a "Claim" means a demand or assertion by one of the parties to the Contract seeking an adjustment of the terms of the Contract Documents, of the Contract Sum, of the Contract Time, or some other relief in respect to the terms of the Contract Documents. The term also includes all other disputes between the Owner and the Contractor arising out of or relating to the Project or the Contract Documents, including but not limited to claims that work was outside the scope of the Contract Documents. The responsibility to substantiate the Claim and the burden of demonstrating compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, WITHOUT EXCEPTION, MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT/ENGINEER AND TO THE OWNER WITHIN FOURTEEN (14) DAYS IMMEDIATELY AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM. Every Claim of the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Prime Contractor by his signature) of the Prime Contractor, verifying the truth and accuracy of the Claim. THE PRIME CONTRACTOR SHALL BE CONCLUSIVELY DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURES AND TIME LIMITS SET OUT IN THIS PARAGRAPH.

(b) Referral to the Architect/Engineer. Claims, disputes, and other matters in question between the Prime Contractor and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Architect/Engineer for recommendation to the Owner, which recommendation the Architect/Engineer will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Prime Contractor to submit the Claim to the Architect/Engineer for rendering of a recommendation to the Owner shall constitute a waiver of the Claim.

(c) Continuing Contract Performance. Pending final resolution of a claim the Prime Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents.

(d) Claims for Concealed or Unknown Conditions. No adjustment in the Contract Sum or Time associated with concealed or unknown conditions will normally be considered or allowed; provided, however, that the Contract Sum or Time may be adjusted by the Owner in such circumstances only if:

(1) a concealed subsurface condition is encountered in the course of performance of the Work;
(2) a concealed or unknown condition in an existing structure is at variance with conditions indicated by the Contract Documents; or

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(3) an unknown physical condition is encountered below the surface of the ground or in an existing structure which is of an unusual nature and materially different from those ordinarily encountered and generally recognized as inherent in the character of the Work; and
(4) a notice of claim with proper and adequate substantiation is presented pursuant to Subparagraph 4.3(a) of these General Conditions; and
(5) the Owner and the Architect/Engineer determine that:

(i) prior to submitting its bid for the Work, the Contractor used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and

(ii) the work caused or required by the concealed or unknown condition at issue can be considered extra work to the extent that additional new Drawings must be prepared and issued and new construction beyond the scope of the Contract Documents is required.

(e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE ARCHITECT/ENGINEER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE PRIME CONTRACTOR AT THE PRIME CONTRACTOR'S OWN RISK. THE OWNER AND THE ARCHITECT/ENGINEER DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.

(f) Claims for Additional Cost. If the Prime Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided in this Paragraph 4.3 shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. In addition, the Prime Contractor's request for an increase in the Contract Sum for any reason (other than work performed under emergency conditions) shall be made far enough in advance of required work to allow the Owner and the Architect/Engineer a sufficient amount of time, without adversely affecting the construction schedule, to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates or proposals and to negotiate, execute and distribute a Change Order for the required work if the Prime Contractor believes that additional cost is involved for reasons including but not limited to:

(1) a written interpretation from the Architect/Engineer;

(2) a written order for a minor change in the Work issued by the Architect/Engineer;

(3) failure of payment by the Owner;

(4) termination of the Contract by the Owner;

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(5) the Owner's temporary suspension of all or any portion of the Work where the Prime Contractor was not at fault; or

(6) other reasonable grounds.

(g) Injury or Damage to Person or Property. If the Prime Contractor suffers injury or damages to person or property because of an act or omission of the Owner, or of any of the Owner's officers, employees or agents, written, sworn-to notice of any claim for damages or injury shall be given as provided in Subparagraph 4.3(a). The notice shall provide sufficient detail to enable the Architect/Engineer and the Owner to investigate the matter.

(h) Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Prime Contractor asserts a claim to the Prime Contractor, that the Prime Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the Prime Contractor to submit and assert the claim against the Owner shall be subject to:

(1) the requirements of Paragraph 4.3 of these General Conditions; and

(2) the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Prime Contractor to seek and assert such claim against the Owner:

(ii) The Prime Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Prime Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Prime Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Prime Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Prime Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Prime Contractor in the claim submittal materials.

(ii) The Prime Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Prime Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Prime Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed by the Contractor to be valid.

(iii) The Subcontractor making the claim to the Prime Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Prime Contractor in the claim submittal materials made by Contractor to the Owner..

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(3) Any failure of the Prime Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim against Owner.

(4) Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or by applicable law.

(i) Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part. The Prime Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If the Prime Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Prime Contractor to develop a recovery schedule as described in Paragraph 3.10 or to accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as the Owner may reasonably direct and, upon receipt, the Prime Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Prime Contractor to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).

(2) In the event that the Prime Contractor is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Subparagraph 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to the Prime Contractor provided within fourteen (14) days after receipt of the Prime Contractor's Claim. If the Owner denies the Prime Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Prime Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(3) If the Prime Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by the Owner if not for the need and right to accelerate, the Prime Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Prime Contractor under Subparagraph 4.3(a) above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and

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required insurance; provided however, not to exceed five (5%) per cent, will be allowed on the claimed acceleration costs. NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM. The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (i)(3).

(i) Waiver of Claims; Final Payment. The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

(1) claims, security interests, purported liens, or other attempted encumbrances arising out of the Contract and remaining unsettled;

(2) defective or nonconforming Work appearing after Substantial Completion;

(3) latent defects, as defined in Subparagraph 12.2(d), appearing after Final Completion; or

(4) the terms of general and special warranties required by the Contract Documents or allowed or implied by law.

(k) THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING.

(l) No Waiver of Governmental Immunity. NOTHING IN THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY APPLICABLE STATE LAW.

ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS OF SUBCONTRACTOR

(a) A Subcontractor is person or entity who has a direct Contract with the Prime Contractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Prime Contractor by purchase or lease for use in performance of or incorporation into the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(b) A Sub-subcontractor is a person or entity who has a direct or indirect Contract with a Subcontractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Subcontractor or another Sub-subcontractor by purchase or lease for use

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in performance of or incorporation into the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

(a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Prime Contractor and the Owner, the Prime Contractor shall furnish to the Architect/Engineer in writing, for acceptance by the Owner and the Architect/Engineer, a list of the names, addresses, telephone numbers, M/WBE certification numbers (where applicable), and type of work of the Subcontractors (including those who are to furnish materials or equipment fabricated to a special design), proposed for the principal portions of the Work, including furnishings when made a part of the Contract. The Prime Contractor shall immediately notify the Owner in writing of any changes in the list as they occur. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.

(b) The Prime Contractor shall not Contract with a proposed person or entity to whom the Owner or Architect/Engineer has made reasonable and timely objection.

(c) Architect/Engineer's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Prime Contractor of his responsibility for performance of Work as called for under the Contract Documents, and shall not provide a basis for any claim for additional time or money on the part of the Prime Contractor. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the Owner or Architect/Engineer. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.

(d) The Prime Contractor shall not change a Subcontractor previously selected if the Owner or Architect/Engineer makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

(a) By appropriate agreement, written where legally required for validity, the Prime Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Prime Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Prime Contractor all the obligations and responsibilities which the Prime Contractor, by the Contract Documents, assumes toward the Owner and the Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Contract Documents (including but not limited to these General Conditions) with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the rights of the Owner and the Architect/Engineer.

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Where appropriate, the Prime Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Prime Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.

(b) The Prime Contractor is solely responsible for making payments properly to the Prime Contractor's Subcontractors on the Project. During performance of the Work, the Prime Contractor shall comply with the following additional rules regarding Subcontractor payments:

(1) The Prime Contractor shall submit, beginning with the Second Application and Certificate for Payment, a Subcontractor Payment Report (the "Report") with each Application and Certificate for Payment. The Report shall show all payments made to date by the Prime Contractor (plus existing retainage) to each Subcontractor involved in the Project. The Report shall be made on a form approved and supplied by the Owner. As an alternative to the Report, the Prime Contractor may furnish Affidavits of Payment Received with the Application and Certificate for Payment, which affidavits shall be executed by each Subcontractor owed money and paid by Subcontractor during the previous progress payment period for work or materials furnished on the Project. RECEIPT BY THE OWNER OF THE REPORT OR AFFIDAVITS OF PAYMENT RECEIVED SHALL BE A CONDITION PRECEDENT TO PAYMENT ON ANY APPLICATION FOR PAYMENT.

(2) If, for any reason, the Prime Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Prime Contractor shall note the amount withheld and further note that the payment is in dispute. The Owner may, in its sole discretion, require the Prime Contractor to document and verify the dispute or other problem in question.

(3) The Owner reserves the right in its sole discretion, to withhold payment to the Prime Contractor pursuant to Paragraph 9.5(a) of the General Conditions, should it appear from the Report, statements of payment received or other information furnished to the Owner that:

(i) the Report has not been properly completed;

(ii) the Prime Contractor has knowingly provided false information regarding payment of any Subcontractor; or

(iii) the Prime Contractor has otherwise failed to make payments properly to any Subcontractor.

(4) THE PRIME CONTRACTOR SHALL NOT HAVE ANY RIGHT TO MAKE A CLAIM FOR ADDITIONAL TIME OR ADDITIONAL COMPENSATION AS A RESULT OF THE OWNER'S OR ARCHITECT/ENGINEER'S ENFORCEMENT OF

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THIS SUBPARAGRAPH 5.3(b). NO PROVISION OF THIS SUBPARAGRAPH OR ANY OF THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO CREATE A CONTRACTUAL RELATIONSHIP, EXPRESS OR IMPLIED, BETWEEN ANY SUBCONTRACTOR AND EITHER THE OWNER OR THE ARCHITECT/ENGINEER AND SHALL NOT BE CONSTRUED TO MAKE ANY SUBCONTRACTOR OR ANY OTHER PERSON OR ENTITY, A THIRD-PARTY BENEFICIARY OF THE CONTRACT BETWEEN THE OWNER AND THE PRIME CONTRACTOR.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of a termination of this Contract by the Owner under Article 14, the Prime Contractor shall, if requested in writing by the Owner, within fifteen (15) days after the date notice of termination is sent, deliver and assign to Owner, or any person or entity acting on the Owner's behalf, any or all subcontracts made by Prime Contractor in the performance of the Work, and deliver to the Owner true and correct originals and copies of the subcontract documents. In the event assignment is not requested by the Owner, Prime Contractor shall terminate all subcontracts to the extent that Owner has not directed assignment of same and to the extent that they relate to the performance of Work terminated by the notice of termination.

ARTICLE 6 - CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

(a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Prime Contractor claims that delay or additional cost is involved because of such action by the Owner, the Prime Contractor shall make a claim as provided elsewhere in, and in accordance with the Contract Documents.

(b) When separate Contracts are awarded for different portions of the Project or other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Building Construction Services Agreement with the Owner.

(c) The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Prime Contractor, who shall cooperate with them. The Prime Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Prime Contractor shall, with the approval of the Owner, make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Prime Contractor, separate

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contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Prime Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Prime Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Prime Contractor's Change Order proposal is denied by the Owner, the Prime Contractor must submit any Claim pursuant to Paragraph 4.3 of the General Conditions.

(d) Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Prime Contractor under these General Conditions, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

(a) The Prime Contractor shall afford the Owner and separate contractors' reasonable opportunity for access to and storage of their materials and equipment and the performance of their activities and shall coordinate the Prime Contractor's construction and operations with the separate contractors as required by the Contract Documents.

(b) If part of the Prime Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Prime Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for proper execution and results. Failure of the Prime Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Prime Contractor's Work, except as to defects not then reasonably discoverable.

(c) The Owner shall not be liable to the prime Contractor for damages suffered by the Prime Contractor due to the fault or negligence of a separate contractor or through failure of a separate contractor to carry out the directions of the Owner or the Architect/Engineer. Should any interference occur between the Prime Contractor and a separate contractor, the Architect/Engineer or the Owner may furnish the Prime Contractor with written instructions designating priority of effort or change in methods, whereupon the Prime Contractor shall immediately comply with such direction. In such event, the Prime Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Prime Contractor.

(d) The Prime Contractor shall promptly remedy damage wrongfully caused by the Prime Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2(e).

(e) Should the Prime Contractor cause damage to the work or property of any separate contractor on the Project, the Prime Contractor shall, upon due notice, settle with the separate contractor by agreement, if the separate contractor will so settle. If the separate

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contractor sues the Owner or submits a claim on account of any damage alleged to have been so sustained, the Owner shall notify the Prime Contractor who shall defend such proceedings, at the Prime Contractor's sole expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Prime Contractor shall fully pay or satisfy it and shall reimburse the Owner for any and all attorney's fees and costs which the Owner has incurred.

(f) The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Prime Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project Site and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up, but is not obligated to do so, and Owner shall allocate the cost among those parties responsible, as the Architect/Engineer recommends to be just.

ARTICLE 7 - AMENDMENTS

7.1 CHANGE ORDERS

(a) A Change Order is a written order to the Contractor, signed by the Owner and the Architect/Engineer, issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, or an adjustment to the Contract Time, consistent with other applicable provisions of this Contract. The Owner, without invalidating the Contract and without requiring notice of any kind to the sureties, may order changes to the scope of Work under the Contract by additions, deletions, or other revisions, the Contract Sum and Contract Time to be adjusted consistent with other applicable provisions of this Contract. All Change Orders shall be executed on a Change Order form approved by the Owner and the Owner's City Attorney.

(b) In addition to the Owner and the Architect/Engineer, the Contractor shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Contractor refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Architect/Engineer to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Contractor indicates his agreement with all of the changes approved, including the adjustment in the Contract Sum or the Contract Time. EACH CHANGE ORDER SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. The Contractor forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the

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executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on other Work.

(c) No extra work (except under emergency conditions) or changes shall be made nor shall any substitutions, changes or additions to or omissions or deviations from the requirements of the Drawings and Specifications be made unless pursuant to a written Change Order signed by the Owner and the Architect/Engineer, it being expressly understood that the Owner shall not be liable for the cost of extra work or any substitution, change, addition, omission or deviation from the requirements of the Drawings or Specifications unless the same shall have been authorized in writing by the Owner and the Architect/Engineer in a written change order or other Amendment. The provisions of this Paragraph 7.1 shall control in the event of any inconsistency between such provisions and the other provisions of this Article 7. See Subparagraph 10.3(a) of the General Conditions for Change Orders under emergency conditions.

(d) The method of determining the cost or credit to the Owner for any change in the Work shall be one of the following:

(1) mutual acceptance of a not-to-exceed lump-sum amount properly itemized and supported by sufficient substantiating data to permit evaluation; or

(2) unit prices stated in the Contract Documents or subsequently agreed upon; or

(3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

(4) the force account method provided in Subparagraph 7.1(e)

(e) If the parties cannot agree to one of the methods of calculating cost provided in Clauses (d) (1), (d) (2), or (d) (3), or if the parties agree to a method but cannot agree on a final dollar figure; or if the Contractor for whatever reason refuses to sign the Change Order in question; the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of the Work involved shall then be calculated on the basis of the reasonable jobsite expenditures and savings of those performing the Work attributable to the changes, including a reasonable allowance for overhead and profit, such allowance in any case never to exceed fifteen (15%) per cent. In such case, the Contractor shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Architect/Engineer and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to the Architect/Engineer each day during the performance of force account work, with copies to the Owner.

FAILURE OF THE CONTRACTOR TO SUBMIT THE SWORN-TO ITEMIZED ACCOUNTING DAILY AS REQUIRED HEREIN SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY RIGHT TO DISPUTE THE OWNER'S DETERMINATION OF THE AMOUNT DUE THE CONTRACTOR FOR FORCE ACCOUNT WORK. Costs to be charged under this Subparagraph for force account work

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are limited to the following:

(1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;

(2) costs of materials, supplies and equipment (but not to include off-site storage unless approved in writing by the Owner), whether incorporated or consumed;

(3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

(4) costs of premiums for all bonds and insurance related to the Work; and

(5) additional costs of supervision and field office personnel directly attributable to the changed Work. Pending final determination of cost to the Owner, payment of undisputed amounts on force account shall be included on the Architect/Engineer's Certificate of Payment as work is completed.

(f) The amount of credit to be allowed to the Owner for any deletion of Work or any other change which results in a net decrease of the Contract Sum shall be the amount of actual net cost confirmed by the Architect/Engineer plus the stated percentage for overhead and profit. When both additions and deletions or credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease with respect to that change.

7.2 SUPPLEMENTAL AGREEMENTS

A written Supplemental Agreement can also be used to implement changes in the Work instead of a Change Order form, including but not limited to situations involving partial occupancy of the Work under Paragraph 9.8, a change made to the Drawings or the Specifications without an increase in the Contract Sum, or special circumstances where it is necessary or more appropriate for the Owner to use a Supplemental Agreement. Written Supplemental Agreements shall have a status equal to that of Change Orders for purposes of priority of Contract Documents interpretation, except that to the extent of a conflict, later Supplemental Agreements in time control over earlier Supplemental Agreements, and the latest Change Order or Supplemental Agreement in time controls over earlier dated Change Orders and Supplemental Agreements. The rules of Subparagraphs 7.1(b) through (f) shall also apply to the negotiation and execution of Supplemental Agreements.

7.3 MINOR CHANGES IN THE WORK

The Architect/Engineer, after notifying the Owner, shall be authorized to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Minor changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly. These written orders shall not be deemed to change or impact the Contract Sum or the Contract Time. Contractor shall have no

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Claim for any minor change ordered to the Work under this Paragraph 7.3 unless the Contractor submits its change proposal, prior to complying with the minor change ordered and in no event later than ten (10) working days from the date the minor change was ordered, to the Owner for approval.

7.4 TIME REQUIRED TO PROCESS AMENDMENTS

(a) All of the Contractor's responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Architect/Engineer a minimum of thirty (30) calendar days after receipt by the Architect/Engineer to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. All of the Prime Contractor's responses to proposal requests shall include a statement that the cost described in the response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation under the Contract Documents, without reservation or further recourse.

(b) All Amendments require approval by either the City Council or, where authorized by the State law and City ordinance, by the City Manager pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution, Ordinance or Administrative Action. THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS. Pending the approval described above, the Contractor will proceed with the work under a pending Amendment only if directed in writing by the Owner.

ARTICLE 8 - CONTRACT TIME

8.1 DEFINITIONS

(a) Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

(b) The date of commencement of the Work is the date established in the Notice to Proceed from the Owner. The date of commencement shall not be postponed by the failure of the Prime Contractor, or of persons or entities for whom the Prime Contractor is responsible to act promptly to commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed, through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable extension of the Contract Time; the Contract Sum shall remain unchanged.

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(c) The date of Substantial Completion is the date certified by the Architect/Engineer in accordance with Paragraph 9.7.

(d) The term "day" as used in the Contract Documents shall mean a calendar day, beginning and ending at 12:00 midnight, unless otherwise specifically defined by special provision.

8.2 PROGRESS AND COMPLETION

(a) **Time limits stated in the Contract Documents are of the essence of the Contract**. By executing the Building Construction Services Agreement, the Prime Contractor confirms that the Contract Time is a reasonable period for performing the Work.

(b) The Prime Contractor shall not knowingly, except by agreement with or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance to be furnished by the Prime Contractor as required by Article 11. The date of commencement of the Work shall not be changed by the effective date of insurance required by Article 11.

8.3 DELAYS AND EXTENSIONS OF TIME

(a) If the Prime Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Prime Contractor's control, or by delay authorized by the Owner pending a claim, or by other causes which the Architect/Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer and Owner may determine.

(b) Claims relating to Contract Time and time extensions shall be made in accordance with the applicable provisions of Paragraph 4.3.

(c) No Damages for Delay. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, INCLUDING THE GENERAL CONDITIONS, NO ADJUSTMENT SHALL BE MADE TO THE CONTRACT SUM AND THE PRIME CONTRACTOR SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR UNFORESEEN, WHICH INCREASES THE TIME TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE ARCHITECT/ENGINEER, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE PRIME CONTRACTOR'S SOLE REMEDY.

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(d) The Owner shall have the right to occupy, without prejudice to the right of either party, any completed or largely completed portions of the structure or Work, notwithstanding the fact that the Contract Time for completing all or a portion of the Work may not have expired. Partial occupancy and use shall not be deemed as an acceptance of the Work taken or used.

(e) The Prime Contractor shall promptly suspend the Work when either the Prime Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Prime Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Prime Contractor will also not be liable to the Owner for a delay caused in fact by the Work being suspended by a court order.

(f) The Architect/Engineer, with the consent of the Owner, shall have the authority to suspend the Work, in whole or in part, for such period or periods as the Architect/Engineer deems necessary due to unusual or severe weather conditions as are considered unfavorable for the suitable prosecution of the Work, or due to failure on the part of the Prime Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop the Work for an indefinite period, the Prime Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way, and shall take every precaution to prevent damage or deterioration of the Work performed. In cases of suspension of the Work under this Subparagraph, the Prime Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Prime Contractor shall not suspend the Work in whole or in part without written authority from the Architect/Engineer or the Owner, and shall resume the Work promptly when notified by the Architect/Engineer or the Owner to resume operations.

