City of Denton

Meeting Agenda

Public Utilities Board

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

Monday, April 13, 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, April 13, 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 – G). 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. PUB26-040 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 J & B Five Point Construction, LLC, amending the contract approved by City Council on August 15, 2023, in the not-to-exceed amount of $1,184,000.00; said first amendment to continue the construction of the DEC Bulk Storage Tank Addition for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8267 - providing for an additional first amendment expenditure amount not-to-exceed $296,000.00, with the total contract amount not-to-exceed $1,480,000.00).

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

B. PUB26-042 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 Trihedral Inc., for an HMI Software System for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8741 - awarded to Trihedral Inc., for five (5) years, with the option for five (5) additional one (1) year extensions, in the total ten (10) year not-to-exceed amount of $886,000.00).

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

C. PUB26-043 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive bids under IFB for the supply of reinforced concrete pipe, polypropylene pipe, precast box culverts, and related components for the Drainage Department; and providing an effective date (IFB 8884).

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

D. PUB26-044 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 Black & Veatch Corporation and C3 AcquisitionCO, LLC dba POWERx Inc., for relay commissioning services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8901 - awarded to Black & Veatch Corporation and C3 AcquisitionCO, LLC dba POWERx Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $4,875,000.00).

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

E. PUB26-046 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 Storm Services Texas, LLC, to provide disaster recovery

logistical services for Denton Municipal Electric as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8976 - Professional Services Agreement for logistical services awarded to Storm Services Texas, 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 $4,000,000.00).

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

F. PUB26-047 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 T&W Tire, L.L.C., for the purchase and repairs of wheels and tires for heavy-duty vehicles and equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8988 - awarded to T&W Tire, L.L.C., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $2,211,300.00).

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

G. PUB26-048 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, approving a power purchase agreement between the City and Peterbilt Motors Company, a division of PACCAR Inc; and providing for an Effective Date.

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

3. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB26-050 Consider approval of the March 23, 2026 minutes.

Attachments: 3.23.26 PUB Minutes

B. PUB26-041 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 Badger Meter, Inc., for the Advanced Metering Infrastructure (AMI) Implementation Program for the Water Metering Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8623 - awarded to Badger Meter, Inc., for five (5) years, with the option for five (5) additional one (1) year extensions, in the total ten (10) year not-to-exceed amount of $26,000,000.00).

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

C. PUB26-045 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 Xylem Vue Inc. through the Sourcewell Cooperative Purchasing Network Contract No. 091724, for the Water Utility Monitoring and Analytics Project for the Water Utilities Department; authorizing the expenditure of funds therefor; and providing an effective date (File 8931 - awarded to Xylem Vue Inc., in the five (5) year not-to-exceed amount of $6,496,090.00).

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

D. PUB26-051 Management Reports

1. Tree Line USA Recognition
2. Electric Rates Comparison
3. Future Agenda Items
4. New Business Action Items

Attachments: 1. Tree Line USA Recognition
2. Electric Rates Comparison
3. Future Agenda Items
4. 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.

Following the completion of the Regular Meeting, the Public Utilities Board will convene in a Work Session at which the following items will be considered:

WORK SESSION

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

A. PUB26-052 Receive a report, hold a discussion, and give staff direction on the City's financial policies.

Attachments: Exhibit 1 - Agenda Information Sheet

Exhibit 2 - Presentation

CLOSED MEETING

A. PUB26-049 Deliberations Regarding Certain Public Power Utilities Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code Section 551.071. Receive information from staff containing public power information related to a Power Purchase Agreement between the City of Denton, as the seller of power and electric energy services, and Peterbilt Motors Company, a division of PACCAR Inc.; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding issues associated with the above matter where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton under Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative or potential litigation.

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

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 April 7, 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: April 13, 2026

SUBJECT

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 J & B Five Point Construction, LLC, amending the contract approved by City Council on August 15, 2023, in the not-to-exceed amount of $1,184,000.00; said first amendment to continue the construction of the DEC Bulk Storage Tank Addition for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8267 – providing for an additional first amendment expenditure amount not-to-exceed $296,000.00, with the total contract amount not-to-exceed $1,480,000.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

In late 2021, Denton Municipal Electric (DME) initiated a comprehensive study of options that could be implemented to reduce or eliminate equipment outage risks at the Denton Energy Center (DEC) associated with winter weather. The Public Utility Commission of Texas (PUCT) also established new weatherization requirements applicable to all generating units and transmission equipment across Texas in response to Winter Storm Uri.

The contract was to perform the recommended freeze protection modifications, which included new piping, electrical work, and installation of engine coolant mixture tanks. These modifications will allow for separate antifreeze mixtures for winter and summer seasons, which will provide added antifreeze measures during extreme cold events and will also prevent the derating of equipment during the summer months.

DME is requesting additional funds to cover costs associated with engineering, permitting, administrative tasks, and pre-construction activities required for the procurement of new and modified parts and materials. The request also includes expenses for civil work and construction equipment, such as concrete work and equipment rentals necessary for moving and setting tanks. Additionally, electrical materials and labor are needed to install wiring and components connecting the tanks to the control room.

The project is nearing completion with electrical terminations, distributed control system assignments, and screen building and operation testing remaining. This will require Wartsila, who is the original equipment manufacturer onsite, to assist the contractor in the completion of tasks. The Denton Energy Center plans to

initiate a sole source contract with Wartsila for the DCS system, and screen builds as they are the only approved and authorized service representative for their systems. Following procurement guidelines, we will enter into a separate contract for electrical and wire terminations as well as work side by side with Wartsila to complete the project and ensure all equipment is operating as designed.

The project with J & B Five Point Construction LLC is currently in progress, but has reached its established not-to-exceed limit. This increase will allow us to complete J & B's portion of the contract.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On August 15, 2023, City Council approved a contract with J & B Five Point Construction LLC in the not-to-exceed amount of $1,184,000 (Ordinance 23-1500).

RECOMMENDATION

Award Amendment No. 1 with J & B Five Point Construction, LLC, to continue the construction of the DEC Bulk Storage Tank Addition for Denton Municipal Electric, in a not-to-exceed amount of $296,000, for a total amended contract amount of $1,480,000.

PRINCIPAL PLACE OF BUSINESS

J & B Five Point Construction, LLC
Justin, TX

ESTIMATED SCHEDULE OF PROJECT

This project is ongoing with an estimated completion date of Fall 2026.

FISCAL INFORMATION

These services will be funded from account number 699999501. Purchase Order #204175 will be revised to include the first amendment amount of $296,000. The total amended amount of this contract is $1,480,000.

EXHIBITS

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

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

For information concerning this acquisition, contact: Arthur Pando, 940-349-8653.

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

ORDINANCE NO. 23-1500

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH J & B FIVE POINT CONSTRUCTION, LLC, FOR WINTERIZATION CONSTRUCTION FOR THE DENTON ENERGY CENTER; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8267 – AWARDED TO J & B FIVE POINT CONSTRUCTION, LLC, IN THE NOT-TO-EXCEED AMOUNT OF $1,184,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for winterization construction for the Denton Energy Center; 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 [Engineering functions]; 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
8267	J & B Five Point Construction, LLC	$1,184,000.00

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

SECTION 3. That should the City and person submitting approved and accepted items wish

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

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

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

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

The motion to approve this ordinance was made by Brian Beck and seconded by Paul Meltzer. 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: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o, ou=City of Denton, email=marcella.lunn@cityofdenton.com, c=US
Date: 2023.07.26 16:30:57 -05'00'

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Docusign City Council Transmittal Coversheet

RFP	8267
File Name	DEC Bulk Storage Tank Addition
Purchasing Contact	Lori Hewell
City Council Target Date	AUGUST 15, 2023
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	23-1500

DS
LH

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CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND J & B FIVE POINT CONSTRUCTION, LLC
(RFP 8267)

THIS CONTRACT is made and entered into this date _____, by and between J & B Five Point Construction, LLC a Texas Limited Liability Corporation, whose address is 11325 FM 156, Justin, TX 76247, 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 RFP 8267 DEC Bulk Storage Tank Addition, 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 # 8267 DEC Bulk Storage Tank Addition **(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) Contractor's Proposal **(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 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.

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Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization***. Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

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

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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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

DocuSigned by:
By: Johnathan Polley
AUTHORIZED SIGNATURE

Date: 7/20/2023

Printed Name: Johnathan Polley

Title: Managing Memeber

Manager

PHONE NUMBER

940-482-4100

EMAIL ADDRESS

john@jandbfivepoint.com

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

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

DocuSigned by:
Jason W Brown
SIGNATURE

Jason W Brown
PRINTED NAME

Denton Energy Center Plant Manager
TITLE

Denton Energy Center
DEPARTMENT

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

DocuSigned by:
By: Sara Hensley
SARA HENSLEY, CITY MANAGER

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

DocuSigned by:
By: Jesus Salazar
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APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
By: Marcella Lunn
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EXHIBIT A
SPECIAL TERMS AND CONDITIONS

Total Contract Amount

The Contract total for services shall not exceed **$1,184,000**. Pricing shall be per Exhibit F attached.