(g) In the event of a delay that is the responsibility of the Prime Contractor or any of the Subcontractors, for which the Prime Contractor is not entitled to a time extension under the provisions of this Contract, the Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts, or resequencing. This acceleration shall be at no cost to the Owner and will continue until the Contract Time is restored. In the event of a delay for which the Prime Contractor is entitled to a time extension, as determined by the Architect/Engineer, Owner may similarly direct acceleration and the Prime Contractor agrees to perform same on the basis that the Prime Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). THE PRIME CONTRACTOR EXPRESSLY WAIVES ANY OTHER COMPENSATION RESULTING FROM ACCELERATION, SUCH AS LOSS OF LABOR PRODUCTIVITY OR EFFICIENCY.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Building Construction Services Agreement and, including authorized adjustments, is the total amount of compensation payable by the Owner to the Prime Contractor for the performance of the Work under the Contract Documents.

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9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Prime Contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, when approved by the Architect/Engineer and the Owner, shall be used as a basis for the Prime Contractor's Application for Payment. The schedule of values shall follow the trade division of the Specifications. Prime Contractor's Application for Payment shall be filed on the current version of AIA Form G702 (Application and Certificate for Payment), as approved by the Owner.

9.3 APPLICATIONS FOR PAYMENT

(a) At least ten (10) days before the date established for each progress payment, the Prime Contractor shall submit to the Architect/Engineer an itemized Application for Payment for Work completed in accordance with the schedule of values. The Application shall be notarized, if required, and supported by data substantiating the Prime Contractor’s right to payment as the Owner or Architect/Engineer may require, including but not limited to copies of requisitions from Subcontractors and material suppliers, and reflecting the applicable retainage as required in the Contract Documents. Prime Contractor's Application for Payment shall also provide other supporting documentation as the Owner or the other applicable provisions of the Contract Documents may require.

(b) Applications for Payment may not include requests for payment of amounts the Prime Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Prime Contractor complies with Clause 5.3(b) (2) of these General Conditions and the Prime Contractor’s Payment Bond Surety consents in writing to payment to the Prime Contractor of the funds deemed to be in dispute.

(c) Unless otherwise provided in the Contract Documents, progress payments shall include payment for materials and equipment delivered and suitably stored at the Project site for subsequent incorporation into the Work within thirty (30) days after delivery to the Project site. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored away from the Project site at a location agreed upon in writing. Payment for costs incurred in storage of materials or equipment away from the Project site will NOT be made by Owner unless:

(1) the Owner has given prior approval of such off-site storage in writing;
(2) the materials or equipment are stored in a bonded warehouse located in Denton County and identified with the Project for which they are stored, as evidenced by warehouse receipts and appropriate documents of title; and
(3) the materials or equipment stored off-site will be incorporated into the Work within thirty (30) days after delivery. STORAGE IN FACILITIES OF THE MANUFACTURER OR THE PRIME CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.

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(d) The Prime Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Prime Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Prime Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

(e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an "early delivery." All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Prime Contractor shall, at Prime Contractor's expense or at the expense of the responsible Subcontractor or Supplier, cause such early delivery to be removed from the Project site and stored off-site until required at the Project site. All costs of labor, transportation and storage will be included as part of the expense. If the Prime Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Prime Contractor's sole expense, and amounts may be withheld from the Prime Contractor's Application for Payment to reimburse the Owner for any costs incurred in removing unauthorized early delivery materials. OWNER WILL NOT BE RESPONSIBLE FOR THE PROTECTION OF OR RISK OF LOSS ON ANY EARLY DELIVERY MATERIALS OR EQUIPMENT, NOR WILL OWNER BE LIABLE FOR ANY PAYMENT FOR THE EARLY DELIVERY MATERIALS OR EQUIPMENT. Any materials or equipment classified as early delivery will not be approved for payment as stored materials prior to thirty (30) days before the incorporation of the materials or equipment into the Work, unless storage and payment at an earlier date is expressly approved in writing by the Owner.

(f) If the Contract Sum is equal to or less than $25,000, and if performance and payment bonds are not furnished by the Contractor, then no payment applied for will be payable under the Contract until the Work has been finally completed and accepted.

9.4 CERTIFICATES FOR PAYMENT

(a) The Architect/Engineer will, within ten (10) days after receipt of the Prime Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Prime Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Prime Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in:
(a) City of Denton "General Conditions for Building Construction."
(b) Subparagraph 9.5(a). The Certificate for Payment shall be issued on the current version of AIA Form G702 (Application and Certificate for Payment) as approved by the Owner.
(c) The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The

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foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Final Completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Prime Contractor is entitled to payment in the amount certified, subject to the Owner's approval. The issuance of a Certificate for Payment is not a representation that the Architect/Engineer has:

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(2) reviewed construction means, methods, techniques, sequences or procedures;

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Prime Contractor's right to payment; or

(4) made examination to ascertain how or for what purpose the Prime Contractor has used money previously paid on account of the Contract Sum.

(d) Whenever the Application for Payment for Work done since the last previous Application for Payment exceeds one hundred dollars ($100.00) in amount, Owner will pay a percentage of the Application, less applicable retainage, to the Prime Contractor within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Architect/Engineer. The Application may include acceptable nonperishable materials delivered to the Work or stored as provided for in Paragraph 9.3(c) and the payment will be allowed on the net invoice value, less taxes and applicable retainage.

(e) The City is required to withhold retainage for public works contracts in which the total contract price estimate at the time of execution is more than $400,000; however, this requirement is applied by the City for all public works contracts in excess of $50,000. The retainage will be withheld by the Owner from each progress payment until final completion of the Work by the Contractor, approval of final completion by the Architect/Engineer, and final acceptance of the Work by the Owner. Unless otherwise required by state law, the retainage percentage as specified in Exhibit A is based upon the original Contract Sum, and will not be affected in the event the original Contract Sum is subsequently increased by Change Order.

(f) No progress payments shall be made on contracts where performance and payment bonds are not required or furnished. In such instances, payment for the Work performed will be made upon final completion and acceptance by the Owner of all Work.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

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(a) The Architect/Engineer or the Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner's interest, if in the Architect/Engineer's or Owner's opinion the representations to the Owner required by Subparagraph 9.4(b) cannot be made. If the Architect/Engineer or the Owner is unable to certify payment in the amount of the Application, the Architect/Engineer or the Owner will notify the Prime Contractor as provided in Subparagraph 9.4(a). If the Prime Contractor and Architect/Engineer or the Owner cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make the required representations to the Owner. The Architect/Engineer or the Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary, in the Architect/Engineer's or Owner's opinion, to protect the Owner from loss because of:

(1) defective or nonconforming Work not remedied;

(2) third-party claims filed or reasonable evidence indicating probable filing of such claims;

(3) failure of the Prime Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;

(4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

(5) damage to the Owner or another contractor;

(6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;

(7) persistent failure to carry out the Work in accordance with the Contract Documents; or

(8) mathematical or other errors that are discovered in the Application for Payment.

(b) When all of the above reasons that existed for withholding certification are removed or remedied, then, at that time, certification will be made for amounts previously withheld.

(c) The Owner may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to the Owner from the Prime Contractor, regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise, and regardless of whether or not the debt due to the Owner has been reduced to judgment by a court.

9.6 PROGRESS PAYMENTS

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(a) After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect/Engineer. The Owner shall not be liable for interest on any late or delayed progress payment or final payment caused by any claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the Application for Payment or as a precondition to payment under the Contract Documents, or due to any payment the Owner or the Architect/Engineer has a right to withhold or not certify under the Contract Documents. Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contract Documents, including but not limited to those defaults set forth in Subparagraph 9.5(a), Clauses (1) through (7). The Owner shall not be deemed in default by reason of withholding payment while any Prime Contractor default remains uncured.

(b) The Prime Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Prime Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Prime Contractor on account of such Subcontractors portion of the Work. The Prime Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

(c) The Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Prime Contractor and action taken thereon by the Architect/Engineer and the Owner on account of portions of the Work done by such Subcontractor.

(d) Neither the Owner nor the Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. That obligation belongs to the Prime Contractor or, in the event of the Prime Contractor's failure to pay a Subcontractor, to the Surety on the Payment Bond as required under Paragraph 11.3.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6(b), (c), and (d).

(f) A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not performed in accordance with the Contract Documents.

9.7 SUBSTANTIAL COMPLETION

(a) The Date of Substantial Completion of the Work, or designated portion of the Work, is the date certified by the Architect/Engineer when construction is sufficiently completed in accordance with the City Of Denton General Conditions For Building Construction.

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(a) the Contract Documents such that the Owner may beneficially occupy and use the Work, or designated portions of the Work, for the purposes for which it is intended and only trivial and insignificant items remain which do not affect the Work as a whole.

(b) When the Prime Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Prime Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The Prime Contractor shall proceed promptly to complete and correct items on the list (hereinafter called the "punch list"). Failure to include an item on the punch list does not alter the responsibility of the Prime Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Architect/Engineer will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Architect/Engineer's inspection discloses any item, whether or not included on the punch list, which is not in accordance with the requirements of the Contract Documents and which renders the Work inspected not Substantially Complete the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Architect/Engineer. The Prime Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and the Prime Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Prime Contractor shall finish all items on the punch list accompanying the Certificate.

(c) The Certificate of Substantial Completion shall be submitted to the Owner and the Prime Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

(d) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Prime Contractor and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

9.8 PARTIAL OCCUPANCY OR USE

(a) The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate Supplemental Agreement with the Prime Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.2(e) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Prime Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of

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warranties required by the Contract Documents. When the Prime Contractor considers a portion Substantially Complete, the Prime Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Prime Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Prime Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

(b) Immediately prior to such partial occupancy or use, the Owner, Prime Contractor, and Architect/Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

(c) Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

(a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer, accompanied by the Owner's representative, will promptly make final inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Prime Contractor and noted in said final Certificate is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9(b) as a condition precedent to the Prime Contractor's being entitled to final payment have been fulfilled. Owner will normally make final payment within thirty (30) days after Owner's receipt and approval of the final Certificate for Payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided by separate agreement between the Owner and the Prime Contractor.

(b) Neither final payment nor any remaining retained percentage shall become due until the Prime Contractor submits to the Architect/Engineer:

(1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
(2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;

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(3) a written statement that the Prime Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
(4) a consent of surety to final payment; and
(5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

(c) As a precondition to final payment by the Owner under this Contract, the Prime Contractor's affidavit under Clause (b)(1) shall state that the Prime Contractor has paid each of his subcontractors, laborers or materialmen in full for all labor and materials provided to Contractor for the Work performed under this Contract. In the event the Prime Contractor has not paid each of his subcontractors, laborers or materialmen in full, the Prime Contractor shall state in the affidavit the amount owed and the name of each subcontractor, laborer or materialmen to whom such payment is owed. IN ANY EVENT, THE PRIME CONTRACTOR SHALL BE REQUIRED TO EXECUTE THE OWNER'S STANDARD AFFIDAVIT OF FINAL PAYMENT AND RELEASE AS A PRECONDITION TO RECEIPT OF FINAL PAYMENT.

(d) If, after Substantial Completion of the Work, final completion of the Work is materially delayed through no fault of the Prime Contractor or by issuance of Change Orders affecting final completion and the Architect/Engineer confirms the delay, the Owner shall, upon application by the Prime Contractor and certification by the Architect/Engineer, 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 for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of payment. Payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

(e) The acceptance by the Prime Contractor of the final payment shall operate as and shall be a complete release of the Owner from all claims or liabilities under the Contract, for anything done or furnished or relating to the Work or the Project, or for any act or neglect of the Owner relating to or connected with the Work or the Project.

ARTICLE 10 - SAFETY, SECURITY AND UTILITY PROVISIONS; ENVIRONMENTAL COMPLIANCE

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Prime Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and will comply with all applicable City, County, State and Federal health and safety regulations.

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10.2 SAFETY OF PERSONS AND PROPERTY

(a) The Prime Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(1) employees on the Work and other persons who may be affected thereby;

(2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Prime Contractor or the Prime Contractor's Subcontractors or Sub-subcontractors; and

(3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Prime Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

(c) The Prime Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(d) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Prime Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

(e) USE OF EXPLOSIVES - CLAIMS AND TOTAL INDEMNIFICATION. The Owner shall have the right to pre-approve the use of any explosives on the Project; the Prime Contractor shall not assume in its bid that permission to use explosives will be granted. The Owner shall NOT be liable for any claim for additional time or compensation as a result of the Owner's denial of permission to use explosives. Where use of explosives is permitted by the Owner, the Prime Contractor EXPRESSLY AGREES TO BE SOLELY RESPONSIBLE for the determination as to whether explosives shall actually be used, and for any result from the use, handling or storage of explosives, and shall INDEMNIFY, DEFEND AND HOLD COMPLETELY HARMLESS the Owner, its officers, agents and employees, and the Architect/Engineer against any and all claims, lawsuits, judgments, costs or expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, as the result of the use, handling or storage of the explosives by the Prime Contractor or any Subcontractor, REGARDLESS OF WHETHER SAID USE, HANDLING OR STORAGE WAS NEGLIGENT OR NOT, AND REGARDLESS OF WHETHER THE DAMAGE OR INJURY WAS CONTRIBUTED TO IN ANY WAY BY THE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES, OR THE ARCHITECT/ENGINEER AND ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. In the event of conflict with any

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other indemnity paragraph in this Contract, this paragraph controls. This indemnity paragraph is intended solely for the benefit of the parties to this Contract and is not intended to create or grant any rights, contractual or otherwise, to or for any other person or entity. The Prime Contractor shall furnish the Owner and the Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury, which insurance shall either include the Owner and the Architect/Engineer as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Architect/Engineer. All explosives shall be stored in a safe and secure manner, under the care of a competent watchman at all times, and all storage places shall be marked clearly and conspicuously: "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives and highly flammable materials shall conform to Federal and State laws, City of Denton ordinances, and the City of Denton Fire Department regulations. The Prime Contractor shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Prime Contractor's intention to use explosives, and such notice shall be given sufficiently in advance to enable the telecommunications and public utility companies and private property owners to take such steps as they may deem necessary to protect their property from injury. The notice shall not relieve the Prime Contractor of any responsibility for damage resulting from any blasting operations.

(f) The Prime Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the Prime Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Prime Contractor is responsible under Clauses 10.2(a)(2) and 10.2(a)(3), except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Prime Contractor or any of its Subcontractors. The foregoing obligations of the Prime Contractor are in addition to the Prime Contractor's obligations under Paragraph 3.l9. To the extent that any such damage or loss may be covered by property insurance or other insurance required by the Contract Documents, the Owner and the Prime Contractor shall exercise their best efforts to make a claim and obtain recovery from the insurers to provide for the cost, in whole or in part, of the repair work or to provide for reimbursement for such damage or loss.

(g) The Prime Contractor shall designate a responsible member of the Prime Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Prime Contractor's superintendent unless otherwise designated by the Prime Contractor in writing to the Owner and Architect/Engineer.

(h) The Prime Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In an emergency affecting safety, health, or security of persons or property, the Prime

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Contractor shall act, at the Prime Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Prime Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.4 PUBLIC CONVENIENCE AND SAFETY

(a) The Prime Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

(b) The Owner reserves the right to remedy any neglect on the part of the Prime Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Prime Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Prime Contractor's neglect shall be deducted from the Contract Sum. The Prime Contractor shall notify the City Traffic Control Department when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Prime Contractor shall, when directed by the Architect/Engineer or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Prime Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Prime Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN

If the Work is carried on or adjacent to any street, alley or public place, the Prime Contractor shall, at the Prime Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon the Prime Contractor's name and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Paragraph, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Prime Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and

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watchmen to protect the Work. Whenever evidence is found of such damage, the Architect/Engineer may order the damaged portion immediately removed and replaced by the Prime Contractor at Prime Contractor's cost and expense. The Prime Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect/Engineer. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Prime Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Prime Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, the Prime Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Prime Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers; for this purpose, the Prime Contractor shall provide and maintain, at the Prime Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. The Prime Contractor shall, at the Prime Contractor's own expense, construct such troughs, pipes, or other structures necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Architect/Engineer. All storm water and sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT

(a) When the Prime Contractor desires to use the Owner's water in connection with the Work, the Prime Contractor shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the Prime Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the Denton Water Utilities Department.

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(b) The Prime Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner or with Denton Municipal Electric in the event that separately metered electrical connections are required for the Project. The Prime Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Prime Contractor through the City of Denton.

10.9 USE OF FIRE HYDRANTS

The Prime Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the Denton Water Utilities Department in accordance with the Denton City Code.

10.10 ENVIRONMENTAL COMPLIANCE

(a) The Prime Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

(b) In the event the Prime Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Prime Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Architect/Engineer and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a Change Order with the Prime Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Prime Contractor or any of its Subcontractors, the Prime Contractor shall be responsible for remediating the condition at the sole expense of the Prime Contractor in accordance with the Prime Contractor's APPROVED Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a

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Hazardous Substance may be granted by the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Paragraph 4.3 and Article 8.

(c) The Prime Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Prime Contractor or any Subcontractor or Supplier. The Prime Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Architect/Engineer so that they may observe the activities; provided, however, that it shall be the Prime Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

(d) Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Prime Contractor shall submit to the Owner for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Prime Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Owner's Project Manager or other designated representative. The Prime Contractor shall not commence any field work prior to approval of such plan by the Owner. The following additional rules shall apply with respect to spills caused by the Prime Contractor or a Subcontractor:

(1) The Prime Contractor shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the Prime Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.

(2) The Prime Contractor shall immediately respond in accordance with the SPRP in the event of a spill.

(3) The Prime Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the Prime Contractor shall use only those transporters and

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disposal facilities that are approved in advance in writing by the Owner. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request of the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter. ALL COSTS OF COLLECTION, CONTAINMENT, AND DISPOSAL OF SPILLED MATERIALS SHALL BE THE SOLE RESPONSIBILITY OF THE PRIME CONTRACTOR.

(4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.

(e) Clean Air Management Plan. The Prime Contractor shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the contractor selection process. The Owner reserves the right, at the Prime Contractor's sole expense, to require the removal or retrofitting of any equipment used in the course of construction that does not comply with the Plan submitted to and approved by the Owner.

(f) The Prime Contractor shall deposit surplus or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Prime Contractor shall submit to the Owner for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request to the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter.

(g) The Prime Contractor is responsible for obtaining all TXPDES Storm Water Permits from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities promulgated by EPA, including but not limited to cleaning, grading, and excavation that disturb the applicable amount of total land area. In addition, the Prime Contractor shall comply with all regulations of the Owner relating to storm water and storm water runoff management at the Project site pursuant to Chapter 19, Article IX, Denton City Code, as amended.

(h) The Prime Contractor shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable.

(i) The Owner reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the Owner and without an extension of the Contract Time, in the

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event the Prime Contractor fails or refuses after seven (7) days advance written notice from the Owner to comply with the provisions of this Paragraph 10.10, the terms of the SPRP, the terms of the Clean Air Management Plan, any storm water permit or other environmental permit issued in connection with the Work, or any applicable environmental law, rule, regulation, or ordinance:

(1) suspend all or any portion of the Work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the Prime Contractor and approved by the Owner;

(2) if the Prime Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and backcharge the Prime Contractor for the cost of the remediation or correction; or

(3) terminate the Contract for cause as provided in Article 13.

ARTICLE 11 INSURANCE AND BONDS

11.1 PRIME CONTRACTOR'S INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.2 PROPERTY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.3 'UMBRELLA' LIABILITY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.4 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.5 PERFORMANCE AND PAYMENT BONDS

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(a) Subject to the provisions of Subparagraph 11.5(b), the Prime Contractor shall, with the execution and delivery of the Construction Services Agreement, furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses (a)(1) and (a)(2) below, which surety bonds shall be in accordance with the Charter of the City of Denton and the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Prime Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.5(c) and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:

(1) Performance Bond. A good and sufficient bond in the amount of $1,000,000, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any Amendments thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of final completion and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

(2) Payment Bond. A good and sufficient bond in the amount of $1,000,000, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract Documents and any Amendments thereto, and for the use and protection of each claimant.

(b) No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Prime Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Denton County, Texas. Each surety shall designate an agent resident in Denton County, Texas to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

(c) Contractor will be required to furnish original performance and payment bonds for $1,000,000 before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000. The contractor shall obtain an independent payment and performance bonds for 100% of the project value for any single project in excess of $400,000.

Bond forms are attached and shall be returned upon notice of contract award by the City. Bonds

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should be forwarded to the City of Denton within fourteen (14) calendar days from contract award. This contract is not fully executed until payment and performance bonds are received and accepted by the City. Upon approval, a purchase order will be issued.

(d) The failure of the Contractor to deliver the required statutory bonds and evidence of insurance within fourteen (14) calendar days after the Contract is awarded shall constitute a material breach of the Prime Contractor's bid proposal and the Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Prime Contractor's failure to execute and furnish the statutory bonds within fourteen (14) calendar days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.5(e). In the event the Owner should re-advertise for bids, the defaulting Prime Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this Paragraph.

ARTICLE 12 DEFECTIVE AND NONCONFORMING WORK

12.1 UNCOVERING OF WORK

(a) If a portion of the Work is covered contrary to the Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, the Work must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer's observation and be replaced at the Prime Contractor's expense without change in the Contract Time.

(b) If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to it being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Prime Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If any Work is not in accordance with the Contract Documents, the Prime Contractor shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

(a) The Prime Contractor shall promptly correct Work rejected by the Architect/Engineer as failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Prime Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby.

(b) If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Prime Contractor shall correct it promptly after receipt of

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written notice from the Architect/Engineer or the Owner to do so unless the Owner has previously given the Prime Contractor a written acceptance or waiver of the defect or nonconformity. The Prime Contractor's obligation to correct defective or nonconforming Work remains in effect for:

(1) one year after the date of Substantial Completion of the Work or designated portion of the Work;

(2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or

(3) the stipulated duration of any applicable special warranty required by the Contract Documents.

(c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.

(d) The obligations of the Prime Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Prime Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Clauses (b)(1) and (b)(2) does not limit the ability of the Owner to require the Prime Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect/Engineer at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one year period also does not relieve the Prime Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

(e) The Prime Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Prime Contractor nor accepted by the Owner.

(f) If the Prime Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.4. If the Prime Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Prime Contractor's expense. If the Prime Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Prime Contractor, including compensation for the Architect/Engineer's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover

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costs which the Prime Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Prime Contractor then or thereafter are not sufficient to cover the deficiency, the Prime Contractor shall pay the difference to the Owner.

(g) The Prime Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Prime Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

(h) Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Prime Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2(b) relates only to the specific obligation of the Prime Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Prime Contractor's liability with respect to the Prime Contractor's obligations other than specifically to correct the Work.

(i) Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13 - COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 FINAL COMPLETION OF CONTRACT

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Architect/Engineer, and final acceptance and final payment is made by the Owner.

13.2 WARRANTY FULFILLMENT

Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Architect/Engineer will make a detailed inspection of the Work and will advise the Prime Contractor and the Prime Contractor's Surety of the items that require correction. The Architect/Engineer will make a subsequent inspection and if the corrections have been properly performed, the Architect/Engineer will issue a letter of release on the

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maintenance stipulations to the Prime Contractor and the Surety. If for any reason the Prime Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

(a) Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Prime Contractor, including but not limited to the following causes:

(1) Failure or refusal of the Prime Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

(2) A reasonable belief that the progress of the Work being made by the Prime Contractor is insufficient to complete the Work within the specified time.

(3) Failure or refusal of the Prime Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

(4) A reasonable belief that the Prime Contractor has abandoned the Work.

(5) A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

(6) Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect/Engineer or the Owner as provided for in the Contract Documents.

(7) Failure or refusal of the Prime Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect/Engineer.

(8) A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.

(9) Repeated and flagrant violation of safe working procedures.

(10) The filing by the Prime Contractor of litigation against the Owner prior to completion of the Work.

(b) When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3(e), the Prime Contractor shall, as of the date specified by the Owner,

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discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Prime Contractor and the surety or its authorized agents, assume the obligations of the Prime Contractor for the Work or that portion of the Work which the Owner has ordered the Prime Contractor to discontinue and may:

(1) perform the Work with forces employed by the surety;

(2) with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

(3) with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming Work, and compensate the Owner for any other loss sustained as a result of Prime Contractor's default.

In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the Prime Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Architect/Engineer and attorneys fees, as a result of such termination.

(c) The balance of the Contract Sum remaining at the time of the Prime Contractor’s default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Subparagraph 13.3(b), exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Prime Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Prime Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Prime Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Prime Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Prime Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of

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the Architect/Engineer and attorney's fees), and damages incurred as a result of the termination.

(d) The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3(c), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Prime Contractor, then the Owner may pay to the Prime Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Prime Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Prime Contractor, then the Prime Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the Prime Contractor shall continue the remainder of the Work in conformity with the terms of the Contract, and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

(e) The unconditional right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of termination for convenience to the Prime Contractor. Upon the Prime Contractor's receipt of such written notice, the Prime Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Prime Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Prime Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Prime Contractor for lost or anticipated profits.

13.4 TEMPORARY SUSPENSION OF THE WORK

(a) The Work or any portion of the Work may be temporarily suspended by the Owner immediately upon written notice to the Prime Contractor for any reason, including but not limited to:
(1) the causes described in Clauses 13.1(a)(1) through (a)(10) above;

(2) where other provisions in the Contract Documents require or permit temporary suspension of the Work;

(3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or

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(4) other unforeseen conditions or circumstances.

(b) The Prime Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Prime Contractor arising from a temporary suspension due to a cause described in Clause (a)(1) above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses (a)(2) through (a)(4), where the Prime Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Prime Contractor under Subparagraph 4.3 of these General Conditions:

(1) an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Architect/Engineer and the Owner;

(2) an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and

(3) if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

(a) This Contract shall be in all things governed by the laws of the State of Texas without regard to conflict of laws principles.

(b) The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Prime Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Prime Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without written consent of the Owner. If the Prime Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not

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assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Prime Contractor, except where assignment is compelled or allowed by court order, the terms of the Contract Documents, or other operation of law.

14.3 WRITTEN NOTICE

Except as otherwise provided in Article 16, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid to the Project Manager or Superintendent of either party, or to an officer, partner, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

(a) The duties and obligations imposed on the Prime Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.

(b) No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Prime Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

14.5 INTEREST

The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Paragraph 9.6(a) of these General Conditions.

14.6 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

No officer or employee of the Owner shall have a financial interest, direct or indirect, in any Contract with the Owner, or be financially interested, directly or indirectly, in the sale to the Owner of any land, materials, supplies or services, except on behalf of the Owner as an officer or employee as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.7 VENUE

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This Contract is deemed to be performed in Denton County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Denton County, Texas.

14.8 INDEPENDENT CONTRACTOR

In performing the Work under this Contract, the relationship between the Owner and the Prime Contractor is that of an independent contractor. The Prime Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Prime Contractor an agent, servant, or employee of the Owner, or making the Prime Contractor or any of the Prime Contractor's employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

14.9 NONDISCRIMINATION

As a condition of this Contract, the Prime Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Prime Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, sexual orientation, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Prime Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Prime Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.10 GIFTS TO PUBLIC SERVANTS

(a) The Owner may terminate this Contract immediately if the Prime Contractor has offered, conferred, or agreed to confer any benefit on a City of Denton employee or official that the City of Denton employee or official is prohibited by law from accepting.

(b) For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

(c) Notwithstanding any other legal remedies, the Owner may require the Prime Contractor to remove any employee of the Prime Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Prime Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.

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ARTICLE 15 RIGHT TO AUDIT CONTRACTOR'S RECORDS

By execution of the Building Construction Services Agreement, the Prime Contractor grants the Owner the right to audit, at the Owner's election, all of the Prime Contractor's records and billings relating to the performance of the Work under the Contract Documents. The Prime Contractor agrees to retain its Project records for a minimum of five (5) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Prime Contractor under this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this section.

ARTICLE 16 NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of the Denton City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Prime Contractor shall comply with the requirements of this ordinance as a precondition of any litigation relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

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EXHIBIT D
PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Contractor will be required to furnish original performance and payment bonds for $1,000,000 before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The contractor shall obtain an independent payment and performance bonds for 100% of the project value for any single project in excess of $400,000. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms shall be returned upon notice of contract award by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from contract award. This contract is not fully executed until payment and performance bonds are received and accepted by the City. Upon approval, a purchase order will be issued.

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EXHIBIT E
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.

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- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

[X] A. **General Liability Insurance:**

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

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

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.

- Coverage B shall include personal injury.

- Coverage C, medical payments, is not required.

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

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- 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 **$1,000,000** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

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

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

[X] **Workers' Compensation Insurance**

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

[X] **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 **$1,000,000.00** combined bodily injury and property damage per occurrence with a **$2,000,000.00** aggregate.

[ ] **Fire Damage Legal Liability Insurance**

Coverage is required if Broad form General Liability is not provided or is unavailable to

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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.

[X] **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.

[X] **Environmental Liability Insurance**

Environmental liability insurance for $2,000,000 to cover all hazards contemplated by this contract.

[ ] **Riggers Insurance**

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

[ ] **Commercial Crime**

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

[ ] **Additional Insurance**

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

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ATTACHMENT 1

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

A. Definitions:

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

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

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

B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any overage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
   1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

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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

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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.

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Exhibit F
Certificate of Interested Parties Electronic Filing

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

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

The contractor shall:

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

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

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EXHIBIT G

FACILITIES MANAGEMENT
869 S. Woodrow Lane
Denton, Texas 76205

Date Issued:

REQUEST FOR COST			
Project Name:		**Building:**	
Physical Address:			
Legal Description:			

Insert Picture of Building	*Insert Picture*

EXISTING CONDITIONS:	PROPOSED CONDITIONS:

SCOPE OF WORK:			
Project Manager:		**Email:**	

ATTACHMENTS		
☐ **Floor Plans**	☐ **Photos**	☐ **Specifications**

The undersigned hereby proposes to complete the scope of services detailed herein by the specified time frame. By submitting this Request for Costs, they acknowledge they have received all attachments, have reviewed all attachments, and have performed a site visit. All work will be performed in accordance with the Contract between the Vendor and the City of Denton.

Company Name:		**Contact Name:**	
Contingencies:		**Email:**	

COST/SCHEDULE ESTIMATE			
Days For Mobilization:		**Name:**	
Days For Construction:		**Job Title:**	
Labor Costs:	$		
Material Costs:	$	**Signature:**	
Equipment/Rental Costs:	$		
TOTAL COST:	$		
REQUEST FOR COST DUE:		**DATE SIGNED:**	

Docusign Envelope ID: CB4810EC-68E3-4258-BF3D-D204FBD2FF3E

EXHIBIT H

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. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person 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 person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

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

1 **Name of person who has a business relationship with local governmental entity.**

DIAMOND M CONSTRUCTION & LAND SERVICES, LLC

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

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

3 **Name of local government officer with whom filer has an employment or business relationship.**

na

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer 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 filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire 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 10 percent or more?

☐ Yes ☐ No

D. Describe each affiliation or business relationship.

4 ☒ **I have no Conflict of Interest to disclose.**

5 DocuSigned by:

6D336167DDEF410...

Signature of person doing business with the governmental entity

3/26/2026

Date

File # 8983

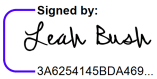
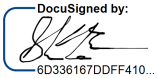
Certificate Of Completion

Envelope Id: CB4810EC-68E3-4258-BF3D-D204FBD2FF3E
Status: Sent
Subject: Please DocuSign: City Council Contract 8983 Parking Lot Maintenance, Repairs, Construction & Demo
Source Envelope:
Document Pages: 88
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Crystal Westbrook
901B Texas Street
Denton, TX 76209
crystal.westbrook@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
3/24/2026 11:37:50 AM
Holder: Crystal Westbrook
crystal.westbrook@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 3/24/2026 11:53:28 AM Viewed: 3/24/2026 11:53:42 AM Signed: 3/24/2026 11:54:48 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: 198.49.140.104	Sent: 3/24/2026 11:54:50 AM Viewed: 3/24/2026 1:30:32 PM Signed: 3/24/2026 1:37:40 PM
Leah Bush leah.bush@cityofdenton.com Assistant City Attorney 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: 3/24/2026 1:37:42 PM Viewed: 3/25/2026 9:34:18 AM Signed: 3/25/2026 10:07:07 AM
Shane McCune diamondmconstructionllc@gmail.com Onwer Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/25/2026 10:36:18 AM ID: 77438d97-d56d-4fb5-b1f7-f053d759819c	 Signature Adoption: Drawn on Device Using IP Address: 38.96.230.37	Sent: 3/25/2026 10:07:10 AM Viewed: 3/25/2026 10:36:18 AM Signed: 3/26/2026 11:36:57 PM

Signer Events	Signature	Timestamp
Tom Gramer tom.gramer@cityofdenton.com Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by:  7B58DA8FCE5F49C... Signature Adoption: Pre-selected Style Using IP Address: 69.58.156.178 Signed using mobile	Sent: 3/26/2026 11:36:59 PM Viewed: 3/27/2026 7:37:38 AM Signed: 3/27/2026 7:37:56 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 3/27/2026 7:38:01 AM
Cassey Ogden Cassey.Ogden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 3/24/2026 11:54:51 AM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:**	COPIED	Sent: 3/27/2026 7:37:59 AM Viewed: 4/1/2026 11:00:07 AM

Carbon Copy Events	Status	Timestamp
Not Offered via Docusign		

City Secretary Office

citysecretary@cityofdenton.com

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via Docusign

Danny Defee

daniel.defee@cityofdenton.com

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via Docusign

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/24/2026 11:53:28 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

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

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:
You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton
To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

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

Required hardware and software

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

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

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

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and

- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and

- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

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Docusign City Council Transmittal Coversheet

RFQ	8983
File Name	PARKING LOT MAINTENANCE, REPAIRS, CONSTRUCTION & DEMO
Purchasing Contact	Crystal Westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

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CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND SOLID FOUNDATIONS CONCRETE, LLC
(CONTRACT 8983)

THIS CONTRACT is made and entered into this date _____, by and between SOLID FOUNDATIONS CONCRETE, LLC a Texas limited liability company, whose address is 1761 INTERNATIONAL PKWY, STE 105, RICHARDSON, TX 75081, hereinafter referred to as "Contractor," and the CITY OF DENTON, TEXAS, a Texas Municipal Corporation and Home-Rule City, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and the 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 construction services in accordance with the City's RFQ 8983 – PARKING LOT MAINTENANCE, REPAIRS, CONSTRUCTION AND DEMO SERVICES, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes as "Exhibit B". 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 Request for Proposal #8983 **(Exhibit "B" on file at Office of Purchasing Agent)**
(c) General Provisions-Standard Terms and Conditions **(Exhibit "C");**
(d) Payment and Performance Bond Requirements **(Exhibit "D");**
(e) Insurance Requirements **(Exhibit "E");**
(f) Certificate of Interested Parties Electronic Filing **(Exhibit "F");**
(g) Request for Cost Form **(Exhibit "G")**;
(h) Form CIQ – Conflict of Interest Questionnaire **(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 this written Contract, and then to the Contract documents in the sequential order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

Prohibition on Contracts with Companies Boycotting Israel
Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or

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maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Section 2252 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapter 2252, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization***. Failure to meet or maintain the requirements under this provision will be considered a material breach.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

SIGNATURE PAGE TO FOLLOW

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

CONTRACTOR

BY: DocuSigned by: Mark Ashley 5650154FD114453...
AUTHORIZED SIGNATURE

Printed Name: Mark Ashley

Title: President

3379673044
PHONE NUMBER

mashley@sfconcretellc.com
EMAIL ADDRESS

2026- mashley@sfconcretellc.com
TEXAS ETHICS COMMISSION CERTIFICATE NUMBER

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

ATTEST:
INGRID REX, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:

By: Signed by: Leah Bush 3A6254145BDA469...

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

DocuSigned by: Tom Gramer 7B58DA8FCE5F49C... Tom Gramer
SIGNATURE PRINTED NAME

Director
TITLE

Facilities
DEPARTMENT

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EXHIBIT A
SPECIAL TERMS AND CONDITIONS

1. **Total Contract Amount**
   SOLID FOUNDATIONS CONCRETE, LLC is pre-qualified for RFP 8983 – PARKING LOT MAINTENANCE, REPAIRS, CONSTRUCTION AND DEMO SERVICES. All pre-qualified contractors will be issued a Request for Cost, Exhibit G, that defines the scope of work and project dates. The pre-qualified contractors will have (5) days to respond to such Request for Cost. Thereafter, the City will select the pre-qualified contractor with the lowest price and ability to meet the City's time schedule requirements. The cumulative contract total for all awarded projects to all pre-qualified contractors for contract 8983 shall not exceed $17,808,000. If a response to the Request of Cost is not received in the applicable time period, such pre-qualified contractor will be disqualified from that Request of Cost.

2. **Contract Terms**
   The contract term will be one (1) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional four (4) one-year periods.

   The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. **Price Escalation and De-escalation**
   On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

   Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

   Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon

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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.

4. Performance Liquidated Damages

Contractor recognizes that time is of the essence of this Agreement and that City will suffer financial loss if the Work is not completed within the times specified in each task order, plus any extension thereof allowed in accordance with Article 12 of the General Conditions. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City one thousand dollars ($1,000) for each day that expires after the time specified in each task order for Final Acceptance until the City issues the Final Letter of Acceptance.

Public Works Construction Standards

NCTCOG 5th Edition

Section 108.8

Schedule 109.8.1 Liquidate Damages

Amount of contract ($)	**Amount of liquidated damages ($)**
Less than 25,000.000	200.00 Per Day
25,000.00 to 99,999.99	350.00 Per Day
100,000.00 to 999,999.99	500.00 Per Day
More Than 1,000,000.00	1000.00 Per Day

5. Post Award Additional Requirements

Pre-Construction Meeting: Prior to commencement of the services, the City and the Contractor will conduct a pre-construction meeting to review the overall scope, schedule, deliverables, planning process, and to ensure that all relevant parties to the project are introduced.

Environmental Hazards: There are no known safety or environmental hazards existing on the project site at the time of issue of this solicitation. The City does not warrant or guarantee against the possibility that safety or environmental hazards or potential hazards may exist at

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the City's facilities. The Contractor shall be responsible for identifying any hazardous conditions and notifying the City verbally of such conditions as soon as possible after discovery and shall follow up in writing within 10 days of such discovery. The costs for necessary investigations or any potential corrective actions will be negotiated between the City and the Contractor.

Contractor Standards of Performance: The contractor shall prosecute the work diligently with skilled craftsmen and with state-of-the-art methods to complete the work within the time stated in the contract or such time extensions as may be grant
Monthly Reports: The awarded Contractor shall provide to the City of Denton, detailed reports of daily work conditions, daily man power availability, equipment problems, and work accomplished on a monthly basis.

Safety: All contractors to the City of Denton are required to ensure absolute safety standards are applied and enforced. The City of Denton will not be responsible for individual contractor safety, and the awarded contractor shall not hold the City of Denton responsible. Known hazards shall immediately be reported to the Project Manager and all safety precautions shall be taken to prevent potential safety issues from occurring.

6. **Asbestos Free Materials**
The contractor shall provide asbestos-free materials as represented by the Manufacturer's "Materials Safety Data Sheets".

7. **Prevailing Wage Rates**
In accordance with Texas Government Code 2258, the awarded 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).

Notwithstanding any other provision of this Contract, the awarded contractor hereby represents and warrants that the contractor shall pay to each of its employees a wage not less than what is currently known as the "Federal Minimum Wage" and any increase or amendments thereto. Furthermore, contractor shall produce proof of compliance with this provision by contractor to the City. The City shall withhold payments due to contractor until contractor has complied with this provision. Prior to any payment being made for work satisfactorily completed and accepted, contractor shall submit wage rate affidavits with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage".