Contract Term

The Contract shall commence upon the issuance of a Notice to Proceed. Contractor shall begin work on site within fourteen (14) calendar days of receipt of Notice to Proceed. Project shall be complete within two hundred (200) calendar days after work commences on site. Delays are further discussed in the Standard Terms and Conditions Exhibit C, Section 8.3.

Liquidated Damages:

The time of the completion of construction of the project is of the essence of the contract. Should the Contractor neglect, refuse or fail to complete the construction within the time agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the City shall have the right to deduct from and retain out of such money which may be then due or which may become due and payable to the Contractor the sum of 500 HUNDRED DOLLARS ($500.00) per day for each and every day, including weekends, that such construction is delayed on its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the City to the Contractor is insufficient to pay in full any such liquidated damages, the Contractor shall pay to the City the amount necessary to effect such payment in full: Provided, however, that the City shall promptly notify the Contractor in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Retainage:

The City is required to withhold five percent (5%) 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.

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EXHIBIT C

CITY OF DENTON STANDARD PURCHASE TERMS AND CONDITIONS FOR FACILITY 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, anthophylite 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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1.3 OWNERSHIP 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 construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

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(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 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

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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 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

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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 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

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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

(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

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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.

(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.

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(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);

(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

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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.

(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

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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)

(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

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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 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

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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 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

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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 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

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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

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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 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.

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(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 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.

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(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.

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:

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(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
(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;

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(4) termination of the Contract by the Owner;

(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

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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..

(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

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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 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.

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(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 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

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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. 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.

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(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 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.

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(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 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.

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(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 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

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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 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

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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 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**

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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 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

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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.

(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,

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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.

(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

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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.

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;

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(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.

(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

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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 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,

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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

(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.

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(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

(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.

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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.

(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

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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 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:

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(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;
(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

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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.

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

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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 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 3.19. 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

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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 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

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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 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;

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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.

(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.

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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 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

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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 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

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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, anthophylite 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 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

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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

(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 an amount equal to 100% of the total Contract Sum, 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 an amount equal to 100% of the total Contract Sum, 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) If the Contract Sum, including Owner-accepted alternates and allowances, if any, is greater than $50,000, Payment bonds in 100% of the Contract Sum are mandatory and shall be required to be provided by the Contractor. If the Contract Sum is greater than $100,000, a Payment Bond and Performance Bond in 100% of the Contract amount is mandatory.

(c) 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

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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.

(d)

Contractor will be required to furnish original performance and payment bonds for 100 percent of the total submission price 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.

Bond forms are attached and 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.

(e) 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

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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 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

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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 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

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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 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.

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(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, 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

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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 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.

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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

(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

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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 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

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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

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

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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.

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

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Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

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

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

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EXHIBIT D
PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Contractor will be required to furnish original performance and payment bonds for one hundred (100%) percent of the total submission price 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.

Bond forms are attached and 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:

A. COMMERCIAL GENERAL LIABILITY INSURANCE Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum DEC Bulk Storage Tank Addition-8267 combined bodily injury (including death) and property damage limits of $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for Employers Liability are: Bodily Injury by Accident: $1,000,000.00 Each Accident Bodily Injury by Disease: $1,000,000.00 Each Employee Bodily Injury by Disease: $1,000,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program,

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evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. BUSINESS AUTOMOBILE LIABILITY INSURANCE
Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of $1,000,000.00 per occurrence.

NOTE:

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos

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.

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C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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4. obtain from each other person with whom it contracts, and provide to the contractor:

   a. a certificate of coverage, prior to the other person beginning work on the project; and

   b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

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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/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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SECTION 00 41 01
PROPOSAL FORM - CSP

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

FOR: *DEC Bulk Storage Tank Addition, General Contractor*

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 any thing of value likely to influence the action of a public official in the proposal process.

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

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

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

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

3 Time of Completion

3.1 The Work will be Substantially Complete as defined in the Supplementary Conditions within *[160]* 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 *[200]* 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. Conflict of Interest Affidavit
b. Section 00 41 01 – This Proposal Form
c. **Unit Price Proposal Form – CSP – Electronic Copy (either included in the Proposal, or submitted via Ion Wave)**
d. Required Offeror's Bond
e. Section 00 43 38 – Proposed Subcontractors Form – CSP
f. Section 00 43 39 – Vendor Compliance to State Law Non-Resident Offeror – CSP
g. Safety Record Questionnaire
h. Section 00 45 27 – Contractor's Compliance with Workers Compensation Law
i. Section 00 45 44 – Corporate Resolution of Authorized Signatories

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: $ 1,184,000.00

6 Proposal Submittal

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

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6.2 This Proposal is submitted on June 21st, 2023 by the entity named below.

Respectfully submitted,

By: Johnathan Polley
(Signature)

Johnathan Polley
(Printed Name)

Title: Owner/Business Development

Company: J&B Five Point Construction, LLC.

Address: PO Box 38
Krum / TX / 76249

State of Incorporation: Texas

Email: accounts@jandbfivepoint.com

Phone: 940-482-4100

END OF SECTION

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Exhibit G

RFP 8267- Pricing Sheet for DEC Winterization GC

The respondent shall complete the following section, which directly corresponds to the specifications. The contractor shall not make changes to this format.

Product Proposal Pricing (PRICING SHALL INCLUDE ALL COSTS TO MANUFACTURE AND DELIVER GOODS AS SPECIFIED F.O.B DESTINATION):

Item #	EST. QTY	UOM	Product Description	Unit Price	Extended Price
SECTION A- Basic Building					
1	TBD	EA	Engineering, Permitting, Administrative and other Pre-Construction	$ 78,500.00	$ 78,500.00
2	TBD	EA	Civil Work and Construction Equipment	$ 500,000.00	$ 500,000.00
3	TBD	EA	Major Equipment	$ 500,000.00	$ 500,000.00
4	TBD	EA	Miscellaneous	$ 105,500.00	$ 105,500.00
				Total Cost of Products	$ 1,184,000.00

Item #	UOM		
5		Company Name	J&B Five Point Construction, LLC.
6		Location of Company? City and State	Justin, TX
7	Weeks	Standard approval time after receipt of construction specs?	2
8		Are there items that may cause delay in construction? Explain	N/A
9	Years	General Contrator (GC) experience: in years	10
10	Years	Years of experience providing GC services to utilities in the United States of America:	10
11	Projects	a. Number of similar GC projects completed in the last 24 months:	37
12	%	b. Percentage of projects that did not complete on time:	0
13	Days	c. Average delay for projects that did not complete on time:	0
14		Are there any exceptions to the specification? (If "Yes," attach a sheet with detailed explanations.)	N/A
15		Pricing Adjustment (Explain)	N/A

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. 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.**

J & B Five Point Construction, LLC

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

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

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

_____
Name of Officer

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

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

[ ] Yes [X] No

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

[ ] Yes [X] No

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

[ ] Yes [X] No

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

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

5 DocuSigned by:
Johnathan Polley
584E8D6F2252446...
Signature of vendor doing business with the governmental entity

7/20/2023
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.

DocuSign

Certificate Of Completion

Envelope Id: 0C57478C843D47EA91E6799408B0259F
Status: Completed
Subject: Please DocuSign: City Council Contract 8267 DEC Bulk Storage Tank Addition
Source Envelope:
Document Pages: 83
Signatures: 6
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
7/17/2023 8:51:47 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)	Completed Using IP Address: 198.49.140.104	Sent: 7/17/2023 8:56:36 AM Viewed: 7/17/2023 8:56:46 AM Signed: 7/17/2023 8:57:55 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	DS LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/17/2023 8:57:58 AM Viewed: 7/17/2023 9:31:20 AM Signed: 7/17/2023 9:32:15 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Marcella Lunn marcella.lunn@cityofdenton.com Mack Reinwand City Attorney City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by: Marcella Lunn 4B070631B4AA438... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/17/2023 9:32:18 AM Viewed: 7/17/2023 1:52:05 PM Signed: 7/17/2023 2:11:27 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Johnathan Polley John@jandbfivepoint.com Managing Memeber Security Level: Email, Account Authentication (None)	DocuSigned by: Johnathan Polley 554E8D6F22B2448... Signature Adoption: Pre-selected Style Using IP Address: 132.147.144.24	Sent: 7/17/2023 2:11:31 PM Viewed: 7/20/2023 2:43:35 PM Signed: 7/20/2023 2:45:43 PM
Electronic Record and Signature Disclosure: Accepted: 7/20/2023 2:43:35 PM ID: cf9c9ab6-e794-458b-a55c-fc807374abdc		