8. **Remedies**
a. COMPLETION OF CONTRACTOR'S DEFAULT: If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this proposal, the City, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety or Sureties upon the Contractor's bond or bonds a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the City

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and/or Engineer shall be made by the Contractor or its Surety or Sureties, the City may take over the construction of the project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor and its Surety or Sureties shall be liable to the City for any cost or expense in excess of the contract price occasioned thereby. In such event the City may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the project. The City in such contingency may exercise any rights, claims or demands which the Contractor may have against third persons in connection with this contract and for such purpose the Contractor does hereby assign, transfer and set over unto the City all such rights claims and demands.

b. LIQUIDATED DAMAGES: Respondent must agree to commence work on or before a date to be specified in written "Notice to Proceed" by the Owner, and to fully complete the project within the time stated on proposal. As failure to complete project within the stated time, respondent agrees to pay as liquidated damages, the sums indicated in the Solicitation Main Document Section 10, for each working day of delay until work is completed and accepted. Delays because of strikes, fire, weather, or any cause beyond the contractors control shall be granted but claims for extension shall be in writing within a reasonable time after the occurrence. Contractor shall submit request for delay on a monthly basis in a letter form indicating reason and date of delay. Failure to do so on a monthly basis means contractor will forfeit those delay days. Liquidated damages in the amount per day shown in Main Solicitation Document, Section 10 “Liquidated Damages”, will be assessed against the Contractor for each calendar day or portion thereof that:

(1) the Contractor has not fully and timely completed the specific portion or part of the work to be completed by the end of the current month as provided in the detailed description of work and/or schedule previously submitted by the Contractor on the first day of that particular month, after accounting for any agreed-upon changed orders, which will entitle the Owner to withhold the liquidated damages from the payment otherwise owed to the Contractor for work completed in that particular month;

(2) the Contractor has not substantially completed all work following the expiration of the number of calendar days to complete the work as agreed upon in the contract, after accounting for any agreed-upon changed orders; or

(3) all items listed as incomplete and attached to the Certificate of Substantial Completion are not completed or corrected after expiration of the agreed time allotted for completion and correction, including any approved extensions of time granted. These liquidated damages are cumulative. The sum of the liquidated damages will be deducted from any monies due the Contractor. If no money is due the Contractor, said sum may be recovered by the Owner from the Contractor or the Contractor's surety, or from both combined. These deductions are to cover liquidated damages to the Owner for losses to Owner that include, but are not limited to, additional expenses of Contract administration, overhead and other costs resulting from failure of the Contractor to complete the Work within the designated time, and are not to be

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considered as penalties. The Owner shall not be considered liable for any extra or additional payment to the Contractor as a bonus or premium for early completion. Any failure on the part of the Owner to request or require payment or withholding of liquidated damages in any particular month shall not constitute a waiver of Contractor's requirement to pay, or the Owner's ability to withhold from payments owed to Contractor, any liquidated damages for work performed or completed in that particular month, in any prior or subsequent month, or at the time all work has been completed.

c. CUMULATIVE REMEDIES: Every right or remedy herein conferred upon or reserved to the City shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election. Provided, however, that the provisions of the REMEDIES SECTION shall be the exclusive measure of damages for failure by the Contractor to complete the construction of the project within the time herein agreed upon.

9. Payment and Performance Requirements

a. PAYMENT AND INVOICES:

Payment processing: The City review, inspection, and processing procedures for invoices ordinarily require thirty (30) days after receipt of invoices, materials, or services. Submissions which call for payment before thirty (30) days from receipt of invoice, or cash discounts given on such payment, will be considered only if, in the opinion of the Purchasing Manager, the review, inspection, and processing procedures can be completed as specified. It is the intention of the City of Denton to make payment within thirty days after receipt of valid invoices for which items or services have been received unless unusual circumstances arise. The 30 day processing period for invoices will begin on the date the invoice is received or the date the items or services are received, whichever is later.

Direct deposit for payments: Contractors are encouraged to arrange for receiving payments through direct deposit. Information regarding direct deposit payments is available from the City of Denton Purchasing website: www.dentonpurchasing.com.

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 as identified in the Notice to Proceed. 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.**

b. PAYMENT TO PERFORMANCE MILESTONES: Awarded contractor shall prepare and submit invoices after completion of specific project milestones. The invoice shall detail the major milestones accomplished and detailed cost information for project. These milestones shall be submitted to the City of Denton and the City's Project Staff shall review

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such for completion and accuracy, prior to payment authorization.

c. TAX EXEMPTION: The City of Denton qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. Any Contractor performing work under this contract for the City of Denton may purchase materials and supplies and rent or lease equipment sales tax free. This is accomplished by issuing exemption certificates to suppliers. Certificates must comply with State Comptroller's ruling #95-0.07 and #95-0.09.

d. RELEASE OF LIENS AND CERTIFICATE OF CONTRACTOR: Upon award of the contract, the Contractor shall inform the City of the subcontractors and material sources that will be used. Upon the completion by the Contractor of the construction of the project, but prior to final payment to the Contractor, the Contractor shall deliver to the City releases of all liens, and of rights to claim any lien, from all manufacturers, material-men, and subcontractors furnishing services or materials for the project, to the effect that all materials or services used on or for the project have been paid for and indicating that the City is released from all such claims.

e. PAYMENTS TO MATERIAL-MEN AND SUBCONTRACTORS: The Contractor shall pay each material-men, and each subcontractor, if any, not later than five (5) days after receipt of any payment from the City, the amount thereof allowed the Contractor for and on account of materials furnished or construction performed by each material-men or each subcontractor.

10. General Provisions – Special Notices and Requirements

a. CONTRACT ADMINISTRATION SUBMITTALS AND REQUIREMENTS:

General: The General Conditions, Supplementary Conditions and Special Conditions provide definite times for Contractor to submit certain lists, qualifications, price breakdowns and schedules for administrative procedures including but not necessarily limited to the following:

List of Subcontractors: Before the execution of the Contract, the respondent awarded the contract will submit to the City for approval a list of all Subcontractors, and/or his major Subcontractors, proposed to use. This list will include each Subcontractor's correct name, mailing address and phone number.

Contractor's Superintendent: The Contractor shall submit the name and qualifications of the person designated as Project Superintendent within ten (10) days of the receipt of the Notice of Award Letter.

Contract Price Breakdown: Upon execution of the Contract, the Contractor shall submit to the City for approval a breakdown of the Contract price, itemizing material and labor for various classifications of work.

1. The City will provide forms for the Contractor to use to prepare the schedule of values.
2. Unit Price items will be multiplied by the estimated quantities to give the item totals. The total item will then be divided into "material" and "labor" and listed on

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the breakdown. The breakdown of unit price items into material and labor is required so the City may make progress payments on materials delivered before the labor is performed.

Work Progress Schedule: Within three (3) weeks after receipt of a work order, the Contractor shall submit in duplicate to the City for approval an estimated progress schedule for the work in relation to the entire project, over the total contract time. Schedules showing less than the stipulated contract time will be rejected. See details for this requirement in the attached STANDARD PURCHASE TERMS AND CONDITIONS FOR FACILITY CONSTRUCTION SERVICES, Article1, paragraph 3.10 “Contractors Construction Schedule”.

Testing and Quality Control: Observation of the Contractor's work to determine compliance with the plans and specifications may include testing of material installed on the project. A Testing Laboratory located by the Contractor shall do testing of materials furnished and work performed. The Contractor shall use only materials in the work, which meet the requirements of the specifications. The Contractor shall furnish at his own expense all necessary tests and specimens for testing of the material and when requested shall furnish a complete written statement of the origin, composition, and/or manufacturer of any or all materials that are to be used in the work. All materials not conforming to the requirements of the specifications will be rejected.

THIS QUALITY CONTROL SERVICE DOES NOT RELIEVE THE CONTRACTOR OF HIS RESPONSIBILITY WITH REGARD TO CONSTRUCTING THE WORK IN ACCORDANCE WITH THE CONTRACT.

Contractor shall submit appropriate tests including, but not limited to:

- Any test required in the technical specifications
- Any structural element called for on the plans, including, but not limited to dam construction, concrete asphalt roads or paths, shelters, bridges or other structure tests, pressure test of irrigation.
- Test to prove adequacy of design and construction of any feature that may have been accepted by Owner under contractor's "Alternate Proposal".
- Any test that may be occasioned by any local, state, or federal law.

As-Built Drawings: The contractor shall maintain a complete set of contract drawings in his possession, upon which he is required to note in red, or other clear manner, all deviations, final dimensions and explanatory notes arising out of actual work installed or performed in the field, and showing exact locations of such work, including trades. Notes on these drawings shall indicate installed locations and dimensioned clearances. Contractor to furnish an as- built drawn from an aerial photo identifying course, irrigation (including all components, buried or otherwise), major and minor drainage lines and related structures, all underground utilities, location of buried trees and debris, limits of topsoil, extra borrow areas, and other significant construction which could reasonably be foreseen to affect future operation. All as-built(s) shall be supplied in CAD format.

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Project Manuals: Contractor shall supply City a project manual for operations of all mechanical systems to be included under this contract in a manner satisfactory to the design professional, his sub-consultants and City's representatives.

Schedule of Tests, Submittals: A schedule of anticipated tests and submittals begins on the next page. Additional submittals may be required.

b. MEETINGS:

Pre-Construction Conference: Prior to start of work, a conference between the City and Contractor will be held to discuss provisions of the contract documents, explain administrative procedures and coordinate the work effort. Time of pre-construction conference will be stated in the Work Order letter for the Contractor. Attendance by Contractor and Contractor's Superintendents is mandatory.

1. City will schedule meeting and provide meeting place.
2. Attendance: The following are expected to attend:
    - City's Representative.
    - Consultant's Construction Administrator.
    - Representatives from Sub-Consultants Contractor's Project Manager, Project Superintendent and Project Coordinator Representatives of major subcontractors
3. Agenda Items:
    - List of major Subcontractors and Suppliers
    - Tentative construction schedule
    - Critical work sequencing
    - Major equipment deliveries
    - Designation of responsible personnel
    - Procedures and processing of field decisions, proposal requests, submittals color coordination, change orders, and applications for payment.
    - Adequacy of distribution of Contract Documents.
    - Procedures for maintaining Record Documents
    - Use of Premises: office, work, storage, staging areas; Owner's requirements
    - Construction facilities, controls and construction aids
    - Temporary utilities
    - Safety and first aid procedures
    - Security procedures
    - Housekeeping procedures
    - Other business

4. The City's Representative will preside over the meeting.

Progress Meetings: Construction progress meetings may be called by the Project Manager, Project Inspector or the General Contractor to review job progress or problems.

1. Schedule meeting and notify in writing those concerned at least one week in advance of meeting.

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2. Provide a convenient, comfortable meeting place.
3. Contractor's Project Superintendent or Project Manager shall preside over meeting.
4. Attendance: The following are expected to attend: City's Representative Consultant's Construction Administrator Sub-consultant's unless notified otherwise Contractor's General Superintendent, Project Superintendent and Project Coordinator. Subcontractors having work in progress Subcontractors whose work will start within the next month Others as requested by City, A/E, or Contractor
5. Agenda Review, approval of minutes or previous meeting Review of work progress since previous meeting Field observation, problems, conflicts Problems which impede construction schedule Review of off-site fabrication, and delivery schedules Corrective measures and procedures to regain projected schedule. Revisions to construction schedules Progress schedules for succeeding period Schedule coordination Review proposed changes for effect on construction schedule, on completion date, and effect on other contracts of project Maintenance of quality standards Pending changes and substitutions Other business
6. The Contractors Project Manager will preside over the meeting. C. Minutes of Meetings: Contractor shall take notes at pre- construction and progress meetings and distribute them to those concerned in the form of minutes within four (4) calendar days after meeting.

c. SURVEYS, MEASUREMENTS AND LAYOUTS

General: The City will provide property surveys. The Contractor shall be responsible for all control point staking as required. The Contractor's responsibility for verifying conditions is defined in the Standard General Conditions.

Surveys, Measurements and Layout Out of Work: The Contractor will establish from survey information on drawings all lines, grades, and levels and will be responsible for maintenance and accuracy thereof.

d. MISCELLANEOUS REQUIREMENTS

Additional safety precautions shall be instituted by the awarded contractor, as the work environment will be in an area where citizens and employees may be present, and work safety must be coordinated with the owner.

The Contractor shall be responsible for all spoil removals, and any excess soil that will require removal.

It is understood that the basis for payment on the work to be done according to the final plans and specifications shall be a lump sum fee as set forth in Contractor's submission. Any quantity estimates supplied by Designer or City are intended only as a guide to the respondent. Respondent is responsible for making his own quantity estimates and pricing from his own examination of the work to be done.

A schedule of Respondent's Quantities and Unit Prices is to be filled out as a part of this solicitation. Extensions of units and unit prices must total up correctly.

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EXHIBIT C

CITY OF DENTON STANDARD PURCHASE TERMS AND CONDITIONS FOR CONSTRUCTION SERVICES

ARTICLE 1 GENERAL PROVISIONS

GENERAL DEFINITIONS

1.1 The following definitions apply throughout these General Conditions and to the other Contract Documents:

a) THE CONTRACT DOCUMENTS

The Contract Documents consist of the formal Building Construction Services Agreement between the Owner and the Prime Contractor, these General Conditions and other supplementary conditions included by special provisions or addenda, drawings, specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract, and Amendments issued after execution of the Contract. For purposes of these General Conditions, an Amendment is:

(1) a written Supplemental Agreement to the Contract signed by authorized representatives of both parties;

(2) a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1(b) and Subparagraph 7.1(e); or

(3) a written order for a minor change in the Work issued by the Architect/Engineer as described in Paragraph 7.3.

The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Prime Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Prime Contractor.

b) THE CONTRACT

The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and made a part of the formal Building Construction Services Agreement between the Owner and the Prime Contractor by reference in this Paragraph and Paragraph 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Prime Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the

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Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

(1) between the Architect/Engineer and Prime Contractor;

(2) between the Owner and a Subcontractor or -subcontractor; or

(3) between any persons or entities other than the Owner and Prime Contractor.

The Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect/Engineer's duties.

c) THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Prime Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Prime Contractor is responsible, to fulfill the Prime Contractor's obligations. The Work may constitute the whole or a part of the Project.

d) THE PROJECT

The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

e) THE DRAWINGS

The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

f) THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

g) THE PROJECT MANUAL

The Project Manual is the volume or volumes which contain the bidding requirements,

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sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

h) ALTERNATE

An Alternate is a variation in the Work on which the Owner requires a price separate from the City Building General Conditions Base Bid. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted prior to any Work under the alternate being performed or materials delivered to the Project site, the Owner will be entitled to a credit in the full value of the alternate as priced in the Prime Contractor's Bid.

i) BASE BID

The Base Bid is the price quoted for the Work before Alternates are considered.

j) HAZARDOUS SUBSTANCE

The term Hazardous Substance is defined to include the following:

(1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;

(2) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

(3) radon;

(4) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

(5) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

(6) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(7) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901

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et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

(8) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

k) OTHER DEFINITIONS

As used in the Contract Documents, the following additional terms have the following meanings:

(1) "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;

(2) "shall" means the action of the party to which reference is being made is mandatory;

(3) "as required" means as prescribed in the Contract Documents; and

(4) "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.2 EXECUTION, CORRELATION AND INTENT

(a) The Building Construction Services Agreement shall be signed by duly authorized representatives of the Owner and Prime Contractor as provided in the Agreement.

(b) Execution of the Building Construction Services Agreement by the Prime Contractor is a representation that the Prime Contractor has visited the site, has become familiar with local conditions, including but not limited to subsurface conditions, under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

(c) The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Prime Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Prime Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

(d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Prime Contractor in dividing the Work among Subcontractor(s) or in establishing the extent of Work to be performed by any trade.

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(e) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

(f) The Drawings and Specifications are intended to agree with one another, and Work called for by Drawings and not mentioned in Specifications, or vice versa, shall be furnished as if set forth by both. Specifications shall govern materials, methods and quality of work. In the event of a conflict on the Drawings between scale and dimension, figured dimensions shall govern over scale dimensions and large scale drawings shall govern over small scale drawings. Conflict between two or more dimensions applying to a common point shall be referred to the Architect/Engineer/Engineer for final adjustment. If discrepancies or conflicts occur within or between the Drawings and Specifications regarding the Work, or within or between other Contract Documents, the Prime Contractor shall not perform such Work without having obtained a clarification from the Architect/Engineer and resolution by the Owner. The Owner's decision as to the appropriate resolution of a conflict or discrepancy shall be final. Should the Drawings or the Specifications disagree within themselves or with each other; the Base Bid will be based on the most expensive combination of quality and quantity of Work indicated.

(g) Deviations from Contract Documents shall be made only after written approval is obtained from Architect/Engineer and Owner, as provided in Article 7.

(h) The intention of the Contract Documents is to include all materials, labor, tools, equipment, utilities, appliances, accessories, services, transportation, and supervision required to completely perform the fabrication, erection and execution of the Work in its final position.

(i) The most recently issued Drawing or Specification takes precedence over previous issues of the same Drawing or Specification. In the event of a conflict, the order of precedence of interpretation of the Contract Documents is as follows:

(1) Amendments (see Paragraph 7.2 for order of precedence between Amendments);

(2) the Building Construction Services Agreement;

(3) addenda, with those addenda of later date having precedence over those of an earlier date;

(4) the Supplementary General Conditions and Special Provisions, if any;

(5) the General Conditions for Building Construction;

(6) 0the Specifications and Drawings.

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1.3OWNERSHIP AND USE OF ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications, and copies thereof furnished by the Architect/Engineer are and shall remain the property of the Owner and are, with the exception of the Contract set for each party, to be returned to the Owner upon request at the completion of the Work.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are:

(1) specifically defined in these General Conditions (except the terms defined in Subparagraph 1.1(j), which terms are of common grammatical usage and are not normally capitalized);

(2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses;

(3) the titles of other documents published or used by the Owner as manuals or official policy statements; or

(4) proper nouns or other words required under standard grammatical rules to be capitalized.

ARTICLE 2 - THE OWNER

2.1 DEFINITION OF OWNER

The Owner is the City of Denton, a Texas municipal corporation, and is identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

(a) The Owner shall furnish the most recent survey describing the physical characteristics, legal limits, utility locations, and a permanent benchmark for the site of the Project. The Owner shall also furnish any environmental site assessments that may have been given to the Owner or conducted for the property upon which the Project is to be constructed. THIS INFORMATION IS FURNISHED TO THE PRIME CONTRACTOR ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.

(b) Except for permits and fees which are provided for in Subparagraph 3.7(a), the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for

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construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

(c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Prime Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval, as required in Paragraph 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Prime Contractor as scheduled and Prime Contractor is not prepared to accept or act on such information or services, then Prime Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

(d) Unless otherwise provided in the Contract Documents, the Prime Contractor will be furnished electronic copies of the Drawings and Specifications for bid purposes and one hard copy approved by Building Inspections upon execution of the Contract. Prime Contractor may obtain additional copies by paying the cost of additional printing or reproduction.

(e) The obligations described above are in addition to other duties and responsibilities of the Owner enumerated in the Contract Documents and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

(f) The Owner shall forward all instructions to the Prime Contractor through the Architect/Engineer, except for the Owner's Notice to Proceed and the Owner's decision to carry out Work as described in Paragraph 2.4.

(g) The Owner's employees, agents, and consultants may be present at the Project site during performance of the Work to assist the Architect/Engineer in the performance of the Architect/Engineer's duties and to verify the Prime Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, the equipment used in the performance of the Work, and for purpose of verification of Prime Contractor's Applications for Payment.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Prime Contractor fails to correct any portion of the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or refuses or fails to carry out all or any part of the Work in accordance with the Contract Documents, the Owner, by written order, may order the Prime Contractor to stop the Work, or any portion of the Work, until the cause for the order has been eliminated. The right of the Owner however, to stop the Work shall not create or imply a duty on the part of the Owner to exercise this right for the benefit of the Prime Contractor or any other person or entity. The rights of the Owner under this Paragraph 2.3 shall be in addition to, and not in restriction of, the Owner's rights under Paragraph 12.2.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Prime Contractor fails or refuses to carry out the Work or perform any of the terms, covenants, or obligations of the Contract Documents, and fails or refuses to correct any failure

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or refusal with diligence and promptness within fourteen (14) days after receipt of written notice from the Owner, the Owner may correct the Prime Contractor's failure or refusal or cause such failure or refusal to be corrected, without affecting, superseding, or waiving any other contractual, legal, or equitable remedies the Owner has, including but not limited to the Owner's termination rights under Article 13. In that case, an appropriate Change Order will be issued deducting the Owner's cost of correction, including Architect/Engineer's compensation for additional services and expenses made necessary by the failure or refusal of the Prime Contractor from payments then or thereafter due to the Prime Contractor. The cost of correction is subject to verification (but not approval) by the Architect/Engineer. If payments then or thereafter due the Prime Contractor are not sufficient to cover the cost of correction, the Prime Contractor shall pay the difference to the Owner.

2.5 NOTICE TO PROCEED

After final execution of the Contract and receipt and approval of the required performance and payment bonds and evidence of required insurance, the Owner will issue a written Notice to Proceed with the Work, including the designated Contract Time within which Substantial Completion of the Work must be achieved. If the Owner unreasonably delays issuance of a written Notice to Proceed through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable adjustment of the Contract Time, if properly claimed pursuant to the requirements of Paragraph 4.3; but the Prime Contractor shall not be entitled to any increase to the Contract Sum whatsoever for this reason.

ARTICLE 3 - THE CONTRACTOR

3.1 DEFINITION OF CONTRACTOR

The Prime Contractor is the person or business entity identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Prime Contractor" means the Prime Contractor or the Prime Contractor's authorized employees or representatives.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

(a) The Prime Contractor shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Architect/Engineer in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Prime Contractor may discover. The Prime Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Prime Contractor will be held responsible for any subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the Prime Contractor continues to work on an item where an inconsistency, ambiguity, error, omission, conflict, or discrepancy exists without obtaining such clarification or resolution or commences an item of the Work without giving written notice of an error, omission, conflict, or discrepancy that might have been avoided by the check, study, and

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comparison required above, it shall be deemed that the Prime Contractor bid and intended to execute the more stringent, higher quality, or state of the art requirement, or accepted the condition "as is" in the Contract Documents, without any increase to the Contract Sum or Contract Time. The Prime Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Prime Contractor's failure to give notice of and obtain a clarification or resolution of any error, omission, conflict, or discrepancy, without any right to any increase to the Contract Sum or Contract Time.