Signer Events	Signature	Timestamp
Jason W Brown Jason.brown@cityofdenton.com Denton Energy Center Plant Manager Security Level: Email, Account Authentication (None)	DocuSigned by: Jason W Brown B79B50822204428...	Sent: 7/20/2023 2:45:49 PM Viewed: 7/20/2023 3:19:31 PM Signed: 7/20/2023 3:20:50 PM
	Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	
Electronic Record and Signature Disclosure: Accepted: 7/20/2023 3:19:31 PM ID: f19ea89e-5fb7-4008-90ef-c5e7ee6f023d		
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.104	Sent: 7/20/2023 3:20:56 PM Viewed: 8/16/2023 8:16:39 AM Signed: 8/16/2023 8:16:50 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...	Sent: 8/16/2023 8:16:55 AM Viewed: 8/16/2023 8:18:27 AM Signed: 8/16/2023 8:18:35 AM
	Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None)	DocuSigned by: Jesus Salazar 2437C77B897541D...	Sent: 8/16/2023 8:18:40 AM Viewed: 8/16/2023 8:59:47 AM Signed: 8/16/2023 9:00:55 AM
	Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	
Electronic Record and Signature Disclosure: Accepted: 8/16/2023 8:59:47 AM ID: 72b32add-00a6-4dc1-8d50-72eebf2f2ac5		

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: 7/17/2023 8:57:58 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 7/20/2023 3:20:56 PM Viewed: 7/24/2023 8:49:23 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 9:00:59 AM Viewed: 8/17/2023 3:06:03 PM
Jason Brown Jason.brown@cityofdenton.com Denton Energy Center Plant Manager Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 8/4/2023 12:16:24 PM ID: 5c73c5b1-3382-47da-aca5-d26a4bcf2c09	COPIED	Sent: 8/16/2023 9:01:00 AM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/17/2023 8:56:36 AM
Certified Delivered	Security Checked	8/16/2023 8:59:47 AM
Signing Complete	Security Checked	8/16/2023 9:00:55 AM
Completed	Security Checked	8/16/2023 9:01:00 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

RFP	8267
File Name	DEC Bulk Storage Tank Addition
Purchasing Contact	Lori Hewell
City Council Target Date	AUGUST 15, 2023
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	23-1500

DS
LH

DocuSign Envelope ID: 0C57478C-843D-47EA-91E6-799408B0259F

CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND J & B FIVE POINT CONSTRUCTION, LLC
(RFP 8267)

THIS CONTRACT is made and entered into this date _____, by and between J & B Five Point Construction, LLC a Texas Limited Liability Corporation, whose address is 11325 FM 156, Justin, TX 76247, 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 RFP 8267 DEC Bulk Storage Tank Addition, 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 # 8267 DEC Bulk Storage Tank Addition **(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) Contractor's Proposal **(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 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.

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

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations
Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization
Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization***. Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

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

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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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

DocuSigned by:
BY: Johnathan Polley
534E3D9B2E2E4E3...
AUTHORIZED SIGNATURE

Date: 7/20/2023

Printed Name: Johnathan Polley

Title: Managing Memeber

Manager

PHONE NUMBER

940-482-4100

EMAIL ADDRESS

john@jandbfivepoint.com

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

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

DocuSigned by:
Jason W Brown
B79B5083220442B...
SIGNATURE

Jason W Brown
PRINTED NAME

Denton Energy Center Plant Manager
TITLE

Denton Energy Center
DEPARTMENT

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

DocuSigned by:
BY: Sara Hensley
5A23ADB2462704B3...
SARA HENSLEY, CITY MANAGER

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

DocuSigned by:
BY: Jesus Salazar
2437C77B897541D...

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

DocuSign Envelope ID: 0C57478C-843D-47EA-91E6-799408B0259F

EXHIBIT A
SPECIAL TERMS AND CONDITIONS

Total Contract Amount

The Contract total for services shall not exceed **$1,184,000**. Pricing shall be per Exhibit F attached.

Contract Term

The Contract shall commence upon the issuance of a Notice to Proceed. Contractor shall begin work on site within fourteen (14) calendar days of receipt of Notice to Proceed. Project shall be complete within two hundred (200) calendar days after work commences on site. Delays are further discussed in the Standard Terms and Conditions Exhibit C, Section 8.3.

Liquidated Damages:

The time of the completion of construction of the project is of the essence of the contract. Should the Contractor neglect, refuse or fail to complete the construction within the time agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the City shall have the right to deduct from and retain out of such money which may be then due or which may become due and payable to the Contractor the sum of 500 HUNDRED DOLLARS ($500.00) per day for each and every day, including weekends, that such construction is delayed on its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the City to the Contractor is insufficient to pay in full any such liquidated damages, the Contractor shall pay to the City the amount necessary to effect such payment in full: Provided, however, that the City shall promptly notify the Contractor in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Retainage:

The City is required to withhold five percent (5%) 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.

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EXHIBIT C

CITY OF DENTON STANDARD PURCHASE TERMS AND CONDITIONS FOR FACILITY 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, anthophylite 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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1.3 OWNERSHIP 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 construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

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(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 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

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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 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

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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 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

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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

(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

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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.

(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.

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(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);

(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

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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.

(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

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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)

(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

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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 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

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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 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

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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 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

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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

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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 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.

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(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 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.

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(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.

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:

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(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
(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;

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(4) termination of the Contract by the Owner;

(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

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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..

(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

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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 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.

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(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 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

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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. 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.

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(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 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.

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(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 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.

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(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 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

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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 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

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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 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**

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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 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

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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.

(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,

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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.

(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

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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.

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;

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(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.

(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

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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 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,

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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

(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.

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(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

(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.

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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.

(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

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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 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:

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(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;
(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

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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.

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

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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 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

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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 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

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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 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;

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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.

(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.

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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 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

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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 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

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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, anthophylite 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 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

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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

(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 an amount equal to 100% of the total Contract Sum, 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 an amount equal to 100% of the total Contract Sum, 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) If the Contract Sum, including Owner-accepted alternates and allowances, if any, is greater than $50,000, Payment bonds in 100% of the Contract Sum are mandatory and shall be required to be provided by the Contractor. If the Contract Sum is greater than $100,000, a Payment Bond and Performance Bond in 100% of the Contract amount is mandatory.

(c) 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

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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.

(d) Contractor will be required to furnish original performance and payment bonds for 100 percent of the total submission price 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.

Bond forms are attached and 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.

(e) 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

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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 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

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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 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

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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 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.

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(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, 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

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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 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.

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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

(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

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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 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

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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

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

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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.

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

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Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

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

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

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EXHIBIT D
PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Contractor will be required to furnish original performance and payment bonds for one hundred (100%) percent of the total submission price 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.

Bond forms are attached and 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:

A. COMMERCIAL GENERAL LIABILITY INSURANCE Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum DEC Bulk Storage Tank Addition-8267 combined bodily injury (including death) and property damage limits of $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for Employers Liability are: Bodily Injury by Accident: $1,000,000.00 Each Accident Bodily Injury by Disease: $1,000,000.00 Each Employee Bodily Injury by Disease: $1,000,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program,

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evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. BUSINESS AUTOMOBILE LIABILITY INSURANCE
Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of $1,000,000.00 per occurrence.

NOTE:

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos

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.

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C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
   1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

   2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

   1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

   2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

   3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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4. obtain from each other person with whom it contracts, and provide to the contractor:

   a. a certificate of coverage, prior to the other person beginning work on the project; and

   b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The contractor’s failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

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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/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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SECTION 00 41 01
PROPOSAL FORM - CSP

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

FOR: *DEC Bulk Storage Tank Addition, General Contractor*

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 any thing of value likely to influence the action of a public official in the proposal process.

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

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

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

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

3 Time of Completion

3.1 The Work will be Substantially Complete as defined in the Supplementary Conditions within *[160]* 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 *[200]* 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. Conflict of Interest Affidavit
b. Section 00 41 01 – This Proposal Form
c. Unit Price Proposal Form – CSP – Electronic Copy (either included in the Proposal, or submitted via Ion Wave)
d. Required Offeror's Bond
e. Section 00 43 38 – Proposed Subcontractors Form – CSP
f. Section 00 43 39 – Vendor Compliance to State Law Non-Resident Offeror – CSP
g. Safety Record Questionnaire
h. Section 00 45 27 – Contractor's Compliance with Workers Compensation Law
i. Section 00 45 44 – Corporate Resolution of Authorized Signatories

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: $ 1,184,000.00

6 Proposal Submittal

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

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6.2 This Proposal is submitted on June 21st, 2023 by the entity named below.