(b) The Prime Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

(a) The Prime Contractor shall supervise and direct the Work, using the Prime Contractor's best skill and attention. The Prime Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents set forth specific instructions concerning these matters.

(b) The Prime Contractor shall be responsible to the Owner for the acts and omissions of the Prime Contractor's employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Prime Contractor, or with any Subcontractor, and all other persons or entities for which the Prime Contractor is legally responsible. All labor shall be performed by mechanics that are trained and skilled in their respective trades. Standards of work required throughout shall be of a quality that will bring only first class results. Mechanics whose work is unsatisfactory, or who are considered careless, incompetent, unskilled, or otherwise objectionable shall be dismissed promptly from the Work and immediately replaced with competent, skilled personnel. Any part of the Work adversely affected by the acts or omissions of incompetent, unskilled, careless, or objectionable personnel shall be immediately corrected by the Prime Contractor.

(c) The Prime Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Prime Contractor.

(d) The Prime Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Prime Contractor's responsibility under this paragraph will not in any way eliminate the Architect/Engineer's responsibility to the Owner under the Architect/Engineer/Owner Agreement.

(e) Any Prime Contractor, Subcontractor, Sub-subcontractor, or separate contractor who commences Work over, in, or under any surface prepared by the Owner or by any other

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contractor, subcontractor, sub-subcontractor or any separate contractor, without the Prime Contractor having given written notice to the Architect/Engineer of the existence of any faulty surface or condition in the surface that prevents achieving the quality of workmanship specified by the Contract Documents and without having obtained the prior approval of the Architect/Engineer and the Owner to proceed is deemed to have accepted the surface or condition in the surface as satisfactory at the commencement of such Work. Any unsatisfactory Work subsequently resulting from such a faulty surface or condition in the surface that was not pre-approved by the Architect/Engineer or the Owner after notice as provided above may be rejected and replacement required, without any increase to the Contract Sum or Contract Time.

(f) All grades, lines, levels, and benchmarks shall be established and maintained on an ongoing basis by the Prime Contractor. The Prime Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Contractor shall verify all grades, lines, levels, and dimensions as indicated on Drawings. He shall report any errors, omissions, conflicts, or inconsistencies to Architect/Engineer before commencing any Work affected by these conditions. Contractor shall establish and safeguard benchmarks in at least two widely separated places and, as Work progresses, establish benchmarks at each level and lay out partitions on rough floor in exact locations as guides to all trades. The Contractor shall, from the permanent benchmark provided by the Owner, establish and maintain adequate horizontal and vertical control.

3.4 LABOR AND MATERIALS

(a) Except as is otherwise specifically provided in the Contract Documents as being the responsibility of the Owner, the Prime Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

(b) The Prime Contractor shall enforce strict discipline and good order among the Prime Contractor's employees and all other persons carrying out the Contract. The Prime Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

(c) The Prime Contractor shall give preference, when qualified labor is available to perform the Work to which the employment relates, to all labor hired for the Project in the following order:

(1) residents of the City of Denton, Texas;

(2) residents of the County of Denton, Texas;

3.5 WARRANTY

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(a) General Warranty. The Contractor warrants to the Owner that all Work shall be accomplished in a good and workmanlike manner and that all materials and equipment furnished under the Contract will be of good quality, new (unless otherwise specified), and free from faults or defects, and that the Work will otherwise conform to the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective or nonconforming. The Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The commencement date, duration, and other conditions related to the scope of this general warranty are established in Subparagraphs 9.9 (a) and 12.2(b) of these General Conditions. THE GENERAL WARRANTY PROVIDED IN THIS SUBPARAGRAPH IS IN ADDITION TO AND DOES NOT LIMIT OR DISCLAIM ANY OTHER WARRANTY OR REMEDY REQUIRED OR PROVIDED BY LAW OR THE CONTRACT DOCUMENTS AND SUCH WARRANTY SHALL REQUIRE THE CONTRACTOR TO REPLACE DEFECTIVE MATERIALS AND RE-EXECUTE DEFECTIVE WORK THAT IS DISCLOSED BY THE OWNER TO THE CONTRACTOR WITHIN A PERIOD OF TWO (2) YEARS AFTER SUBSTANTIAL COMPLETION OF THE ENTIRE WORK; OR, IF A LATENT DEFECT IS DISCOVERED WITHIN TWO YEARS OF SUBSTATIONAL COMPLETION OF THE ENTIRE WORK.

(b) Special Warranties. The Contractor shall assign to the Owner in writing, as a condition precedent to final payment, the terms and conditions of all special warranties required under the Contract Documents.

3.6 TAXES

The Owner qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the Owner shall not be liable for, or pay the Contractor's cost of, such sales and use taxes which would otherwise be payable in connection with the purchase of tangible personal property furnished and incorporated into the real property being improved under the Contract Documents or the purchase of materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for performance of the Contract which is to be completely consumed at the job site. The Contractor shall issue an exemption certificate in lieu of the tax on such purchases.

3.7 PERMITS, FEES AND NOTICES

(a) The Architect/Engineer will apply and arrange for the issuance of the City of Denton Building Permit. The Prime Contractor and Subcontractors will apply and arrange for the issuance of all other required permits, and will not be required to pay a fee for any City of Denton permits required for the Project. The Owner will pay all service extension charges, including tap fees, assessed by the Water Utilities Department.

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(b) The Prime Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of governmental entities or agencies applying to performance of the Work.

(c) Except as provided in Subparagraph (d) below, it is not the Prime Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Prime Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Prime Contractor shall promptly notify the Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.

(d) If the Prime Contractor performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Architect/Engineer and the Owner, the Prime Contractor shall assume full responsibility for the Work and shall bear the attributable costs of the correction of the Work and any other Work in place that may be adversely affected by the corrective work.

3.8 ALLOWANCES

(a) The Prime Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for the amounts identified in the Contract and by persons or entities as the Owner may direct, but the Prime Contractor shall not be required to employ persons or entities against which the Prime Contractor makes reasonable objection.

(b) Unless otherwise provided in the Contract Documents:

(1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

(2) the amount of each allowance shall cover the cost to the Prime Contractor of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts;

(3) the amount of each allowance includes the Prime Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance Work;

(4) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect:

(i) the difference between actual costs and the allowances under Clause (b) (2); and

(ii) changes in Contractor's costs under Clause (b) (3);

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(5) the Owner retains the right to review and approve Subcontractors selected by the Prime Contractor to perform work activities covered by allowances.

3.9 SUPERINTENDENT

The Prime Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Prime Contractor, and communications given to the superintendent shall be as binding as if given to the Prime Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to request that the Prime Contractor replace its superintendent at any time and the Prime Contractor will replace said superintendent at the Owner's direction.

3.10 PRIME CONTRACTOR'S CONSTRUCTION SCHEDULES

(a) The Prime Contractor shall, immediately after award of the Contract and before submittal of the first Application for Payment, prepare and submit the construction schedule for the Architect/Engineer's and Owner's information, review, and approval in accordance with the following provisions:

(1) Unless otherwise approved in writing by the Owner, the construction schedule shall not exceed the Contract Time limits currently in effect under the Contract Documents and shall provide for expeditious and practicable execution of the Work.

(2) The construction schedule shall include all shop drawing and submittal data requirements, indicating for each:
(i) the latest date to be submitted by the Prime Contractor; and
(ii) the latest date for approval by the Architect/Engineer.

(3) The construction schedule shall be in the form of a critical path management schedule, and shall indicate each critical task (the "predecessor") of all the major construction activities of the Work in a logical and sequential order (the "project network") which requires completion prior to commencement of the task next following (the "successor"). Each task shall be identified with:

(i) actual work time, exclusive of slack time, for accomplishment;

(ii) the latest start date;

(iii) the latest finish date;

(iv) the amount of float associated with each task;

(v) the amount of labor, material, and equipment associated with each task; and

(vi) the percentage of completion as of the date of the current schedule.

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(4) The construction schedule shall be revised and updated monthly to reflect the actual status of the Work and shall be submitted with each Application for Payment.

(5) On or before the first day of each month, following the date of commencement of the Work as stated in the notice to proceed, the Prime Contractor shall prepare and submit to the Architect/Engineer and the Owner an up-to-date status report of the progress of the various construction phases of the Work in the form of an updated construction schedule. This status report shall consist of a time scale drawing indicating actual progress of the various phases of the Work and the percentage of completion of the entire Work. The original construction schedule shall be updated or changed to indicate any adjustments to the Contract Time granted by the Owner. The updated schedule must be submitted with the Prime Contractor's Application for Payment. No such application will be certified without a satisfactory update to the construction schedule.

(6) The construction schedule will also be revised to show the effect of change orders and other events on Contract Time. No request for an increase in Contract Time will be considered unless it is accompanied by a schedule revision demonstrating the amount of time related to the cause of the request. If the Contractor's status schedules reflect that the Prime Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Prime Contractor shall prepare a recovery schedule demonstrating how it intends to bring its progress back within the Contract Time. This recovery schedule shall be in a form acceptable to the Owner.

(7) Costs incurred by the Prime Contractor in preparing and maintaining the required construction schedule, any updated schedule, and any recovery schedule required by the Owner will not be paid as an additional or extra cost and shall be included in the Contract Sum.

(8) The Contract Sum is deemed to be based upon a construction schedule requiring the full Contract Time. NO CLAIM FOR ADDITIONAL COMPENSATION SHALL BE ALLOWED AS A RESULT OF THE PRIME CONTRACTOR BASING HIS BID ON AN EARLY COMPLETION SCHEDULE, OR AS A RESULT OF DELAYS AND COSTS ATTRIBUTABLE TO COMPLETION LATER THAN THE PLANNED EARLY COMPLETION DATE.

(b) The Prime Contractor shall also prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Prime Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.

(c) The Prime Contractor shall conform to the most recent schedules approved as to form by the Architect/Engineer and the Owner. Any subsequent revisions made by the Prime Contractor to schedules in effect shall conform to the provisions of Subparagraph 3.10(a)

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(d) If the Work falls behind the approved construction schedule, the Prime Contractor shall take such steps as may be necessary to improve his progress, and the Architect/Engineer and the Owner may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, and to submit for approval revised schedules in the form required above in order to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

(a) Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, materialmen, manufacturer(s), supplier(s), or distributor(s) to illustrate some portion of the Work.
(b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
(c) Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
(d) Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Paragraph 4.2.
(e) The Prime Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner, or of separate contractors. Submittals made by the Prime Contractor which are not required by the Contract Documents may be returned without action.
(f) The Prime Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect/Engineer. Work requiring this submittal and review shall be in accordance with approved submittals and any identified exceptions noted by the Architect/Engineer.
(g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Prime Contractor represents that the Prime Contractor has determined and verified materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within submittals with the

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requirements of the Work and of the Contract Documents. The Prime Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.

(h) The Prime Contractor shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Prime Contractor has specifically informed the Architect/Engineer in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Architect/Engineer, subject to a formal Change Order signed by the Owner, Architect/Engineer and Prime Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Prime Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect/Engineer's approval thereof. Further, notwithstanding any approval of a submittal by the Architect/Engineer, the Prime Contractor shall be responsible for all associated Project costs, including costs of coordination's, modifications, or impacts, direct or indirect, resulting from any and all substitutions, changes, additions, deletions, omissions, or deviations, whether or not specifically identified by the Prime Contractor to the Architect/Engineer at the time of the above-mentioned submittals, including additional consulting fees, if any, in any and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.

(i) The Prime Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to additional revisions other than those requested by the Architect/Engineer on previous submittals. In the absence of such written notice, the Architect/Engineer's approval of a resubmission shall not apply to the additional revisions not requested.

(j) Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.

(k) When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF THE PROJECT SITE

The Prime Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

3.14 CUTTING AND PATCHING

(a) The Prime Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Prime Contractor shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering the construction, or by excavating. The Prime Contractor

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shall not cut or otherwise alter the construction by the Owner or a separate contractor except with the written consent of the Owner and of the separate contractor; consent shall not be unreasonably withheld. The Prime Contractor shall not unreasonably withhold from the Owner or a separate contractor the Prime Contractor's consent to cutting or otherwise altering the Work.

(c) A "Hot Work Permit" must be obtained from the City of Denton's Facilities Management Department, 869 S. Woodrow Lane, Denton, Texas (940 349-7200) for any temporary operation involving open flames or producing heat and/or sparks. This includes, but is not limited to: Brazing, Cutting, Grinding, Soldering, Torch Applied Roofing and Welding.

3.15 CLEANING UP

(a) The Prime Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon the completion of the Work the Prime Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Prime Contractor's tools, construction equipment, machinery, and surplus materials.

(b) If the Prime Contractor fails to clean up as provided in the Contract Documents, the Owner may, at Owner's option, clean up the Project site, and the Owner's cost of cleaning up shall be charged to the Contractor.

3.16 ACCESS TO WORK

The Prime Contractor shall provide the Owner and the Architect/Engineer access to the Work in preparation and progress wherever located during the course of construction.

3.17 TESTS AND INSPECTIONS

(a) Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of governmental entities or agencies having jurisdiction over the Work shall be made at appropriate times. Unless otherwise provided, the Prime Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate governmental entity or agency, and the Prime Contractor shall bear all related costs of tests, inspections, and approvals. The Prime Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals which become requirements after bids or proposals are received.

(b) If the Architect/Engineer, the Owner or other public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 3.17(a), the Architect/Engineer will, upon written authorization from the Owner, instruct the Prime Contractor to make arrangements

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for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Prime Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so that the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 3.17(c).

(c) If procedures for testing, inspection, or approval under Subparagraphs 3.17(a) and 3.17(b) reveal deficiencies or nonconformities in the Work, the Prime Contractor shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Architect/Engineer's services and expenses, if any. The Prime Contractor shall bear the costs of any subsequent testing, inspection, or approval of the corrected Work.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Prime Contractor and promptly delivered to the Architect/Engineer.

(e) If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing or inspection.

(f) Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

3.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. CONTRACTOR SHALL COMPLETELY DEFEND, INDEMNIFY AND HOLD OWNER AND ARCHITECT/ENGINEER HARMLESS FROM ANY AND ALL LIABILITIES, SUITS OR CLAIMS FOR INFRINGEMENT OF PATENT RIGHTS, REGARDLESS OF WHETHER OR NOT THE OWNER OR THE ARCHITECT/ENGINEER SPECIFIED A PARTICULAR DESIGN, PROCESS OR PRODUCT IN THE CONTRACT DOCUMENTS THAT MAY BE THE SUBJECT OF A PATENT INFRINGEMENT OR OTHERWISE ACTIVELY INDUCED OR CONTRIBUTED TO THE PATENT INFRINGEMENT. In the event the Prime Contractor has reason to believe that a particular design, process or product specified infringes a patent, the Prime Contractor shall immediately notify the Owner and the Architect/Engineer of same.

3.19 INDEMNIFICATION

(a) THE PRIME CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT/ENGINEER, HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITIES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S

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BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE PRIME CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE PRIME CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR OF THE ARCHITECT/ENGINEER, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CONTRACTOR, THE OWNER, AND THE ARCHITECT/ENGINEER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW, AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER THIRD PERSON OR ENTITY.

(b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Prime Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.19 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Prime Contractor or any Subcontractor, under workers compensation acts, disability benefit acts or other employee benefit acts.

(c) Indemnification under this Paragraph 3.19 shall include, but is not limited to, liability which could result to or be created for the Owner, its officers, agents, or employees, or the Architect/Engineer pursuant to State or Federal laws or regulations relating to pollution of the environment and State or Federal laws or regulations relating to the occupational safety and health of workers. The Prime Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Prime Contractor and that the obligations of the Owner, its officers, agents, and employees, and the Architect/Engineer under the above-mentioned laws and regulations are secondary to those of the Prime Contractor.

ARTICLE 4 - CONTRACT ADMINISTRATION

4.1 THE DESIGN PROFESSIONAL (ARCHITECT/ENGINEER)

(a) The design professional is the person lawfully licensed to practice architecture or engineering or a firm or other business entity lawfully practicing architecture/engineering identified as such in the formal Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in number. The term

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"Architect/Engineer" means the Architect/Engineer or the Architect/Engineer's authorized representative. The Owner may, at its option, designate a qualified Owner representative to serve as the Architect/Engineer on the Project instead of an outside firm or person. In such event, the references in these General Conditions that refer to the Architect/Engineer shall apply to the Owner-designated Architect/Engineer representative and the Owner-designated Architect/Engineer representative shall be accorded that same status by the Prime Contractor.

(b) In the event the Architect/Engineer is an outside person or firm and the Architect/Engineer's employment is terminated, the Owner may, at its option, contract with a new outside Architect/Engineer to replace the former, or may designate a qualified Owner representative to serve as the Architect/Engineer. The replacement Architect/Engineer, whether an Owner representative, an independent Architect/Engineer or any other qualified person or entity, shall be regarded as the Architect/Engineer for all purposes under the Contract Documents and shall be accorded that same status by the Prime Contractor. Any dispute in connection with such appointment shall be reviewed and settled by the Owner, whose decision shall be final and binding.

(c) Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect/Engineer's Construction Phase responsibility. Similarly, from time to time the Owner may expand or reduce the Owner's delegation of powers to the Architect/Engineer, with the Owner notifying the Prime Contractor of any such changes. The Architect/Engineer shall not be construed as a third party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth in this Subparagraph (c). In no event, however, shall the Owner have control over charge of, or be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of Prime Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2 ARCHITECT/ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION

(a) The Architect/Engineer will administer the Contract as described in the Contract Documents and in accordance with the terms of the Architect/Engineer's agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Prime Contractor, the provisions of the Owner/Architect/Engineer Agreement will be made available to the Prime Contractor.

(b) The Architect/Engineer shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent necessary to personally familiarize themselves with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents. The Architect/Engineer shall not, however, be required to make continuous on-site inspections to check the Work. Field reports of each visit shall be prepared by the

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Architect/Engineer and submitted to the Owner. The Architect/Engineer shall employ all reasonable measures to safeguard the Owner against defects and nonconformities in the Work. The Architect/Engineer shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Work. The Architect/Engineer will, however, immediately inform the Owner whenever defects or nonconformities in the Work are observed, or when any observed actions or omissions are undertaken by the Prime Contractor or any Subcontractor which are not in the best interests of the Owner or the Project.

(c) The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Prime Contractor's responsibility as provided in Paragraph 4.3. The Architect/Engineer and the Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Prime Contractor, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Prime Contractor is responsible.

(d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Prime Contractor shall endeavor to communicate through the Architect/Engineer. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Prime Contractor. Communications by and with separate contractors will be through the Owner. The Prime Contractor shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Architect/Engineer.

(e) Based on the Architect/Engineer's observations and evaluations of the Prime Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Prime Contractor and will issue Certificates for Payment in such amounts.

(f) The Architect/Engineer and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 3.17(b) and 3.17(c), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer to the Prime Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

(g) The Architect/Engineer will review and approve or take other appropriate action upon the Prime Contractor's submittals such as Shop Drawings, Product Data, and Samples, but

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only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such reasonable promptness as to not delay the Work or the activities of the Owner, Contractor, or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Prime Contractor as required by the Contract Documents. The Architect/Engineer's review of the Prime Contractor's submittals shall not relieve the Prime Contractor of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work as provided in Paragraph 7.3.

(i) The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Prime Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

(j) If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more Project representatives to assist in carrying out the Architect/Engineer's responsibilities at the site. The duties, responsibilities, and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated into the Contract Documents.

(k) The Architect/Engineer will interpret and make recommendations to the Owner concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Architect/Engineer shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Prime Contractor which change the scope of the Work or which modify or change the terms and conditions of any of the Contract Documents.

(l) Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by the Prime Contractor.

(m) The Architect/Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents; provided that the Architect/Engineer has the prior written approval of the Owner.

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4.3 CLAIMS AND DISPUTES

(a) Definition; General Notice of Claim Procedure. As used in these General Conditions, a "Claim" means a demand or assertion by one of the parties to the Contract seeking an adjustment of the terms of the Contract Documents, of the Contract Sum, of the Contract Time, or some other relief in respect to the terms of the Contract Documents. The term also includes all other disputes between the Owner and the Contractor arising out of or relating to the Project or the Contract Documents, including but not limited to claims that work was outside the scope of the Contract Documents. The responsibility to substantiate the Claim and the burden of demonstrating compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, WITHOUT EXCEPTION, MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT/ENGINEER AND TO THE OWNER WITHIN FOURTEEN (14) DAYS IMMEDIATELY AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM. Every Claim of the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Prime Contractor by his signature) of the Prime Contractor, verifying the truth and accuracy of the Claim. THE PRIME CONTRACTOR SHALL BE CONCLUSIVELY DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURES AND TIME LIMITS SET OUT IN THIS PARAGRAPH.