Respectfully submitted,

By: Johnathan Polley
(Signature)

Johnathan Polley
(Printed Name)

Title: Owner/Business Development

Company: J&B Five Point Construction, LLC.

Address: PO Box 38
Krum / TX / 76249

State of Incorporation: Texas

Email: accounts@jandbfivepoint.com

Phone: 940-482-4100

END OF SECTION

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Exhibit G

RFP 8267- Pricing Sheet for DEC Winterization GC

The respondent shall complete the following section, which directly corresponds to the specifications. The contractor shall not make changes to this format.

Product Proposal Pricing (PRICING SHALL INCLUDE ALL COSTS TO MANUFACTURE AND DELIVER GOODS AS SPECIFIED F.O.B DESTINATION):

Item #	EST. QTY	UOM	Product Description	Unit Price	Extended Price
SECTION A- Basic Building					
1	TBD	EA	Engineering, Permitting, Administrative and other Pre-Construction	$ 78,500.00	$ 78,500.00
2	TBD	EA	Civil Work and Construction Equipment	$ 500,000.00	$ 500,000.00
3	TBD	EA	Major Equipment	$ 500,000.00	$ 500,000.00
4	TBD	EA	Miscellaneous	$ 105,500.00	$ 105,500.00
				Total Cost of Products	$ 1,184,000.00

Item #	UOM		
5		Company Name	J&B Five Point Construction, LLC.
6		Location of Company? City and State	Justin, TX
7	Weeks	Standard approval time after receipt of construction specs?	2
8		Are there items that may cause delay in construction? Explain	N/A
9	Years	General Contrator (GC) experience: in years	10
10	Years	Years of experience providing GC services to utilities in the United States of America:	10
11	Projects	a. Number of similar GC projects completed in the last 24 months:	37
12	%	b. Percentage of projects that did not complete on time:	0
13	Days	c. Average delay for projects that did not complete on time:	0
14		Are there any exceptions to the specification? (If "Yes," attach a sheet with detailed explanations.)	N/A
15		Pricing Adjustment (Explain)	N/A

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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. 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.**

J & B Five Point Construction, LLC

2

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

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

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

_____
Name of Officer

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

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

[ ] Yes [X] No

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

[ ] Yes [X] No

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

[ ] Yes [X] No

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

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

5

DocuSigned by:
Johnathan Polley
584E8D6F22B2446...
Signature of vendor doing business with the governmental entity

7/20/2023
Date

DocuSign Envelope ID: 0C57478C-843D-47EA-91E6-799408B0259F

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.

DocuSign

Certificate Of Completion

Envelope Id: 0C57478C843D47EA91E6799408B0259F
Status: Completed
Subject: Please DocuSign: City Council Contract 8267 DEC Bulk Storage Tank Addition
Source Envelope:
Document Pages: 83
Signatures: 6
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
7/17/2023 8:51:47 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: 7/17/2023 8:56:36 AM Viewed: 7/17/2023 8:56:46 AM Signed: 7/17/2023 8:57:55 AM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DS LH Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/17/2023 8:57:58 AM Viewed: 7/17/2023 9:31:20 AM Signed: 7/17/2023 9:32:15 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	DocuSigned by: Marcella Lunn 4B070831B4AA438... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/17/2023 9:32:18 AM Viewed: 7/17/2023 1:52:05 PM Signed: 7/17/2023 2:11:27 PM
Johnathan Polley John@jandbfivepoint.com Managing Memeber Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 7/20/2023 2:43:35 PM ID: cf9c9ab6-e794-458b-a55c-fc807374abdc	DocuSigned by: Johnathan Polley 584E8D6F22B2446... Signature Adoption: Pre-selected Style Using IP Address: 132.147.144.24	Sent: 7/17/2023 2:11:31 PM Viewed: 7/20/2023 2:43:35 PM Signed: 7/20/2023 2:45:43 PM

Signer Events	Signature	Timestamp
Jason W Brown Jason.brown@cityofdenton.com Denton Energy Center Plant Manager Security Level: Email, Account Authentication (None)	DocuSigned by: Jason W Brown B79B50822204428... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/20/2023 2:45:49 PM Viewed: 7/20/2023 3:19:31 PM Signed: 7/20/2023 3:20:50 PM
Electronic Record and Signature Disclosure: Accepted: 7/20/2023 3:19:31 PM ID: f19ea89e-5fb7-4008-90ef-c5e7ee6f023d		
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	**Completed** Using IP Address: 198.49.140.104	Sent: 7/20/2023 3:20:56 PM Viewed: 8/16/2023 8:16:39 AM Signed: 8/16/2023 8:16:50 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: 8/16/2023 8:16:55 AM Viewed: 8/16/2023 8:18:27 AM Signed: 8/16/2023 8:18:35 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None)	DocuSigned by: Jesus Salazar 2437C77B897541D... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 8/16/2023 8:18:40 AM Viewed: 8/16/2023 8:59:47 AM Signed: 8/16/2023 9:00:55 AM
Electronic Record and Signature Disclosure: Accepted: 8/16/2023 8:59:47 AM ID: 72b32add-00a6-4dc1-8d50-72eebf2f2ac5		

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: 7/17/2023 8:57:58 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 7/20/2023 3:20:56 PM Viewed: 7/24/2023 8:49:23 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 9:00:59 AM
Jason Brown Jason.brown@cityofdenton.com Denton Energy Center Plant Manager Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 8/4/2023 12:16:24 PM ID: 5c73c5b1-3382-47da-aca5-d26a4bcf2c09	COPIED	Sent: 8/16/2023 9:01:00 AM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/17/2023 8:56:36 AM
Certified Delivered	Security Checked	8/16/2023 8:59:47 AM
Signing Complete	Security Checked	8/16/2023 9:00:55 AM
Completed	Security Checked	8/16/2023 9:01:00 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

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

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

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

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

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

Required hardware and software

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

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

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

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

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

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIRST AMENDMENT TO A CONTRACT BETWEEN THE CITY OF DENTON AND J & B FIVE POINT CONSTRUCTION, LLC, AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON AUGUST 15, 2023, IN THE NOT-TO-EXCEED AMOUNT OF $1,184,000.00; SAID FIRST AMENDMENT TO CONTINUE THE CONSTRUCTION OF THE DEC BULK STORAGE TANK ADDITION FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8267 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED $296,000.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED $1,480,000.00).

WHEREAS, on August 15, 2023, City Council awarded a contract to J & B Five Point Construction, LLC, in the amount of $1,184,000.00, for the construction of the DEC Bulk Storage Tank Addition for Denton Municipal Electric; and

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

WHEREAS, the additional fees under the proposed First Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The First Amendment, increasing the amount of the contract between the City and J & B Five Point Construction, LLC, which is on file in the office of the Purchasing Agent, in the amount of Two Hundred Ninety-Six Thousand and 0/100 ($296,000.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be effective upon the execution of the amendment attached hereto. The total contract amount increases to $1,480,000.00.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

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

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

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

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

Docusign Envelope ID: 3F5F4529-0EFF-4F75-9655-2A65D526EB52

Docusign City Council Transmittal Coversheet

RFP	8267
File Name	Construction of the DEC Bulk Storage Tank Addition, NTE Increase
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: 3F5F4529-0EFF-4F75-9655-2A65D526EB52

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND
J & B FIVE POINT CONSTRUCTION LLC
(RFP 8267)

THIS FIRST AMENDMENT TO CONTRACT 8267 (this "Amendment") by and between the City of Denton, Texas ("City") and **J & B FIVE POINT CONSTRUCTION LLC** ("Contractor") to that certain contract executed on August 15, 2023, in the original not-to-exceed amount of $1,184,000 (the "Agreement"); for services related to the **DEC Bulk Storage Tank Addition.**

WHEREAS, the City deems it necessary to further expand the services provided by Contractor to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount $296,000 with this First Amendment for an aggregate not-to-exceed amount of $1,480,000; and

WHEREAS, this amendment incorporates any previously executed documents between the parties including but not limited to pricing adjustments.

WHEREAS, the City deems it necessary to further expand the goods/services provided by Contractor to the City; and

WHEREAS, the original not-to-exceed amount may not be increased by more than 25.0% as provided in Texas Local Government Code Sec. 252.048; and

NOW THEREFORE, the City and Contractor (hereafter collectively referred to as the "Parties"), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following First Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. This Amendment modifies the Agreement amount to provide an additional $296,000 for additional services and materials to be provided in accordance with the terms of the Agreement with a revised aggregate not-to-exceed total of $1,480,000.00.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the Contractor, have each executed this Amendment, by and through their respective duly authorized representatives and officers on this date_____.