(b) Referral to the Architect/Engineer. Claims, disputes, and other matters in question between the Prime Contractor and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Architect/Engineer for recommendation to the Owner, which recommendation the Architect/Engineer will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Prime Contractor to submit the Claim to the Architect/Engineer for rendering of a recommendation to the Owner shall constitute a waiver of the Claim.

(c) Continuing Contract Performance. Pending final resolution of a claim the Prime Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents.

(d) Claims for Concealed or Unknown Conditions. No adjustment in the Contract Sum or Time associated with concealed or unknown conditions will normally be considered or allowed; provided, however, that the Contract Sum or Time may be adjusted by the Owner in such circumstances only if:

(1) a concealed subsurface condition is encountered in the course of performance of the Work;
(2) a concealed or unknown condition in an existing structure is at variance with conditions indicated by the Contract Documents; or

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(3) an unknown physical condition is encountered below the surface of the ground or in an existing structure which is of an unusual nature and materially different from those ordinarily encountered and generally recognized as inherent in the character of the Work; and
(4) a notice of claim with proper and adequate substantiation is presented pursuant to Subparagraph 4.3(a) of these General Conditions; and
(5) the Owner and the Architect/Engineer determine that:

(i) prior to submitting its bid for the Work, the Contractor used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and

(ii) the work caused or required by the concealed or unknown condition at issue can be considered extra work to the extent that additional new Drawings must be prepared and issued and new construction beyond the scope of the Contract Documents is required.

(e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE ARCHITECT/ENGINEER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE PRIME CONTRACTOR AT THE PRIME CONTRACTOR'S OWN RISK. THE OWNER AND THE ARCHITECT/ENGINEER DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.

(f) Claims for Additional Cost. If the Prime Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided in this Paragraph 4.3 shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. In addition, the Prime Contractor's request for an increase in the Contract Sum for any reason (other than work performed under emergency conditions) shall be made far enough in advance of required work to allow the Owner and the Architect/Engineer a sufficient amount of time, without adversely affecting the construction schedule, to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates or proposals and to negotiate, execute and distribute a Change Order for the required work if the Prime Contractor believes that additional cost is involved for reasons including but not limited to:

(1) a written interpretation from the Architect/Engineer;

(2) a written order for a minor change in the Work issued by the Architect/Engineer;

(3) failure of payment by the Owner;

(4) termination of the Contract by the Owner;

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(5) the Owner's temporary suspension of all or any portion of the Work where the Prime Contractor was not at fault; or

(6) other reasonable grounds.

(g) Injury or Damage to Person or Property. If the Prime Contractor suffers injury or damages to person or property because of an act or omission of the Owner, or of any of the Owner's officers, employees or agents, written, sworn-to notice of any claim for damages or injury shall be given as provided in Subparagraph 4.3(a). The notice shall provide sufficient detail to enable the Architect/Engineer and the Owner to investigate the matter.

(h) Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Prime Contractor asserts a claim to the Prime Contractor, that the Prime Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the Prime Contractor to submit and assert the claim against the Owner shall be subject to:

(1) the requirements of Paragraph 4.3 of these General Conditions; and

(2) the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Prime Contractor to seek and assert such claim against the Owner:

(ii) The Prime Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Prime Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Prime Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Prime Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Prime Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Prime Contractor in the claim submittal materials.

(ii) The Prime Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Prime Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Prime Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed by the Contractor to be valid.

(iii) The Subcontractor making the claim to the Prime Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Prime Contractor in the claim submittal materials made by Contractor to the Owner..

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(3) Any failure of the Prime Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim against Owner.

(4) Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or by applicable law.

(i) Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part. The Prime Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If the Prime Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Prime Contractor to develop a recovery schedule as described in Paragraph 3.10 or to accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as the Owner may reasonably direct and, upon receipt, the Prime Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Prime Contractor to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).

(2) In the event that the Prime Contractor is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Subparagraph 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to the Prime Contractor provided within fourteen (14) days after receipt of the Prime Contractor's Claim. If the Owner denies the Prime Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Prime Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(3) If the Prime Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by the Owner if not for the need and right to accelerate, the Prime Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Prime Contractor under Subparagraph 4.3(a) above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and

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required insurance; provided however, not to exceed five (5%) per cent, will be allowed on the claimed acceleration costs. NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM. The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (i)(3).

(i) Waiver of Claims; Final Payment. The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

(1) claims, security interests, purported liens, or other attempted encumbrances arising out of the Contract and remaining unsettled;

(2) defective or nonconforming Work appearing after Substantial Completion;

(3) latent defects, as defined in Subparagraph 12.2(d), appearing after Final Completion; or

(4) the terms of general and special warranties required by the Contract Documents or allowed or implied by law.

(k) THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING.

(l) No Waiver of Governmental Immunity. NOTHING IN THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY APPLICABLE STATE LAW.

ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS OF SUBCONTRACTOR

(a) A Subcontractor is person or entity who has a direct Contract with the Prime Contractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Prime Contractor by purchase or lease for use in performance of or incorporation into the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(b) A Sub-subcontractor is a person or entity who has a direct or indirect Contract with a Subcontractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Subcontractor or another Sub-subcontractor by purchase or lease for use

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in performance of or incorporation into the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

(a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Prime Contractor and the Owner, the Prime Contractor shall furnish to the Architect/Engineer in writing, for acceptance by the Owner and the Architect/Engineer, a list of the names, addresses, telephone numbers, M/WBE certification numbers (where applicable), and type of work of the Subcontractors (including those who are to furnish materials or equipment fabricated to a special design), proposed for the principal portions of the Work, including furnishings when made a part of the Contract. The Prime Contractor shall immediately notify the Owner in writing of any changes in the list as they occur. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.

(b) The Prime Contractor shall not Contract with a proposed person or entity to whom the Owner or Architect/Engineer has made reasonable and timely objection.

(c) Architect/Engineer's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Prime Contractor of his responsibility for performance of Work as called for under the Contract Documents, and shall not provide a basis for any claim for additional time or money on the part of the Prime Contractor. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the Owner or Architect/Engineer. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.

(d) The Prime Contractor shall not change a Subcontractor previously selected if the Owner or Architect/Engineer makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

(a) By appropriate agreement, written where legally required for validity, the Prime Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Prime Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Prime Contractor all the obligations and responsibilities which the Prime Contractor, by the Contract Documents, assumes toward the Owner and the Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Contract Documents (including but not limited to these General Conditions) with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the rights of the Owner and the Architect/Engineer.

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Where appropriate, the Prime Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Prime Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.

(b) The Prime Contractor is solely responsible for making payments properly to the Prime Contractor's Subcontractors on the Project. During performance of the Work, the Prime Contractor shall comply with the following additional rules regarding Subcontractor payments:

(1) The Prime Contractor shall submit, beginning with the Second Application and Certificate for Payment, a Subcontractor Payment Report (the "Report") with each Application and Certificate for Payment. The Report shall show all payments made to date by the Prime Contractor (plus existing retainage) to each Subcontractor involved in the Project. The Report shall be made on a form approved and supplied by the Owner. As an alternative to the Report, the Prime Contractor may furnish Affidavits of Payment Received with the Application and Certificate for Payment, which affidavits shall be executed by each Subcontractor owed money and paid by Subcontractor during the previous progress payment period for work or materials furnished on the Project. RECEIPT BY THE OWNER OF THE REPORT OR AFFIDAVITS OF PAYMENT RECEIVED SHALL BE A CONDITION PRECEDENT TO PAYMENT ON ANY APPLICATION FOR PAYMENT.

(2) If, for any reason, the Prime Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Prime Contractor shall note the amount withheld and further note that the payment is in dispute. The Owner may, in its sole discretion, require the Prime Contractor to document and verify the dispute or other problem in question.

(3) The Owner reserves the right in its sole discretion, to withhold payment to the Prime Contractor pursuant to Paragraph 9.5(a) of the General Conditions, should it appear from the Report, statements of payment received or other information furnished to the Owner that:

(i) the Report has not been properly completed;

(ii) the Prime Contractor has knowingly provided false information regarding payment of any Subcontractor; or

(iii) the Prime Contractor has otherwise failed to make payments properly to any Subcontractor.

(4) THE PRIME CONTRACTOR SHALL NOT HAVE ANY RIGHT TO MAKE A CLAIM FOR ADDITIONAL TIME OR ADDITIONAL COMPENSATION AS A RESULT OF THE OWNER'S OR ARCHITECT/ENGINEER'S ENFORCEMENT OF

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THIS SUBPARAGRAPH 5.3(b). NO PROVISION OF THIS SUBPARAGRAPH OR ANY OF THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO CREATE A CONTRACTUAL RELATIONSHIP, EXPRESS OR IMPLIED, BETWEEN ANY SUBCONTRACTOR AND EITHER THE OWNER OR THE ARCHITECT/ENGINEER AND SHALL NOT BE CONSTRUED TO MAKE ANY SUBCONTRACTOR OR ANY OTHER PERSON OR ENTITY, A THIRD-PARTY BENEFICIARY OF THE CONTRACT BETWEEN THE OWNER AND THE PRIME CONTRACTOR.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of a termination of this Contract by the Owner under Article 14, the Prime Contractor shall, if requested in writing by the Owner, within fifteen (15) days after the date notice of termination is sent, deliver and assign to Owner, or any person or entity acting on the Owner's behalf, any or all subcontracts made by Prime Contractor in the performance of the Work, and deliver to the Owner true and correct originals and copies of the subcontract documents. In the event assignment is not requested by the Owner, Prime Contractor shall terminate all subcontracts to the extent that Owner has not directed assignment of same and to the extent that they relate to the performance of Work terminated by the notice of termination.

ARTICLE 6 - CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

(a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Prime Contractor claims that delay or additional cost is involved because of such action by the Owner, the Prime Contractor shall make a claim as provided elsewhere in, and in accordance with the Contract Documents.

(b) When separate Contracts are awarded for different portions of the Project or other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Building Construction Services Agreement with the Owner.

(c) The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Prime Contractor, who shall cooperate with them. The Prime Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Prime Contractor shall, with the approval of the Owner, make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Prime Contractor, separate

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contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Prime Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Prime Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Prime Contractor's Change Order proposal is denied by the Owner, the Prime Contractor must submit any Claim pursuant to Paragraph 4.3 of the General Conditions.

(d) Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Prime Contractor under these General Conditions, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

(a) The Prime Contractor shall afford the Owner and separate contractors' reasonable opportunity for access to and storage of their materials and equipment and the performance of their activities and shall coordinate the Prime Contractor's construction and operations with the separate contractors as required by the Contract Documents.

(b) If part of the Prime Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Prime Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for proper execution and results. Failure of the Prime Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Prime Contractor's Work, except as to defects not then reasonably discoverable.

(c) The Owner shall not be liable to the prime Contractor for damages suffered by the Prime Contractor due to the fault or negligence of a separate contractor or through failure of a separate contractor to carry out the directions of the Owner or the Architect/Engineer. Should any interference occur between the Prime Contractor and a separate contractor, the Architect/Engineer or the Owner may furnish the Prime Contractor with written instructions designating priority of effort or change in methods, whereupon the Prime Contractor shall immediately comply with such direction. In such event, the Prime Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Prime Contractor.

(d) The Prime Contractor shall promptly remedy damage wrongfully caused by the Prime Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2(e).

(e) Should the Prime Contractor cause damage to the work or property of any separate contractor on the Project, the Prime Contractor shall, upon due notice, settle with the separate contractor by agreement, if the separate contractor will so settle. If the separate

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contractor sues the Owner or submits a claim on account of any damage alleged to have been so sustained, the Owner shall notify the Prime Contractor who shall defend such proceedings, at the Prime Contractor's sole expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Prime Contractor shall fully pay or satisfy it and shall reimburse the Owner for any and all attorney's fees and costs which the Owner has incurred.

(f) The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Prime Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project Site and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up, but is not obligated to do so, and Owner shall allocate the cost among those parties responsible, as the Architect/Engineer recommends to be just.

ARTICLE 7 - AMENDMENTS

7.1 CHANGE ORDERS

(a) A Change Order is a written order to the Contractor, signed by the Owner and the Architect/Engineer, issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, or an adjustment to the Contract Time, consistent with other applicable provisions of this Contract. The Owner, without invalidating the Contract and without requiring notice of any kind to the sureties, may order changes to the scope of Work under the Contract by additions, deletions, or other revisions, the Contract Sum and Contract Time to be adjusted consistent with other applicable provisions of this Contract. All Change Orders shall be executed on a Change Order form approved by the Owner and the Owner's City Attorney.

(b) In addition to the Owner and the Architect/Engineer, the Contractor shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Contractor refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Architect/Engineer to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Contractor indicates his agreement with all of the changes approved, including the adjustment in the Contract Sum or the Contract Time. EACH CHANGE ORDER SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. The Contractor forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the

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executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on other Work.

(c) No extra work (except under emergency conditions) or changes shall be made nor shall any substitutions, changes or additions to or omissions or deviations from the requirements of the Drawings and Specifications be made unless pursuant to a written Change Order signed by the Owner and the Architect/Engineer, it being expressly understood that the Owner shall not be liable for the cost of extra work or any substitution, change, addition, omission or deviation from the requirements of the Drawings or Specifications unless the same shall have been authorized in writing by the Owner and the Architect/Engineer in a written change order or other Amendment. The provisions of this Paragraph 7.1 shall control in the event of any inconsistency between such provisions and the other provisions of this Article 7. See Subparagraph 10.3(a) of the General Conditions for Change Orders under emergency conditions.

(d) The method of determining the cost or credit to the Owner for any change in the Work shall be one of the following:

(1) mutual acceptance of a not-to-exceed lump-sum amount properly itemized and supported by sufficient substantiating data to permit evaluation; or

(2) unit prices stated in the Contract Documents or subsequently agreed upon; or

(3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

(4) the force account method provided in Subparagraph 7.1(e)

(e) If the parties cannot agree to one of the methods of calculating cost provided in Clauses (d) (1), (d) (2), or (d) (3), or if the parties agree to a method but cannot agree on a final dollar figure; or if the Contractor for whatever reason refuses to sign the Change Order in question; the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of the Work involved shall then be calculated on the basis of the reasonable jobsite expenditures and savings of those performing the Work attributable to the changes, including a reasonable allowance for overhead and profit, such allowance in any case never to exceed fifteen (15%) per cent. In such case, the Contractor shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Architect/Engineer and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to the Architect/Engineer each day during the performance of force account work, with copies to the Owner.

FAILURE OF THE CONTRACTOR TO SUBMIT THE SWORN-TO ITEMIZED ACCOUNTING DAILY AS REQUIRED HEREIN SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY RIGHT TO DISPUTE THE OWNER'S DETERMINATION OF THE AMOUNT DUE THE CONTRACTOR FOR FORCE ACCOUNT WORK. Costs to be charged under this Subparagraph for force account work

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are limited to the following:

(1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;

(2) costs of materials, supplies and equipment (but not to include off-site storage unless approved in writing by the Owner), whether incorporated or consumed;

(3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

(4) costs of premiums for all bonds and insurance related to the Work; and

(5) additional costs of supervision and field office personnel directly attributable to the changed Work. Pending final determination of cost to the Owner, payment of undisputed amounts on force account shall be included on the Architect/Engineer's Certificate of Payment as work is completed.

(f) The amount of credit to be allowed to the Owner for any deletion of Work or any other change which results in a net decrease of the Contract Sum shall be the amount of actual net cost confirmed by the Architect/Engineer plus the stated percentage for overhead and profit. When both additions and deletions or credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease with respect to that change.

7.2 SUPPLEMENTAL AGREEMENTS

A written Supplemental Agreement can also be used to implement changes in the Work instead of a Change Order form, including but not limited to situations involving partial occupancy of the Work under Paragraph 9.8, a change made to the Drawings or the Specifications without an increase in the Contract Sum, or special circumstances where it is necessary or more appropriate for the Owner to use a Supplemental Agreement. Written Supplemental Agreements shall have a status equal to that of Change Orders for purposes of priority of Contract Documents interpretation, except that to the extent of a conflict, later Supplemental Agreements in time control over earlier Supplemental Agreements, and the latest Change Order or Supplemental Agreement in time controls over earlier dated Change Orders and Supplemental Agreements. The rules of Subparagraphs 7.1(b) through (f) shall also apply to the negotiation and execution of Supplemental Agreements.

7.3 MINOR CHANGES IN THE WORK

The Architect/Engineer, after notifying the Owner, shall be authorized to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Minor changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly. These written orders shall not be deemed to change or impact the Contract Sum or the Contract Time. Contractor shall have no

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Claim for any minor change ordered to the Work under this Paragraph 7.3 unless the Contractor submits its change proposal, prior to complying with the minor change ordered and in no event later than ten (10) working days from the date the minor change was ordered, to the Owner for approval.

7.4 TIME REQUIRED TO PROCESS AMENDMENTS

(a) All of the Contractor's responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Architect/Engineer a minimum of thirty (30) calendar days after receipt by the Architect/Engineer to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. All of the Prime Contractor's responses to proposal requests shall include a statement that the cost described in the response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation under the Contract Documents, without reservation or further recourse.

(b) All Amendments require approval by either the City Council or, where authorized by the State law and City ordinance, by the City Manager pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution, Ordinance or Administrative Action. THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS. Pending the approval described above, the Contractor will proceed with the work under a pending Amendment only if directed in writing by the Owner.

ARTICLE 8 - CONTRACT TIME

8.1 DEFINITIONS

(a) Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

(b) The date of commencement of the Work is the date established in the Notice to Proceed from the Owner. The date of commencement shall not be postponed by the failure of the Prime Contractor, or of persons or entities for whom the Prime Contractor is responsible to act promptly to commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed, through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable extension of the Contract Time; the Contract Sum shall remain unchanged.

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(c) The date of Substantial Completion is the date certified by the Architect/Engineer in accordance with Paragraph 9.7.

(d) The term "day" as used in the Contract Documents shall mean a calendar day, beginning and ending at 12:00 midnight, unless otherwise specifically defined by special provision.

8.2 PROGRESS AND COMPLETION

(a) **Time limits stated in the Contract Documents are of the essence of the Contract**. By executing the Building Construction Services Agreement, the Prime Contractor confirms that the Contract Time is a reasonable period for performing the Work.

(b) The Prime Contractor shall not knowingly, except by agreement with or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance to be furnished by the Prime Contractor as required by Article 11. The date of commencement of the Work shall not be changed by the effective date of insurance required by Article 11.

8.3 DELAYS AND EXTENSIONS OF TIME

(a) If the Prime Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Prime Contractor's control, or by delay authorized by the Owner pending a claim, or by other causes which the Architect/Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer and Owner may determine.

(b) Claims relating to Contract Time and time extensions shall be made in accordance with the applicable provisions of Paragraph 4.3.

(c) No Damages for Delay. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, INCLUDING THE GENERAL CONDITIONS, NO ADJUSTMENT SHALL BE MADE TO THE CONTRACT SUM AND THE PRIME CONTRACTOR SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR UNFORESEEN, WHICH INCREASES THE TIME TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE ARCHITECT/ENGINEER, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE PRIME CONTRACTOR'S SOLE REMEDY.

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(d) The Owner shall have the right to occupy, without prejudice to the right of either party, any completed or largely completed portions of the structure or Work, notwithstanding the fact that the Contract Time for completing all or a portion of the Work may not have expired. Partial occupancy and use shall not be deemed as an acceptance of the Work taken or used.

(e) The Prime Contractor shall promptly suspend the Work when either the Prime Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Prime Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Prime Contractor will also not be liable to the Owner for a delay caused in fact by the Work being suspended by a court order.

(f) The Architect/Engineer, with the consent of the Owner, shall have the authority to suspend the Work, in whole or in part, for such period or periods as the Architect/Engineer deems necessary due to unusual or severe weather conditions as are considered unfavorable for the suitable prosecution of the Work, or due to failure on the part of the Prime Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop the Work for an indefinite period, the Prime Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way, and shall take every precaution to prevent damage or deterioration of the Work performed. In cases of suspension of the Work under this Subparagraph, the Prime Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Prime Contractor shall not suspend the Work in whole or in part without written authority from the Architect/Engineer or the Owner, and shall resume the Work promptly when notified by the Architect/Engineer or the Owner to resume operations.