Docusign Envelope ID: 3F5F4529-0EFF-4F75-9655-2A65D526EB52

"CONTRACTOR"
J & B FIVE POINT CONSTRUCTION LLC

DocuSigned by:
By: _____ Managing Memeber
584E8D6E22B2446...
AUTHORIZED SIGNATURE, TITLE

"CITY"
CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

ATTEST:
INGRID REX, CITY SECRETARY

By: _____

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

Signed by:
Antonio Puente, Jr. Antonio Puente, Jr.
SIGNATURE PRINTED NAME

DME General Manager
TITLE

Electric
DEPARTMENT

Docusign Envelope ID: 3F5F4529-0EFF-4F75-9655-2A65D526EB52

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.**

J & B Five Point Construction LLC

2

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

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

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

_____
Name of Officer

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

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

[ ] Yes [ ] 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 [X] **I have no Conflict of Interest to disclose.**

5

DocuSigned by:
584E8D6F22B2446...

Signature of vendor doing business with the governmental entity

3/10/2026
Date

Docusign Envelope ID: 3F5F4529-0EFF-4F75-9655-2A65D526EB52

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.

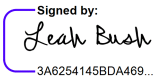
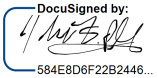
Certificate Of Completion

Envelope Id: 3F5F4529-0EFF-4F75-9655-2A65D526EB52
Status: Sent
Subject: Please DocuSign: City Council Contract 8267 Construction of the DEC Bulk Storage Tank NTE Increase
Source Envelope:
Document Pages: 5
Signatures: 4
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Christa Christian
901B Texas Street
Denton, TX 76209
Christa.Christian@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
2/27/2026 11:04:12 AM
Holder: Christa Christian
Christa.Christian@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Christa Christian Christa.Christian@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.104	Sent: 2/27/2026 11:11:51 AM Viewed: 2/27/2026 11:13:04 AM Signed: 2/27/2026 11:13:29 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: 2/27/2026 11:13:32 AM Viewed: 2/27/2026 11:23:35 AM Signed: 2/27/2026 11:23:46 AM
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: 198.49.140.104	Sent: 2/27/2026 11:23:49 AM Viewed: 3/4/2026 6:59:48 PM Signed: 3/4/2026 7:12:08 PM
Johnathan Forrest Polley john@jandbfivepoint.com Managing Memeber Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/10/2026 12:56:30 PM ID: 0464911f-e4cf-4cb2-b625-32114e7d2437	 Signature Adoption: Drawn on Device Using IP Address: 38.96.230.149	Sent: 3/4/2026 7:12:10 PM Viewed: 3/10/2026 12:56:30 PM Signed: 3/10/2026 12:58:04 PM

Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Denton Municipal Electric Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/10/2026 1:08:16 PM ID: 51fcfd92-bf5e-4567-ba96-49d29d79ab1f	Signed by: E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/10/2026 12:58:06 PM Viewed: 3/10/2026 1:08:16 PM Signed: 3/10/2026 1:08:37 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: 3/10/2026 1:08:39 PM
Cassey Ogden Cassandra.ogden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/12/2026 5:00:16 PM ID: 0c4dbe9c-18c0-433a-8b34-ef6d70091ffd		
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: 2/27/2026 11:13:32 AM

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 3/10/2026 1:08:40 PM Viewed: 3/11/2026 3:27:44 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Arthur Pando arthur.pando@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/21/2026 10:40:15 AM ID: b6004c8e-8fba-402f-aaa9-cbe67c8074a6		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/27/2026 11:11:51 AM
Envelope Updated	Security Checked	3/6/2026 2:59:08 PM
Envelope Updated	Security Checked	3/6/2026 2:59:08 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: April 13, 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 Trihedral Inc., for an HMI Software System for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8741 – awarded to Trihedral Inc., for five (5) years, with the option for five (5) additional one (1) year extensions, in the total ten (10) year not-to-exceed amount of $886,000.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

Operations staff at both the Water Production and Water Reclamation plants utilize Human-Machine Interface (HMI) software to control water treatment flows from start to finish through Supervisory Control and Data Acquisition (SCADA) systems. This software enables control of all field equipment, including pumps, motors, valve actuators, and instrumentation, while providing positional feedback for each piece of equipment from a central location. This helps the operations staff understand the current state of water quality and, if necessary, make changes through the software.

Currently, the Water Production and Reclamation plants operate on different software platforms, which are also outdated. This new HMI/SCADA project will not only update the software used but also consolidate all treatment plants onto a single software platform, which will enhance technical support and minimize potential downtime.

	Lake Lewisville WTP	Ray Roberts WTP	Pecan Creek WRF	Robson Ranch WRF	System Wide Costs	**Total**
Redundant HMI Server License	$76,695.00	$76,695.00	$76,695.00	$27,695.00		$257,780.00
Historical Server	8,131.69	8,131.69	8,131.69	4,876.69		29,271.76
Classroom Training (Fundamentals)					3,500.00	3,500.00
Classroom Training (Software Admin)					3,000.00	3,000.00

HMI Configuration Support					6,600.00	6,600.00
Annual System Support					469,827.00	469,827.00
Sub Total	**$84,826.69**	**$84,826.69**	**$84,826.69**	**$32,571.69**	**$482,927.00**	**$769,978.76**
Contingency						116,021.24
Total NTE						**$886,000.00**

Request for Proposals was sent to 1,493 prospective suppliers, including 68 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Five (5) proposals were received, references were checked, and proposals were evaluated based upon published criteria, including technical capabilities, support and training, references, and price. Best and Final Offers (BAFO) were requested from the top two (2) firms. Based upon this evaluation, Trihedral Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	208, 209, 961, 962, and 968
Notifications sent for Solicitation sent in IonWave:	1,493
Number of Suppliers that viewed Solicitation in IonWave:	71
HUB-Historically Underutilized Business Invitations sent out:	181
SBE-Small Business Enterprise Invitations sent out:	156
Responses from Solicitation:	5

RECOMMENDATION

Award a contract with Trihedral Inc., for an HMI Software System for the Water Utilities Department, in a five (5) years, with the option for five (5) additional one (1) year extensions, in the total ten (10) year not-to-exceed amount of $886,000.

PRINCIPAL PLACE OF BUSINESS

Trihedral Inc.
Orlando, FL

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval, with an estimated completion date by Winter 2027.

FISCAL INFORMATION

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

Water Project Fund	630528523.1360.40100	$182,753.38
Wastewater Project Fund	640507545.1360.40100	$117,398.38

Requisition #174013 has been entered into the Purchasing software system in the amount of $300,151.76 for the first year of services. The budgeted amount for this item is $886,000.

EXHIBITS

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

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

For information concerning this acquisition, contact: John Dillard, 940-349-7628.

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

Exhibit 2
RFP 8741 - Pricing Evaluation for HMI Software System

Respondent's Business Name:	**Trihedral Inc.**	AVEVA Software LLC	Process Control Dynamics Inc	BW Systems, Inc.	Automatech
Principal Place of Business (City and State):	**Spring, TX**	Lake Forest, CA	Addison, TX	S. St Paul, MN	Plymouth, MA
Description	**Extended**	**Extended**	**Extended**	**Extended**	**Extended**
10-year total cost	**$769,978.75**	$1,021,142.00	$497,430.00	$752,225.00	$876,279.76

Evaluation

Scoring Round 1	**Trihedral Inc.**	AVEVA Software LLC	Process Control Dynamics Inc	BW Systems, Inc.	Automatech
Technical Capabilities - 40%	**33.60**	32.00	22.40	20.80	22.40
Support and Training - 20%	**16.80**	15.20	12.00	11.20	12.00
Reference Feedback and Comparable References - 20%	**17.60**	16.80	12.00	13.60	11.20
Price, Total Cost of Ownership - 20%	**12.92**	9.74	20.00	13.23	11.35
TOTAL:	**80.92**	73.74	66.40	58.83	56.95

Scoring Round 2	**Trihedral Inc.**	AVEVA Software LLC
Functionality Demonstrated - 45%	**42.75**	27.00
Client Satisfaction - 45%	**40.50**	29.25
Price, Total Cost of Ownership - 10%	**10.00**	7.54
TOTAL:	**93.25**	63.79

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH TRIHEDRAL INC., FOR AN HMI SOFTWARE SYSTEM FOR THE WATER UTILITIES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8741 – AWARDED TO TRIHEDRAL INC., FOR FIVE (5) YEARS, WITH THE OPTION FOR FIVE (5) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL TEN (10) YEAR NOT-TO-EXCEED AMOUNT OF $886,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for an HMI Software System for the Water Utilities Department; and

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

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

RFP NUMBER	CONTRACTOR	AMOUNT
8741	Trihedral Inc.	$886,000.00

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

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

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

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

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

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

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

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

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

Docusign Envelope ID: 45380197-9792-4041-BE64-5489B2D8E8C9

Docusign City Council Transmittal Coversheet

RFP	8741
File Name	HMI Software Upgrades
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: 45380197-9792-4041-BE64-5489B2D8E8C9

CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND TRIHEDRAL INC.
(Contract #8741)

THIS CONTRACT is made and entered into this date _____, by and between _Trihedral Inc. a Florida corporation, whose address 28326 Parkerton Lane Spring, TX 77386, 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 8741 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 8741 (the "Solicitation") **(Exhibit "B" on file at the office of the Purchasing Agent**);
(c) Tech Agreement **(Exhibit "C");**
(d) VTScada Software License Agreement **(Exhibit "D");**
(e) Certificate of Interested Parties Electronic Filing **(Exhibit "E");**
(f) Insurance Requirements **(Exhibit "F");**
(g) Contractor's Proposal ("Contractor's Offer") **(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 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.

Docusign Envelope ID: 45380197-9792-4041-BE64-5489B2D8E8C9

CONTRACTOR

DocuSigned by:

BY: Barry Baker
20F1D85A8D1F47D...
AUTHORIZED SIGNATURE

Printed Name: Barry Baker

Title: President

8004632783
PHONE NUMBER

barry.baker@trihedral.com
EMAIL ADDRESS

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

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

Signed by:

Stephen D Gay
FE548AE9726E4AE...
SIGNATURE

Stephen D Gay
PRINTED NAME

General Manager
TITLE

Water utilities and street operations
DEPARTMENT

CITY OF DENTON, TEXAS

BY: _____

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

Signed by:

BY: Leah Bush
3A6254145BDA469...

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Exhibit A
Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed $886,000. Pricing shall be per Exhibit G attached.

2. The Quantities

The quantities indicated on Exhibit G are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs with pricing adjusted on a per unit basis as detailed in Exhibit G. Individual purchase orders will be issued on an as needed basis.

3. Contract Terms

It is the intention of the City of Denton to award a contract for five (5) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional five (5) one-year periods.

The contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months

4. 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

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also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

5. Performance Liquidated Damages – Intentionally Omitted

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Exhibit B
City of Denton's RFP 8741 (the "Solicitation") (Exhibit "B" on file at the office of the Purchasing Agent

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Exhibit C
City of Denton
TECH ADDENDUM

Standard Addendum to Agreement

The agreement between the City of Denton, a Texas home-rule municipal corporation ("City"), and the other party to the agreement ("Vendor") to which this Standard Addendum to Agreement (this "Addendum") is attached, is subject to the terms and conditions of this Addendum, which are incorporated for all purposes into the agreement to which they are attached (the "Agreement"). In the event of a conflict between the Agreement and this Addendum, this Addendum shall govern, and no term or condition in subsequent invoices or statements shall serve to modify the terms of this Addendum. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

Payment. In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or services, (ii) performance is complete, or (iii) delivery of an invoice to City; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Invoices and any required supporting documents must be presented to: City of Denton – Purchasing Department, 901 B Texas Street, Denton, TX 76201.

Tax Exempt. No taxes shall be included in the invoice. City is exempt from the payment of taxes and the purchase order serves as the required exemption certificate for tax exemption. The City will provide other exemption certificates or documentation confirming its tax-exempt status as requested.

Governing Law and Venue. The Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. Venue for all issues arising from or related to the Agreement shall be resolved in the courts of Denton County, Texas, and the parties agree to submit to the exclusive jurisdiction of such courts.

No Excess Obligations. In the event the Agreement spans multiple fiscal years, the City's continuing performance under the Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the City Council of the City of Denton. If the City Council of the City of Denton fails to appropriate or allot the necessary funds, City shall issue written notice to Vendor that City may terminate the Agreement without penalty, further duty, or obligation.

Delivery. Delivery shall be FOB Destination.

Public Information. City shall release information in accordance with the Texas Public Information Act, Tex. Gov't Code Chapter 552, and other applicable law or court orders. If requested, Vendor shall make public information available to City in an electronic format, and any portions of records claimed by the Vendor to be proprietary must be clearly marked as such.

Insurance. City is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by City shall, without further requirement, satisfy all insurance obligations of City under the Agreement.

Prohibition on Contracts with Companies Boycotting Israel. Vendor 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

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(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, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (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. Vendor acknowledges that in accordance with Chapter 2276 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. By signing this agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (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. Vendor 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, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (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, Vendor certifies that Vendor's signature provides written verification to the City that Vendor, 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 Vendor 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

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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.

Indemnity. The Vendor shall indemnify and save and hold harmless the City and its officers, OFFICIALS, agents, and employees from and against any and all liability, claims, demands, damages, losses, and expenses, including, but not limited to court costs and reasonable attorney fees ASSERTED AGAINST OR incurred by CITY, and including, without limitation, damages for bodily and personal injury, death and property damage, directly resulting from the grossly negligent acts or omissions of the Vendor or its officers, shareholders, agents, or employees INCIDENTAL TO, RELATED TO, AND in the execution, operation, or performance of the Agreement. Nothing in this Addendum shall be construed to create a liability to any person who is not a party to this Addendum, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

For greater certainty, the City agrees it has the sole authority in the installation, operation, management and maintenance of its control systems including the interconnected control hardware, networks, anti-virus software and computers which are supplied by 3rd parties under the direction and supervision of the City.

Limitations. City is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on City property; disclaimers and limitations of warranties; disclaimers and limitation of liability for damages; waivers, disclaimers, and limitation on litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on City, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

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Exhibit D

VTScada Software License Agreement (Standard Conditions)

Last Modified: July 2, 2025
V

This License Agreement ("**License Agreement**") governs any Software and/or Services in the Order Confirmation that the individual or entity identified as the customer in the Order Confirmation ("**Customer**") purchase directly from Trihedral or through its authorized resellers ("**Reseller**"). This License Agreement, the Order Confirmation, and any other incorporated terms comprise the complete understanding between the parties on the subject matter ("**Agreement**"). By using or accessing the Software or Services, Customer agrees to this License Agreement.

"**Affiliate**" means an entity that controls, is controlled by, or is under common control with, a party. Control means direct or indirect ownership of (i) more than 50% of an entity's voting interest; or (ii) the right to receive more than fifty percent (50%) of an entity's profits.

"**Customer Data**" means data, information, and content that is entered into the Software by the Customer and the output generated by the Customer from the data it entered into the Software (e.g., statistical calculations, sorting, collection, averaging, and other mathematical computations).

"**Documentation**" means the then-current documentation regarding the Software that is generally provided or made available by Trihedral either in print or electronic forms, and which may include end-user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

"**Indemnified Liabilities**" means any (i) settlement amounts approved by the indemnifying party and (ii) damages and costs in a final judgment awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.

"**Instance**" means a single copy of the Software running on a single physical or virtual machine.

"**Modifications**" means modifications, revisions, enhancements, scripting, fixes, error corrections, workarounds, and improvements made by any person, whether or not issued in a formal update, upgrade, or release.

"**License Key**" means an alphanumeric code that enables the Customer to activate and use the Software.

"**Licensed Instance**" means an Instance of the Software that has been activated using a License Key provided by Trihedral. If the License Key is subsequently used to activate a different Instance of the Software, then the first Instance of the Software will automatically cease to be a Licensed Instance.

"**Order Confirmation**" means the ordering document issued or signed by Trihedral or its authorized reseller, which for Paid Licenses will be identified as an order confirmation form and for a Free License or Demo License is the online check out screen where these terms are agreed to.

"**Services**" means Support and other Services provided by Trihedral.

"**Software**" means the VTScada software in machine executable object code and any training materials and documentation provided by Trihedral, including any Modifications to any of them.

"**Trihedral**" means the Trihedral entity listed on the Order Confirmation, and if the Order Confirmation is silent, the term means (i) Trihedral USA, if the Customer is located in the United States (ii) Trihedral UK if the customer is located within the United Kingdom and (iii) Trihedral CAN if the Customer is located elsewhere

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"**Trihedral CAN**" means Trihedral Engineering Ltd., an entity organized under the laws of Nova Scotia, Canada.
"**Trihedral USA**" means Trihedral, Inc., a Florida Corporation.
"**Trihedral UK**" means Trihedral UK Limited, an entity organized under the laws of the United Kingdom.
"**Third-Party Legal Proceeding**" means any claim, demand, action, or legal proceeding made or instituted by someone other than Trihedral, Customer, or any of their Affiliates.