(g) In the event of a delay that is the responsibility of the Prime Contractor or any of the Subcontractors, for which the Prime Contractor is not entitled to a time extension under the provisions of this Contract, the Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts, or resequencing. This acceleration shall be at no cost to the Owner and will continue until the Contract Time is restored. In the event of a delay for which the Prime Contractor is entitled to a time extension, as determined by the Architect/Engineer, Owner may similarly direct acceleration and the Prime Contractor agrees to perform same on the basis that the Prime Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). THE PRIME CONTRACTOR EXPRESSLY WAIVES ANY OTHER COMPENSATION RESULTING FROM ACCELERATION, SUCH AS LOSS OF LABOR PRODUCTIVITY OR EFFICIENCY.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Building Construction Services Agreement and, including authorized adjustments, is the total amount of compensation payable by the Owner to the Prime Contractor for the performance of the Work under the Contract Documents.

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9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Prime Contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, when approved by the Architect/Engineer and the Owner, shall be used as a basis for the Prime Contractor's Application for Payment. The schedule of values shall follow the trade division of the Specifications. Prime Contractor's Application for Payment shall be filed on the current version of AIA Form G702 (Application and Certificate for Payment), as approved by the Owner.

9.3 APPLICATIONS FOR PAYMENT

(a) At least ten (10) days before the date established for each progress payment, the Prime Contractor shall submit to the Architect/Engineer an itemized Application for Payment for Work completed in accordance with the schedule of values. The Application shall be notarized, if required, and supported by data substantiating the Prime Contractor's right to payment as the Owner or Architect/Engineer may require, including but not limited to copies of requisitions from Subcontractors and material suppliers, and reflecting the applicable retainage as required in the Contract Documents. Prime Contractor's Application for Payment shall also provide other supporting documentation as the Owner or the other applicable provisions of the Contract Documents may require.

(b) Applications for Payment may not include requests for payment of amounts the Prime Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Prime Contractor complies with Clause 5.3(b) (2) of these General Conditions and the Prime Contractor's Payment Bond Surety consents in writing to payment to the Prime Contractor of the funds deemed to be in dispute.

(c) Unless otherwise provided in the Contract Documents, progress payments shall include payment for materials and equipment delivered and suitably stored at the Project site for subsequent incorporation into the Work within thirty (30) days after delivery to the Project site. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored away from the Project site at a location agreed upon in writing. Payment for costs incurred in storage of materials or equipment away from the Project site will NOT be made by Owner unless:

(1) the Owner has given prior approval of such off-site storage in writing;
(2) the materials or equipment are stored in a bonded warehouse located in Denton County and identified with the Project for which they are stored, as evidenced by warehouse receipts and appropriate documents of title; and
(3) the materials or equipment stored off-site will be incorporated into the Work within thirty (30) days after delivery. STORAGE IN FACILITIES OF THE MANUFACTURER OR THE PRIME CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.

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(d) The Prime Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Prime Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Prime Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

(e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an "early delivery." All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Prime Contractor shall, at Prime Contractor's expense or at the expense of the responsible Subcontractor or Supplier, cause such early delivery to be removed from the Project site and stored off-site until required at the Project site. All costs of labor, transportation and storage will be included as part of the expense. If the Prime Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Prime Contractor's sole expense, and amounts may be withheld from the Prime Contractor's Application for Payment to reimburse the Owner for any costs incurred in removing unauthorized early delivery materials. OWNER WILL NOT BE RESPONSIBLE FOR THE PROTECTION OF OR RISK OF LOSS ON ANY EARLY DELIVERY MATERIALS OR EQUIPMENT, NOR WILL OWNER BE LIABLE FOR ANY PAYMENT FOR THE EARLY DELIVERY MATERIALS OR EQUIPMENT. Any materials or equipment classified as early delivery will not be approved for payment as stored materials prior to thirty (30) days before the incorporation of the materials or equipment into the Work, unless storage and payment at an earlier date is expressly approved in writing by the Owner.

(f) If the Contract Sum is equal to or less than $25,000, and if performance and payment bonds are not furnished by the Contractor, then no payment applied for will be payable under the Contract until the Work has been finally completed and accepted.

9.4 CERTIFICATES FOR PAYMENT

(a) The Architect/Engineer will, within ten (10) days after receipt of the Prime Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Prime Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Prime Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in:
(a) City of Denton "General Conditions for Building Construction."
(b) Subparagraph 9.5(a). The Certificate for Payment shall be issued on the current version of AIA Form G702 (Application and Certificate for Payment) as approved by the Owner.
(c) The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The

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foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Final Completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Prime Contractor is entitled to payment in the amount certified, subject to the Owner's approval. The issuance of a Certificate for Payment is not a representation that the Architect/Engineer has:

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(2) reviewed construction means, methods, techniques, sequences or procedures;

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Prime Contractor's right to payment; or

(4) made examination to ascertain how or for what purpose the Prime Contractor has used money previously paid on account of the Contract Sum.

(d) Whenever the Application for Payment for Work done since the last previous Application for Payment exceeds one hundred dollars ($100.00) in amount, Owner will pay a percentage of the Application, less applicable retainage, to the Prime Contractor within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Architect/Engineer. The Application may include acceptable nonperishable materials delivered to the Work or stored as provided for in Paragraph 9.3(c) and the payment will be allowed on the net invoice value, less taxes and applicable retainage.

(e) The City is required to withhold retainage for public works contracts in which the total contract price estimate at the time of execution is more than $400,000; however, this requirement is applied by the City for all public works contracts in excess of $50,000. The retainage will be withheld by the Owner from each progress payment until final completion of the Work by the Contractor, approval of final completion by the Architect/Engineer, and final acceptance of the Work by the Owner. Unless otherwise required by state law, the retainage percentage as specified in Exhibit A is based upon the original Contract Sum, and will not be affected in the event the original Contract Sum is subsequently increased by Change Order.

(f) No progress payments shall be made on contracts where performance and payment bonds are not required or furnished. In such instances, payment for the Work performed will be made upon final completion and acceptance by the Owner of all Work.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

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(a) The Architect/Engineer or the Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner's interest, if in the Architect/Engineer's or Owner's opinion the representations to the Owner required by Subparagraph 9.4(b) cannot be made. If the Architect/Engineer or the Owner is unable to certify payment in the amount of the Application, the Architect/Engineer or the Owner will notify the Prime Contractor as provided in Subparagraph 9.4(a). If the Prime Contractor and Architect/Engineer or the Owner cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make the required representations to the Owner. The Architect/Engineer or the Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary, in the Architect/Engineer's or Owner's opinion, to protect the Owner from loss because of:

(1) defective or nonconforming Work not remedied;

(2) third-party claims filed or reasonable evidence indicating probable filing of such claims;

(3) failure of the Prime Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;

(4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

(5) damage to the Owner or another contractor;

(6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;

(7) persistent failure to carry out the Work in accordance with the Contract Documents; or

(8) mathematical or other errors that are discovered in the Application for Payment.

(b) When all of the above reasons that existed for withholding certification are removed or remedied, then, at that time, certification will be made for amounts previously withheld.

(c) The Owner may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to the Owner from the Prime Contractor, regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise, and regardless of whether or not the debt due to the Owner has been reduced to judgment by a court.

9.6 PROGRESS PAYMENTS

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(a) After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect/Engineer. The Owner shall not be liable for interest on any late or delayed progress payment or final payment caused by any claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the Application for Payment or as a precondition to payment under the Contract Documents, or due to any payment the Owner or the Architect/Engineer has a right to withhold or not certify under the Contract Documents. Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contract Documents, including but not limited to those defaults set forth in Subparagraph 9.5(a), Clauses (1) through (7). The Owner shall not be deemed in default by reason of withholding payment while any Prime Contractor default remains uncured.

(b) The Prime Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Prime Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Prime Contractor on account of such Subcontractors portion of the Work. The Prime Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

(c) The Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Prime Contractor and action taken thereon by the Architect/Engineer and the Owner on account of portions of the Work done by such Subcontractor.

(d) Neither the Owner nor the Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. That obligation belongs to the Prime Contractor or, in the event of the Prime Contractor's failure to pay a Subcontractor, to the Surety on the Payment Bond as required under Paragraph 11.3.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6(b), (c), and (d).

(f) A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not performed in accordance with the Contract Documents.

9.7 SUBSTANTIAL COMPLETION

(a) The Date of Substantial Completion of the Work, or designated portion of the Work, is the date certified by the Architect/Engineer when construction is sufficiently completed in accordance with the City Of Denton General Conditions For Building Construction.

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(a) the Contract Documents such that the Owner may beneficially occupy and use the Work, or designated portions of the Work, for the purposes for which it is intended and only trivial and insignificant items remain which do not affect the Work as a whole.

(b) When the Prime Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Prime Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The Prime Contractor shall proceed promptly to complete and correct items on the list (hereinafter called the "punch list"). Failure to include an item on the punch list does not alter the responsibility of the Prime Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Architect/Engineer will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Architect/Engineer's inspection discloses any item, whether or not included on the punch list, which is not in accordance with the requirements of the Contract Documents and which renders the Work inspected not Substantially Complete the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Architect/Engineer. The Prime Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and the Prime Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Prime Contractor shall finish all items on the punch list accompanying the Certificate.

(c) The Certificate of Substantial Completion shall be submitted to the Owner and the Prime Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

(d) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Prime Contractor and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

9.8 PARTIAL OCCUPANCY OR USE

(a) The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate Supplemental Agreement with the Prime Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.2(e) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Prime Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of

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warranties required by the Contract Documents. When the Prime Contractor considers a portion Substantially Complete, the Prime Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Prime Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Prime Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

(b) Immediately prior to such partial occupancy or use, the Owner, Prime Contractor, and Architect/Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

(c) Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

(a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer, accompanied by the Owner's representative, will promptly make final inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Prime Contractor and noted in said final Certificate is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9(b) as a condition precedent to the Prime Contractor's being entitled to final payment have been fulfilled. Owner will normally make final payment within thirty (30) days after Owner's receipt and approval of the final Certificate for Payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided by separate agreement between the Owner and the Prime Contractor.

(b) Neither final payment nor any remaining retained percentage shall become due until the Prime Contractor submits to the Architect/Engineer:

(1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
(2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;

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(3) a written statement that the Prime Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
(4) a consent of surety to final payment; and
(5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

(c) As a precondition to final payment by the Owner under this Contract, the Prime Contractor's affidavit under Clause (b)(1) shall state that the Prime Contractor has paid each of his subcontractors, laborers or materialmen in full for all labor and materials provided to Contractor for the Work performed under this Contract. In the event the Prime Contractor has not paid each of his subcontractors, laborers or materialmen in full, the Prime Contractor shall state in the affidavit the amount owed and the name of each subcontractor, laborer or materialmen to whom such payment is owed. IN ANY EVENT, THE PRIME CONTRACTOR SHALL BE REQUIRED TO EXECUTE THE OWNER'S STANDARD AFFIDAVIT OF FINAL PAYMENT AND RELEASE AS A PRECONDITION TO RECEIPT OF FINAL PAYMENT.

(d) If, after Substantial Completion of the Work, final completion of the Work is materially delayed through no fault of the Prime Contractor or by issuance of Change Orders affecting final completion and the Architect/Engineer confirms the delay, the Owner shall, upon application by the Prime Contractor and certification by the Architect/Engineer, 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 for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of payment. Payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

(e) The acceptance by the Prime Contractor of the final payment shall operate as and shall be a complete release of the Owner from all claims or liabilities under the Contract, for anything done or furnished or relating to the Work or the Project, or for any act or neglect of the Owner relating to or connected with the Work or the Project.

ARTICLE 10 - SAFETY, SECURITY AND UTILITY PROVISIONS; ENVIRONMENTAL COMPLIANCE

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Prime Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and will comply with all applicable City, County, State and Federal health and safety regulations.

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10.2 SAFETY OF PERSONS AND PROPERTY

(a) The Prime Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(1) employees on the Work and other persons who may be affected thereby;

(2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Prime Contractor or the Prime Contractor's Subcontractors or Sub-subcontractors; and

(3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Prime Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

(c) The Prime Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(d) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Prime Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

(e) USE OF EXPLOSIVES - CLAIMS AND TOTAL INDEMNIFICATION. The Owner shall have the right to pre-approve the use of any explosives on the Project; the Prime Contractor shall not assume in its bid that permission to use explosives will be granted. The Owner shall NOT be liable for any claim for additional time or compensation as a result of the Owner's denial of permission to use explosives. Where use of explosives is permitted by the Owner, the Prime Contractor EXPRESSLY AGREES TO BE SOLELY RESPONSIBLE for the determination as to whether explosives shall actually be used, and for any result from the use, handling or storage of explosives, and shall INDEMNIFY, DEFEND AND HOLD COMPLETELY HARMLESS the Owner, its officers, agents and employees, and the Architect/Engineer against any and all claims, lawsuits, judgments, costs or expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, as the result of the use, handling or storage of the explosives by the Prime Contractor or any Subcontractor, REGARDLESS OF WHETHER SAID USE, HANDLING OR STORAGE WAS NEGLIGENT OR NOT, AND REGARDLESS OF WHETHER THE DAMAGE OR INJURY WAS CONTRIBUTED TO IN ANY WAY BY THE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES, OR THE ARCHITECT/ENGINEER AND ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. In the event of conflict with any

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other indemnity paragraph in this Contract, this paragraph controls. This indemnity paragraph is intended solely for the benefit of the parties to this Contract and is not intended to create or grant any rights, contractual or otherwise, to or for any other person or entity. The Prime Contractor shall furnish the Owner and the Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury, which insurance shall either include the Owner and the Architect/Engineer as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Architect/Engineer. All explosives shall be stored in a safe and secure manner, under the care of a competent watchman at all times, and all storage places shall be marked clearly and conspicuously: "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives and highly flammable materials shall conform to Federal and State laws, City of Denton ordinances, and the City of Denton Fire Department regulations. The Prime Contractor shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Prime Contractor's intention to use explosives, and such notice shall be given sufficiently in advance to enable the telecommunications and public utility companies and private property owners to take such steps as they may deem necessary to protect their property from injury. The notice shall not relieve the Prime Contractor of any responsibility for damage resulting from any blasting operations.

(f) The Prime Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the Prime Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Prime Contractor is responsible under Clauses 10.2(a)(2) and 10.2(a)(3), except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Prime Contractor or any of its Subcontractors. The foregoing obligations of the Prime Contractor are in addition to the Prime Contractor's obligations under Paragraph 3.l9. To the extent that any such damage or loss may be covered by property insurance or other insurance required by the Contract Documents, the Owner and the Prime Contractor shall exercise their best efforts to make a claim and obtain recovery from the insurers to provide for the cost, in whole or in part, of the repair work or to provide for reimbursement for such damage or loss.

(g) The Prime Contractor shall designate a responsible member of the Prime Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Prime Contractor's superintendent unless otherwise designated by the Prime Contractor in writing to the Owner and Architect/Engineer.

(h) The Prime Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In an emergency affecting safety, health, or security of persons or property, the Prime

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Contractor shall act, at the Prime Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Prime Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.4 PUBLIC CONVENIENCE AND SAFETY

(a) The Prime Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

(b) The Owner reserves the right to remedy any neglect on the part of the Prime Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Prime Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Prime Contractor's neglect shall be deducted from the Contract Sum. The Prime Contractor shall notify the City Traffic Control Department when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Prime Contractor shall, when directed by the Architect/Engineer or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Prime Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Prime Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN

If the Work is carried on or adjacent to any street, alley or public place, the Prime Contractor shall, at the Prime Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon the Prime Contractor's name and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Paragraph, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Prime Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and

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watchmen to protect the Work. Whenever evidence is found of such damage, the Architect/Engineer may order the damaged portion immediately removed and replaced by the Prime Contractor at Prime Contractor's cost and expense. The Prime Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect/Engineer. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Prime Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Prime Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, the Prime Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Prime Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers; for this purpose, the Prime Contractor shall provide and maintain, at the Prime Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. The Prime Contractor shall, at the Prime Contractor's own expense, construct such troughs, pipes, or other structures necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Architect/Engineer. All storm water and sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT

(a) When the Prime Contractor desires to use the Owner's water in connection with the Work, the Prime Contractor shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the Prime Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the Denton Water Utilities Department.

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(b) The Prime Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner or with Denton Municipal Electric in the event that separately metered electrical connections are required for the Project. The Prime Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Prime Contractor through the City of Denton.

10.9 USE OF FIRE HYDRANTS

The Prime Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the Denton Water Utilities Department in accordance with the Denton City Code.

10.10 ENVIRONMENTAL COMPLIANCE

(a) The Prime Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

(b) In the event the Prime Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Prime Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Architect/Engineer and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a Change Order with the Prime Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Prime Contractor or any of its Subcontractors, the Prime Contractor shall be responsible for remediating the condition at the sole expense of the Prime Contractor in accordance with the Prime Contractor's APPROVED Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a

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Hazardous Substance may be granted by the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Paragraph 4.3 and Article 8.

(c) The Prime Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Prime Contractor or any Subcontractor or Supplier. The Prime Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Architect/Engineer so that they may observe the activities; provided, however, that it shall be the Prime Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

(d) Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Prime Contractor shall submit to the Owner for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Prime Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Owner's Project Manager or other designated representative. The Prime Contractor shall not commence any field work prior to approval of such plan by the Owner. The following additional rules shall apply with respect to spills caused by the Prime Contractor or a Subcontractor:

(1) The Prime Contractor shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the Prime Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.

(2) The Prime Contractor shall immediately respond in accordance with the SPRP in the event of a spill.

(3) The Prime Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the Prime Contractor shall use only those transporters and

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disposal facilities that are approved in advance in writing by the Owner. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request of the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter. ALL COSTS OF COLLECTION, CONTAINMENT, AND DISPOSAL OF SPILLED MATERIALS SHALL BE THE SOLE RESPONSIBILITY OF THE PRIME CONTRACTOR.

(4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.

(e) Clean Air Management Plan. The Prime Contractor shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the contractor selection process. The Owner reserves the right, at the Prime Contractor's sole expense, to require the removal or retrofitting of any equipment used in the course of construction that does not comply with the Plan submitted to and approved by the Owner.

(f) The Prime Contractor shall deposit surplus or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Prime Contractor shall submit to the Owner for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request to the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter.

(g) The Prime Contractor is responsible for obtaining all TXPDES Storm Water Permits from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities promulgated by EPA, including but not limited to cleaning, grading, and excavation that disturb the applicable amount of total land area. In addition, the Prime Contractor shall comply with all regulations of the Owner relating to storm water and storm water runoff management at the Project site pursuant to Chapter 19, Article IX, Denton City Code, as amended.

(h) The Prime Contractor shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable.

(i) The Owner reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the Owner and without an extension of the Contract Time, in the

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event the Prime Contractor fails or refuses after seven (7) days advance written notice from the Owner to comply with the provisions of this Paragraph 10.10, the terms of the SPRP, the terms of the Clean Air Management Plan, any storm water permit or other environmental permit issued in connection with the Work, or any applicable environmental law, rule, regulation, or ordinance:

(1) suspend all or any portion of the Work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the Prime Contractor and approved by the Owner;

(2) if the Prime Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and backcharge the Prime Contractor for the cost of the remediation or correction; or

(3) terminate the Contract for cause as provided in Article 13.

ARTICLE 11 INSURANCE AND BONDS

11.1 PRIME CONTRACTOR'S INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.2 PROPERTY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.3 'UMBRELLA' LIABILITY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.4 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.5 PERFORMANCE AND PAYMENT BONDS

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(a) Subject to the provisions of Subparagraph 11.5(b), the Prime Contractor shall, with the execution and delivery of the Construction Services Agreement, furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses (a)(1) and (a)(2) below, which surety bonds shall be in accordance with the Charter of the City of Denton and the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Prime Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.5(c) and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:

(1) Performance Bond. A good and sufficient bond in the amount of $1,000,000, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any Amendments thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of final completion and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

(2) Payment Bond. A good and sufficient bond in the amount of $1,000,000, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract Documents and any Amendments thereto, and for the use and protection of each claimant.

(b) No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Prime Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Denton County, Texas. Each surety shall designate an agent resident in Denton County, Texas to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

(c) Contractor will be required to furnish original performance and payment bonds for $1,000,000 before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000. The contractor shall obtain an independent payment and performance bonds for 100% of the project value for any single project in excess of $400,000.

Bond forms are attached and shall be returned upon notice of contract award by the City. Bonds

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should be forwarded to the City of Denton within fourteen (14) calendar days from contract award. This contract is not fully executed until payment and performance bonds are received and accepted by the City. Upon approval, a purchase order will be issued.

(d) The failure of the Contractor to deliver the required statutory bonds and evidence of insurance within fourteen (14) calendar days after the Contract is awarded shall constitute a material breach of the Prime Contractor's bid proposal and the Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Prime Contractor's failure to execute and furnish the statutory bonds within fourteen (14) calendar days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.5(e). In the event the Owner should re-advertise for bids, the defaulting Prime Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this Paragraph.

ARTICLE 12 DEFECTIVE AND NONCONFORMING WORK

12.1 UNCOVERING OF WORK

(a) If a portion of the Work is covered contrary to the Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, the Work must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer's observation and be replaced at the Prime Contractor's expense without change in the Contract Time.

(b) If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to it being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Prime Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If any Work is not in accordance with the Contract Documents, the Prime Contractor shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

(a) The Prime Contractor shall promptly correct Work rejected by the Architect/Engineer as failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Prime Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby.

(b) If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Prime Contractor shall correct it promptly after receipt of

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written notice from the Architect/Engineer or the Owner to do so unless the Owner has previously given the Prime Contractor a written acceptance or waiver of the defect or nonconformity. The Prime Contractor's obligation to correct defective or nonconforming Work remains in effect for:

(1) one year after the date of Substantial Completion of the Work or designated portion of the Work;

(2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or

(3) the stipulated duration of any applicable special warranty required by the Contract Documents.

(c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.

(d) The obligations of the Prime Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Prime Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Clauses (b)(1) and (b)(2) does not limit the ability of the Owner to require the Prime Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect/Engineer at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one year period also does not relieve the Prime Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

(e) The Prime Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Prime Contractor nor accepted by the Owner.

(f) If the Prime Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.4. If the Prime Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Prime Contractor's expense. If the Prime Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Prime Contractor, including compensation for the Architect/Engineer's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover

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costs which the Prime Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Prime Contractor then or thereafter are not sufficient to cover the deficiency, the Prime Contractor shall pay the difference to the Owner.

(g) The Prime Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Prime Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

(h) Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Prime Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2(b) relates only to the specific obligation of the Prime Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Prime Contractor's liability with respect to the Prime Contractor's obligations other than specifically to correct the Work.

(i) Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13 - COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 FINAL COMPLETION OF CONTRACT

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Architect/Engineer, and final acceptance and final payment is made by the Owner.

13.2 WARRANTY FULFILLMENT

Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Architect/Engineer will make a detailed inspection of the Work and will advise the Prime Contractor and the Prime Contractor's Surety of the items that require correction. The Architect/Engineer will make a subsequent inspection and if the corrections have been properly performed, the Architect/Engineer will issue a letter of release on the

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maintenance stipulations to the Prime Contractor and the Surety. If for any reason the Prime Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

(a) Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Prime Contractor, including but not limited to the following causes:

(1) Failure or refusal of the Prime Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

(2) A reasonable belief that the progress of the Work being made by the Prime Contractor is insufficient to complete the Work within the specified time.

(3) Failure or refusal of the Prime Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

(4) A reasonable belief that the Prime Contractor has abandoned the Work.

(5) A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

(6) Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect/Engineer or the Owner as provided for in the Contract Documents.

(7) Failure or refusal of the Prime Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect/Engineer.

(8) A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.

(9) Repeated and flagrant violation of safe working procedures.

(10) The filing by the Prime Contractor of litigation against the Owner prior to completion of the Work.

(b) When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3(e), the Prime Contractor shall, as of the date specified by the Owner,

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discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Prime Contractor and the surety or its authorized agents, assume the obligations of the Prime Contractor for the Work or that portion of the Work which the Owner has ordered the Prime Contractor to discontinue and may:

(1) perform the Work with forces employed by the surety;

(2) with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

(3) with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming Work, and compensate the Owner for any other loss sustained as a result of Prime Contractor's default.

In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the Prime Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Architect/Engineer and attorneys fees, as a result of such termination.

(c) The balance of the Contract Sum remaining at the time of the Prime Contractor’s default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Subparagraph 13.3(b), exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Prime Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Prime Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Prime Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Prime Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Prime Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of

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the Architect/Engineer and attorney's fees), and damages incurred as a result of the termination.

(d) The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3(c), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Prime Contractor, then the Owner may pay to the Prime Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Prime Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Prime Contractor, then the Prime Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the Prime Contractor shall continue the remainder of the Work in conformity with the terms of the Contract, and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

(e) The unconditional right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of termination for convenience to the Prime Contractor. Upon the Prime Contractor's receipt of such written notice, the Prime Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Prime Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Prime Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Prime Contractor for lost or anticipated profits.

13.4 TEMPORARY SUSPENSION OF THE WORK

(a) The Work or any portion of the Work may be temporarily suspended by the Owner immediately upon written notice to the Prime Contractor for any reason, including but not limited to:
(1) the causes described in Clauses 13.1(a)(1) through (a)(10) above;

(2) where other provisions in the Contract Documents require or permit temporary suspension of the Work;

(3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or

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(4) other unforeseen conditions or circumstances.

(b) The Prime Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Prime Contractor arising from a temporary suspension due to a cause described in Clause (a)(1) above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses (a)(2) through (a)(4), where the Prime Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Prime Contractor under Subparagraph 4.3 of these General Conditions:

(1) an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Architect/Engineer and the Owner;

(2) an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and

(3) if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

(a) This Contract shall be in all things governed by the laws of the State of Texas without regard to conflict of laws principles.

(b) The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Prime Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Prime Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without written consent of the Owner. If the Prime Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not

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assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Prime Contractor, except where assignment is compelled or allowed by court order, the terms of the Contract Documents, or other operation of law.

14.3 WRITTEN NOTICE

Except as otherwise provided in Article 16, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid to the Project Manager or Superintendent of either party, or to an officer, partner, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

(a) The duties and obligations imposed on the Prime Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.

(b) No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Prime Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

14.5 INTEREST

The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Paragraph 9.6(a) of these General Conditions.

14.6 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

No officer or employee of the Owner shall have a financial interest, direct or indirect, in any Contract with the Owner, or be financially interested, directly or indirectly, in the sale to the Owner of any land, materials, supplies or services, except on behalf of the Owner as an officer or employee as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.7 VENUE

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This Contract is deemed to be performed in Denton County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Denton County, Texas.

14.8 INDEPENDENT CONTRACTOR

In performing the Work under this Contract, the relationship between the Owner and the Prime Contractor is that of an independent contractor. The Prime Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Prime Contractor an agent, servant, or employee of the Owner, or making the Prime Contractor or any of the Prime Contractor's employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

14.9 NONDISCRIMINATION

As a condition of this Contract, the Prime Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Prime Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, sexual orientation, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Prime Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Prime Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.10 GIFTS TO PUBLIC SERVANTS

(a) The Owner may terminate this Contract immediately if the Prime Contractor has offered, conferred, or agreed to confer any benefit on a City of Denton employee or official that the City of Denton employee or official is prohibited by law from accepting.

(b) For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

(c) Notwithstanding any other legal remedies, the Owner may require the Prime Contractor to remove any employee of the Prime Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Prime Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.

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ARTICLE 15 RIGHT TO AUDIT CONTRACTOR'S RECORDS

By execution of the Building Construction Services Agreement, the Prime Contractor grants the Owner the right to audit, at the Owner's election, all of the Prime Contractor's records and billings relating to the performance of the Work under the Contract Documents. The Prime Contractor agrees to retain its Project records for a minimum of five (5) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Prime Contractor under this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this section.

ARTICLE 16 NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of the Denton City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Prime Contractor shall comply with the requirements of this ordinance as a precondition of any litigation relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

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EXHIBIT D
PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Contractor will be required to furnish original performance and payment bonds for $1,000,000 before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The contractor shall obtain an independent payment and performance bonds for 100% of the project value for any single project in excess of $400,000. The City, at its option, may waive the payment and performance bond requirements for projects of less than $50,000.

Bond forms shall be returned upon notice of contract award by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from contract award. This contract is not fully executed until payment and performance bonds are received and accepted by the City. Upon approval, a purchase order will be issued.

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EXHIBIT E
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.

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- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

[X] A. **General Liability Insurance:**

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

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

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.

- Coverage B shall include personal injury.

- Coverage C, medical payments, is not required.

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

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- 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 **$1,000,000** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

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

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

[X] **Workers' Compensation Insurance**

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

[X] **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 **$1,000,000.00** combined bodily injury and property damage per occurrence with a **$2,000,000.00** aggregate.

[ ] **Fire Damage Legal Liability Insurance**

Coverage is required if Broad form General Liability is not provided or is unavailable to

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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.

[X] **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.

[X] **Environmental Liability Insurance**

Environmental liability insurance for $2,000,000 to cover all hazards contemplated by this contract.

[ ] **Riggers Insurance**

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

[ ] **Commercial Crime**

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

[ ] **Additional Insurance**

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

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ATTACHMENT 1

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

A. Definitions:

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

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

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

B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any overage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
   1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

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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

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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.

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Exhibit F
Certificate of Interested Parties Electronic Filing

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

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

The contractor shall:

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

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

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EXHIBIT G

FACILITIES MANAGEMENT
869 S. Woodrow Lane
Denton, Texas 76205

Date Issued:

REQUEST FOR COST			
Project Name:		**Building:**	
Physical Address:			
Legal Description:			

Insert Picture of Building	*Insert Picture*

EXISTING CONDITIONS:	PROPOSED CONDITIONS:

SCOPE OF WORK:			
Project Manager:		**Email:**	

ATTACHMENTS		
☐ **Floor Plans**	☐ **Photos**	☐ **Specifications**

The undersigned hereby proposes to complete the scope of services detailed herein by the specified time frame. By submitting this Request for Costs, they acknowledge they have received all attachments, have reviewed all attachments, and have performed a site visit. All work will be performed in accordance with the Contract between the Vendor and the City of Denton.

Company Name:		**Contact Name:**	
Contingencies:		**Email:**	

COST/SCHEDULE ESTIMATE			
Days For Mobilization:		**Name:**	
Days For Construction:		**Job Title:**	
Labor Costs:	$		
Material Costs:	$	**Signature:**	
Equipment/Rental Costs:	$		
TOTAL COST:	$		
REQUEST FOR COST DUE:		**DATE SIGNED:**	

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EXHIBIT H

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. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person 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 person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

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

1 **Name of person who has a business relationship with local governmental entity.**

SOLID FOUNDATIONS CONCRETE, LLC

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

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

3 **Name of local government officer with whom filer has an employment or business relationship.**

NA

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer 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 filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire 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 10 percent or more?

☐ Yes ☐ No

D. Describe each affiliation or business relationship.

4 ☒ **I have no Conflict of Interest to disclose.**

5 DocuSigned by:

Mark Ashley

5650154FD114453...

Signature of person doing business with the governmental entity

3/31/2026

Date

File # 8983

Certificate Of Completion

Envelope Id: 9E0A0F9A-FAD3-445D-A424-0A331F9E752E
Status: Sent
Subject: Please DocuSign: City Council Contract 8983 Parking Lot Maintenance, Repairs, Construction & DEMO
Source Envelope:
Document Pages: 88
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Crystal Westbrook
901B Texas Street
Denton, TX 76209
crystal.westbrook@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
3/24/2026 11:55:10 AM
Holder: Crystal Westbrook
crystal.westbrook@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 3/24/2026 12:00:09 PM Viewed: 3/24/2026 12:00:18 PM Signed: 3/24/2026 12:01:08 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/24/2026 12:01:11 PM Viewed: 3/24/2026 1:24:17 PM Signed: 3/24/2026 1:28:25 PM
Leah Bush leah.bush@cityofdenton.com Assistant City Attorney Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Signed by: Leah Bush 3A6254145BDA469... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/24/2026 1:28:27 PM Viewed: 3/25/2026 10:07:25 AM Signed: 3/25/2026 10:14:44 AM
Mark Ashley mashley@sfconcretellc.com President Solid Foundations Concrete Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/31/2026 4:13:16 PM ID: d6e8bd04-2e77-4602-9692-ab2d27e04f4b	DocuSigned by: Mark Ashley 5650154FD114453... Signature Adoption: Pre-selected Style Using IP Address: 104.58.216.170	Sent: 3/25/2026 10:14:46 AM Resent: 3/31/2026 3:56:38 PM Viewed: 3/31/2026 4:13:16 PM Signed: 3/31/2026 4:19:26 PM

Signer Events	Signature	Timestamp
Tom Gramer tom.gramer@cityofdenton.com Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	DocuSigned by: Tom Gramer 7B58DA8FCE5F49C... Signature Adoption: Pre-selected Style Using IP Address: 2600:100c:b285:2abf:c567:1cf0:38a9:8351 Signed using mobile	Sent: 3/31/2026 4:19:28 PM Viewed: 3/31/2026 4:20:38 PM Signed: 3/31/2026 4:20:57 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		Sent: 3/31/2026 4:21:00 PM
Cassey Ogden Cassey.Ogden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 3/24/2026 12:01:12 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 3/31/2026 4:20:59 PM Viewed: 4/1/2026 10:48:59 AM

Carbon Copy Events	Status	Timestamp
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		
Danny Defee daniel.defee@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/24/2026 12:00:09 PM
Envelope Updated	Security Checked	3/31/2026 3:56:37 PM
Envelope Updated	Security Checked	3/31/2026 3:56:37 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
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To withdraw your consent with City of Denton
To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

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

Required hardware and software

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

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

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.

2026 PUBLIC UTILITIES BOARD MEETING SCHEDULE

Monday	January 12	Regular Meeting – Council Work Session Room
Monday	January 26	Regular Meeting – Council Work Session Room
Monday	February 9	Regular Meeting – Council Work Session Room
Monday	February 23	Regular Meeting – Council Work Session Room
Monday	March 9	Regular Meeting – Council Work Session Room
Monday	March 23	Regular Meeting – Council Work Session Room
Monday	April 13	Regular Meeting – Council Work Session Room
Monday	April 27	Regular Meeting – Council Work Session Room
Monday	May 4*	Regular Meeting – Council Work Session Room
Monday	May 18*	Regular Meeting – Council Work Session Room
Monday	June 8	Regular Meeting – Council Work Session Room
Monday	June 22	Regular Meeting – Council Work Session Room
Monday	July 13	Regular Meeting – Council Work Session Room
Monday	July 27	Regular Meeting – Council Work Session Room
Monday	August 10	Regular Meeting – Council Work Session Room
Monday	August 24	Regular Meeting – Council Work Session Room
Monday	September 14	Regular Meeting – Council Work Session Room
Monday	September 28	Regular Meeting – Council Work Session Room
Monday	October 5*	Regular Meeting – Council Work Session Room
Monday	October 19*	Regular Meeting – Council Work Session Room
Monday	November 9*	Regular Meeting – Council Work Session Room
Monday	December 7*	Regular Meeting – Council Work Session Room

*The dates denoted with an asterisk deviate from the 2nd and 4th Monday.

2026 PUBLIC UTILITIES BOARD MEETING SCHEDULE

Monday	January 12	Regular Meeting – Council Work Session Room
Monday	January 26	Regular Meeting – Council Work Session Room
Monday	February 9	Regular Meeting – Council Work Session Room
Monday	February 23	Regular Meeting – Council Work Session Room
Monday	March 9	Regular Meeting – Council Work Session Room
Monday	March 23	Regular Meeting – Council Work Session Room
Monday	April 13	Regular Meeting – Council Work Session Room
Monday	April 27	Regular Meeting – Council Work Session Room
Monday	May 4*	Regular Meeting – Council Work Session Room
Monday	May 18*	Regular Meeting – Council Work Session Room
Monday	June 8	Regular Meeting – Council Work Session Room
Monday	June 22	Regular Meeting – Council Work Session Room
Monday	July 13	Regular Meeting – Council Work Session Room
Monday	July 27	Regular Meeting – Council Work Session Room
Monday	August 10	Regular Meeting – Council Work Session Room
Monday	August 24	Regular Meeting – Council Work Session Room
Monday	September 14	Regular Meeting – Council Work Session Room
Monday	September 28	Regular Meeting – Council Work Session Room
Monday	October 12	Regular Meeting – Council Work Session Room
Monday	October 26	Regular Meeting – Council Work Session Room
Monday	November 16*	Regular Meeting – Council Work Session Room
Monday	December 14*	Regular Meeting – Council Work Session Room

*The dates denoted with an asterisk deviate from the 2nd and 4th Monday.

Denton Municipal Electric
1659 Spencer Rd., Denton, TX 76205 • (940) 349-7591

MEMORANDUM

DATE: May 18, 2026
TO: Members of the Public Utilities Board
FROM: Melissa Cuevas, DME Executive Manager of Energy Services
THROUGH: Tony Puente, DME General Manager
SUBJECT: Oncor and REP Commercial Rates Comparison

Overview

At the request of PUB Chair Devin Taylor, DME staff has prepared a comparison of commercial rates between Oncor Electric Delivery Company (Oncor) and Denton Municipal Electric (DME).

This memo outlines the rate classifications used, the methodology applied in comparing delivery charges, and the resulting full-bill comparisons using Retail Electric Provider (REP) energy charges.

Oncor Commercial Rates

Two Oncor commercial rate classes were used in the comparison:

- Secondary Service ≤ 10 kW
- Secondary Service > 10 kW

To align these with DME's commercial rate structure, DME staff classified the Oncor commercial rate classes as follows:

- Secondary Service ≤ 10 kW → General Service Small (GSS) ≤ 21 kW
- Secondary Service > 10 kW → General Service Medium (GSM), 21 kW – 240 kW and General Service Large (GSL), > 240 kW

Methodology for Delivery Charges Comparison

Because Oncor only assesses transmission and distribution delivery charges, and energy usage charges are determined separately by the customer's Retail Electric Provider (REP), DME isolated the delivery-related components that are more comparable to Oncor's rates:

- Demand Charges
- Transmission Cost Recovery Factor (TCRF)
- Other applicable delivery fees

The tables below show the breakdown of Oncor and DME delivery and demand related charges:

Oncor Rates

Charge	GS Small	GS Medium	GS Large
Distribution System Charge	$0.021251	$5.480386	$5.480386
Transmission Cost Recovery Factor	$0.018157	$5.12104	$5.12104
Distribution Cost Recovery Factor	$0.006411	$1.036859	$1.036859
Energy Efficiency Cost Recovery Factor	$0.000055	$0.000546	$0.000546
Total - $/kWh	**$0.045874**	**$0.000546**	**$0.000546**
Total - $/kW	**N/A**	**$11.64**	**$11.64**

DME Rates

Charge	GS Small	GS Medium	GS Large
Demand Charge	N/A	$4.85	$10.96
Transmission Cost Recovery Factor	$0.0156	$4.45	$6.16
Total - $/kWh	**$0.0156**	**N/A**	**N/A**
Total - $/kW	**N/A**	**$9.30**	**$17.12**

Full-Bill Comparison Including Energy Usage Charges
To provide a complete picture of the total customer bill, DME obtained commercial rate offerings from Retail Electric Providers within the Oncor service territory. For each REP, staff applied the energy usage charge listed on the Electricity Facts Label (EFL) to the same kWh/kW usage and demand profiles used in the rate comparison provided to the PUB on April 13, 2026.

The table below shows the comparison of REP + Oncor full bills versus DME's full bills:

REP/MOU	Class	REP Charges	Oncor Charges	Bill Total
Reliant Energy	GS Small	$117.81	$57.38	$175.18
Champion Energy	GS Medium	$1,179.66	$598.56	$1,778.22
Champion Energy	GS Large	$27,392.48	$10,309.78	$37,702.26
Denton Municipal Electric	GS Small			$180.13
Denton Municipal Electric	GS Medium			$1,753.58
Denton Municipal Electric	GS Large			$37,734.46

Conclusion
The above full-bill comparison reflects that DME commercial rates are competitive to those offered by investor-owned (private) electric utilities, based on staff's analysis.

Prepared By:
John Lockwood, Business Analyst

Future Public Utilities Board Agenda Items

Note: This is a working draft of pending PUB items and is subject to change without notice.

Meeting Date	Item	Dept
May 18, 2026		
June 8, 2026		
June 22, 2026	Water/Wastewater Quarterly Report Budget Update	Water Budget
July 13, 2026	Budget Workshop	Budget
July 27, 2026	Rate and Budget Recommendation	Budget
August 10, 2026		
August 24, 2026		
September 14, 2026		
September 28, 2026	Water/Wastewater Quarterly Report	Water
October 12, 2026	2027 PUB Schedule	DME
October 26, 2026		
November 16, 2026		
December 14, 2026	Water/Wastewater Quarterly Report	Water

Codes: Work Session WS, Consent Agenda CA, Individual Consideration IC

PUBLIC UTILITIES BOARD - NEW BUSINESS ACTION ITEMS

	DATE REQUESTED	REQUESTOR	ITEM	DEPT	STATUS
1.	2/9/26	Riback	Major Water and Wastewater infrastructure projects such as Ray Roberts Expansion, Pecan Creek Expansion and any others the department may deem responsive to this request.	Water/Waste water – Stephen Gay	Quarterly Reports 4/27/26, 6/22/26, 9/28/26, 12/14/26
2.	4/13/26	Taylor	Additional comparison update of Electric Commercial Rates requested – TND	Electric	5/18/26