1. **License.**

1.1 **Ordering.** If Customer purchases directly from Trihedral, then Customer will pay Trihedral the fees for the Services and/or any Paid License in accordance with the payment terms stated in the Order Confirmation. If Customer purchases Services and/or any Paid License through a Reseller, then the description of the Services and/or Paid License will be set forth in the ordering document Customer enters with the Reseller (the "**Order Confirmation,**" which for the purposes of this Agreement is also an "Order Confirmation") and payment will be made to Reseller in accordance with the terms of the Order Confirmation. The Reseller is responsible for the accuracy of the Order Confirmation, Resellers are not authorized to make any promises or commitments on Trihedral's behalf, and Trihedral is not bound by any obligations to Customer other than as specified in this License Agreement. Except as otherwise stated in the Agreement, Customer's purchases are except as may be stated in the Order Confirmation non-cancelable and payment for Services is non-refundable. Customer will pay all applicable sales tax, VAT, GST, use tax, or similar transaction taxes imposed on Customer's purchase of Services and/or use of the Software, unless Customer provides Trihedral with a valid tax exemption certificate. Customer will have no liability for taxes that are imposed on Trihedral or Reseller, as applicable, that are measured by Trihedral's or Reseller's net or gross income.

1.2 **Paid License.** Subject to the terms and conditions of the Agreement, upon payment of the applicable license fees stated in the Order Confirmation, Trihedral grants Customer a non-exclusive, non-sublicensable, non-transferable license to use the Software described in the Order Confirmation ("**Paid License**") for the terms stated in the Order Confirmation for the sole purpose of monitoring, controlling and analyzing Customer's industrial processes and equipment. The Software may be installed on the maximum number of Licensed Instances listed in the Order Confirmation, which is one if no number is listed and is subject to any other restrictions stated in the Order Confirmation, such as the maximum number of tags (i.e. a value, timestamp or quality characteristic). Customer may permit third-party providers to host the Software solely for Customer's personnel use.

1.3 **Free License**. Trihedral makes a version of the VTScada software with limited functionality ("**Trial Version**," also the "**Software**") that will monitor, control and analyze Customer's industrial processes and equipment for no more than 50 IO tags from an external device or source. For those Customers that download the Trial Version, Trihedral grants Customer a free, perpetual, non-exclusive, non-sublicensable, non-transferable, limited license ("**Free License**") to use version of the Trial Version subject to the terms and restrictions of the Agreement. Customer may host the Trial Version on only one server and may only have one instance of the Trial Software and only one Free License. Customers who purchase a Paid License may not also obtain a Free License to the Software. The Trial Version of the Software may only be used in the Country stated in the Order Confirmation and for the purposes stated in that Order Confirmation. The

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Trial Version may not be used in connection with any High Risk Activity. "**High Risk Activities**" means uses in connection with the operation of nuclear facilities; the manufacture of arms, armament, weapons or ammunition; air traffic control; life support systems; military or defense applications; or where the use or failure of the Services could lead to death, personal injury, property damage or environmental damage.

1.4 **Demo License**. Trihedral makes a version of the VTScada software with License Key functionality ("**Demo Version**," also the "**Software**") that will monitor, control and analyze Customer's industrial processes and equipment for a License Key evaluation period. For those Customers that obtain the Demo Version under an Order Confirmation, Trihedral grants Customer a free, non-exclusive, non-sublicensable, non-transferable, limited license ("**Demo License**") to use a version of the Software subject to the limitations of the License Key and the terms and restrictions of this Agreement. Customer may host the Demo Version on only one server and may only have one instance of the Demo Software per license. The Demo Version of the Software may only be used in the Country entered in the download request. The Demo Version may not be used in connection with any High-Risk Activity.

1.5 **Restrictions.** The Software may only be accessed and used by Customer's personnel ("**Users**"), and Customer is responsible for Users' compliance with the Agreement. Customer, on behalf of itself and its Users, agrees not to: (1) use the Software other than as authorized in the Agreement; (2) modify, decompile, decode, or reverse engineer the Software, (3) create derivative works based on the Software; (4) use the Software or any other Trihedral Confidential Information to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Software, (5) use the Software for competitive analysis or benchmarking purposes, (6) use the Software to provide services to any third party, (7) deactivate, impair, or circumvent any security or authentication measures of the Software, or (8) transfer, sublicense, distribute, sell, lease or use for timesharing or service bureau purposes the Software. Customer will not export or install the Software on a server outside of the United States, Canada or the country identified as Customer's shipping address on the Order Confirmation without obtaining Trihedral's prior written consent.

1.6 **Support and other Services.** Unless otherwise provided in an Order Confirmation, Support for a Paid License is free for the first ninety (90) days after it is initially licensed and is offered on renewal at the rates set forth in Order Confirmation. Support and any other Service are described in the Order Confirmation.

1.7 **Third-Party Solutions.** Customer may decide to interact with, access or use compatible third-party services, content or solutions ("**Third Party Solution**") in connection with the Software. Trihedral does not provide any aspect of the Third-Party Solution and is not responsible for any compatibility issues, errors, or bugs in the Software or Third-Party Solution caused in whole or in part by the Third-Party Solution. Customer is solely responsible for maintaining the Third-Party Solution and obtaining any associated licenses and consents necessary for Customer's use of the Third-Party Solution in connection with the Software.

1.8 **Personal Data.** The Software has been architected so Trihedral will not process any Personal Data of Customer. "**Personal Data**" means data relating to an identified or identifiable natural person.

2. **Confidential Information.**

2.1 **Definition.** The term "**Confidential Information**" means any information disclosed under the Agreement that (a) if tangible, is clearly marked as "Confidential" or with a

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similar designation; (b) if intangible, is identified as "Confidential" by discloser at the time of disclosure and confirmed in writing to recipient as being Confidential Information. Confidential Information does not include any portion of the information that recipient can prove: (a) was rightfully known to recipient before receipt from discloser; (b) becomes generally known to the public through no fault of recipient; (c) was received by recipient from a third party without any confidentiality obligation; or (d) was independently developed by recipient without breach of this Section 2.

2.2 **Limited Use and Non-Disclosure.** Recipient will (a) use Confidential Information only for the purposes of furthering the business relationship between the parties; (b) protect Confidential Information using the same degree of care it uses to protect its own confidential information of a like nature, but in no event less than a reasonable degree of care; or (c) not disclose Confidential Information to any third party except (i) as required by law and/or (ii) to employees, consultants, and agents who have a need to know it in order to carry out their obligations under the Agreement and are under written confidentiality and non-use obligations at least as restrictive as those stated in the Agreement.

3. **Intellectual Property Rights**. As between Trihedral and Customer, Customer owns all worldwide right, title and interest in and to Customer Data, including all worldwide Intellectual Property Rights ("**Customer IP**"). Trihedral and its licensors own all worldwide right, title and interest in and to the Software, including all worldwide Intellectual Property Rights ("**Trihedral IP**"). Except as expressly set forth in the Agreement, no rights to any Trihedral IP or Customer IP is granted to the other party. Customer is not obligated to provide Trihedral with any suggestions, enhancement requests, or other feedback about the Software or related technology ("**Feedback**"). However, if Customer's personnel provide any Feedback to Trihedral, Trihedral may use and modify it without any restriction or payment. When the Software is installed on a server that is accessible by the Internet, Customer agrees that Trihedral may obtain data from the Software other than any data that relates to an identifiable individual (PII) for the purpose of supporting and improving the Software and related solutions. "**Intellectual Property Right(s)**" means patent rights (including, without limitation, patent applications and disclosures), trademarks, copyrights, moral rights, know-how, and any other intellectual property rights recognized in the United States, Canada, or the European Union.

4. **Term and Termination.**

4.1 **Term.** The Agreement is effective on the earlier of the date the first Order Confirmation is entered into by Customer and Trihedral or when the Software is first accessed ("**Effective Date**") and remains in effect until all Order Confirmations are terminated or expire.

4.2 **Termination and Suspension.** Either party may terminate the Agreement or an Order Confirmation if the other party materially breaches the Agreement and fails to cure the breach within 30 days after receiving notice that specifically identifies the breach.

4.3 **Effect of Termination**. Except if Customer terminates for Trihedral's uncured material breach under Section 4.2, termination of the Agreement or an Order Confirmation will not relieve Customer from Customer's obligation to pay Trihedral any fees stated in an Order Confirmation. After termination or expiration of the Agreement, (a) Customer will stop using the Software and will promptly certify in writing that all copies of the Software have been destroyed, (b) any license granted to the Software will immediately end, and (c) Trihedral will have no further obligation to perform any Services.

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Termination of an Order Confirmation does not terminate the Agreement unless no other Order Confirmations are in effect. Termination of the Agreement will result in the immediate termination of all Order Confirmations. Sections 2, 3, and 6-9 of the Agreement will survive termination.

5. **Warranty and Warranty Disclaimer.** For Paid Licenses, **Trihedral** warrants that for a period of 90 days from activation (the "**Warranty Period**") that all of the critical functionality of the Software will perform when operated according to the Documentation, and Trihedral will (at its own cost) rectify any material defects in the Software that Customer notifies it of during the Warranty Period. This constitutes Trihedral's sole remedy for breaches of warranty under the Agreement. Except for that warranty provided to for a Paid License, the Paid License and the Demo and Free License is provided "as is." **To the fullest extent permitted by applicable law, except as expressly provided in the Agreement, Trihedral makes no other warranty of any kind regarding the Software or any Service, whether express, implied, statutory or otherwise, including without limitation warranties of merchantability, fitness for a particular use and non-infringement (since Trihedral indemnifies for IP infringement). Trihedral does not warrant and makes no representations (i) that the operation of the Software will be error-free or uninterrupted or (ii) concerning the results obtained from or the conclusions drawn from the use of Software. This Warranty and Warranty Disclaimer shall not apply to Annual System Support Agreement between the parties.**
6. **Indemnification.** The indemnity provisions in this Section only apply to Paid Licenses.

6.1 **Trihedral's Indemnification Obligations.** Trihedral will defend Customer and Customer's respective directors, officers and employees ("**Customer's Indemnified Parties**") against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that (a) the Software infringes, misappropriates or otherwise violates any third party's Intellectual Property Right, (b) Trihedral's willful misconduct or fraud, or (c) Trihedral violated any applicable law.

6.2 **Customer's Indemnification Obligations.** Intentionally Omitted.

6.3 **Indemnification Exclusions.** Sections 6.1 (Trihedral's Indemnification Obligations) and Section 6.2 (Customer's Indemnification Obligations) will not apply to the extent the underlying allegation arises from:

a. the indemnified party's breach of the Agreement; or
b. modifications to the Software by anyone other than Trihedral or its agents; or
c. combination of the Software with materials not provided by Trihedral;
d. failure to use the most current, supported version of Trihedral's Software provided under the Agreement or
e. compliance with the indemnified party's instructions, design or request for customized features.

6.4 **Indemnification Conditions.** Sections 6.1 (Trihedral's Indemnification Obligations) is conditioned on the following:

a. The indemnified party will promptly notify the indemnifying party in writing of any allegation(s) that preceded the Third-Party Legal Proceeding and cooperate reasonably with the indemnifying party to resolve the allegation(s) and Third-Party Legal Proceeding. If breach of this Section 6.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 6.1 (as applicable) will be reduced in proportion to the prejudice.
b. The indemnified party will tender sole control of the indemnified portion of the Third-Party

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Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

7. **Limitation of Liability**. In this Section, "liability" means any liability, whether under contract, tort, or otherwise, including for negligence.

7.1 **General Limitations on Liability.** Subject to section 7.2 (Exceptions to Limitations): (a) neither party will have any liability arising out of or relating to the Agreement for: (1) indirect, special, incidental or consequential losses (whether or not foreseeable or contemplated by the parties at the Effective Date); (2) exemplary or punitive damages; or (3) the other party's lost revenues, profits, or data; and

(b) For a Paid License, each party's aggregate liability arising out of or relating to the Agreement will not exceed the amount paid or payable to Trihedral under the applicable Order Confirmation. **Exceptions to Limitations.** For a Paid License, nothing in the Agreement excludes or limits either party's liability for: (a) breach of confidentiality obligations under Section 2, (b) the indemnification obligations under Section 6, (c) infringement of the other party's intellectual property rights; (d) death or personal injury resulting from its negligence or the negligence of its employees or agents; or (e) matters for which liability cannot be excluded or limited under applicable law.

8. **Dispute Resolution.**

If the Customer is domiciled in the U.S.: The Agreement and all matters arising out of or relating to the Agreement is governed by Texas law, without regard to conflict of law, and each party irrevocably consents to exclusive jurisdiction over all claims and disputes between the parties The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

If the Customer is domiciled outside of the U.S.*:* Any unresolved dispute arising out of or in connection with the Agreement shall be finally resolved by arbitration with one arbitrator conducted in English under the Rules of Arbitration of the International Chamber of Commerce that are made a part of the Agreement. Either party can obtain temporary restraining orders, preliminary injunctions, and other similar relief in a court of competent jurisdiction when necessary to preserve status quo or prevent injury pending resolution of the dispute on its merits by arbitration. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply. The Agreement and all matters arising out of or relating to the Agreement shall be governed by the laws of (without regard to conflict of law) and the location of the arbitration will be, as follows:

Customer domiciled in Asia	Laws of Singapore	Arbitration will be held in Singapore
Customer domiciled in Canada	Laws of Ontario	Arbitration will be held in Toronto
Customer domiciled in Mexico, Central America or South America	Laws of New York	Arbitration will be held in New York City
Customer domiciled elsewhere (other than the U.S.)	Laws of England	Arbitration will be held in London

9. **Audit.** Upon ten (10) business days written request from Trihedral, to the extent allowed by law, without waiving any applicable immunities, and subject to reasonable

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notification, Customer will provide Trihedral or its auditors with reasonable access to any books, records, computers, or information that relates to Customer's use of the Software in compliance with the terms of the Agreement. The audit will not unreasonably interfere with Customer's business activities.

10. **Export Control**. The Software is subject to U.S. and/or Canadian export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import the Software. Where the Trihedral USA is the contracting party or the Customer is based in the United States, the Software may not be downloaded, or otherwise exported or re-exported (i) into or to a national or resident of any country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nations or the U.S. Commerce Department's Table of Denial Orders. By installing or using the Software, Customer is warranting that it is not located in or under the control of, or a national or resident of any such country or on any such list.
11. **License Rights Applicable to the U.S. Government**. The Software is a commercial product that is developed exclusively at private expense. If the Software is acquired directly or indirectly for use by the U.S. Government, then the parties agree that the Software is considered 'Commercial Items' and 'Commercial Computer Software' or 'Computer Software Documentation', as defined in 48 C.F.R. §2.101 and 48 C.F.R. §252.227-7014(a)(1) and (a)(5), as applicable. Software and Documentation may only be used under the terms and conditions of this Agreement as required by 48 C.F.R. §12.212 and 48 C.F.R. §227.7202. The U.S. Government will only have the rights set forth in this Agreement, which supersedes any conflicting terms or conditions in any government order document, except for provisions which are contrary to applicable mandatory federal laws. Trihedral will not be required to obtain a security clearance or otherwise be involved in accessing U.S. Government classified information.
12. **Miscellaneous**. Neither party will assign the Agreement in whole or in part without the other party's prior written consent (which consent will not be unreasonably denied, delayed or conditioned), except no consent is necessary for assignment to a successor that is made in connection with a merger or sale of all or substantially all of a party's assets or equity. Any attempted assignment in violation of this restriction is void. The Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. If a conflict exists between any of the terms the Agreement and the Order Confirmation, then the Order Confirmation will govern only if it is signed by both parties. Neither party relies on any undertaking, promise, assurance, statement, representation, warranty or understanding of any person relating to the subject matter of the Agreement, other than as stated in the Agreement. Notices will be provided in writing and delivered by commercial overnight or next day courier to the address of the other party stated on the Order Confirmation. The Agreement does not create a partnership, agency relationship, or joint venture between the parties. Neither party has the power or authority to bind the other or to create any obligation or responsibility on behalf of the other. Under no circumstances will any employee of one party be deemed to be the employee of the other. If any provision of the Agreement is unenforceable, that provision will be modified to render it enforceable to the extent possible to give effect to the parties' intentions and the remaining provisions will not be affected. The parties may amend the Agreement only in a written amendment signed by both parties. The

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Agreement does not confer any benefits on any third party unless it expressly states that it does.

The Agreement can be executed electronically and in counterparts, each of which is deemed to be an original and together comprise a single document. Each party represents and warrants that the individual binding a party under the Agreement is authorized to do so.

Prior Versions: June 8, 2016 Version

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Exhibit E

Certificate of Interested Parties Electronic Filing

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

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

The Contractor shall:

1. Log onto the State Ethics Commission Website at :https://www.ethics.state.tx.us/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 F

INSURANCE REQUIREMENTS

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

STANDARD PROVISIONS:

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

As soon as practicable after notification of contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A+ or better**.

- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- Liability policies shall be endorsed to provide the following:

    - Name as Additional Insured the City of Denton, its Officials, Agents,

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Employees and volunteers.

- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

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

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

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

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of

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$1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. <u>WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE</u>

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: $100,000.00 Each Accident
Bodily Injury by Disease: $100,000.00 Each Employee
Bodily Injury by Disease: $500,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. <u>Technology Errors & Omissions Liability Insurance</u>

Technology Errors and Omissions Insurance to provide coverage for any damage or losses arising from the rendering of, negligent or improper performance of, or failure to perform technology services including, but not limited to, media content, network security breaches and negligent design, website design, hosting and support, content management, user optimization services, system integrations, system creation designed to migrate to various platforms, the design and/or implementation of add-on platforms, the provision of guidance regarding industry best practices and custom translation solutions and other website functionality, the provision of analytics on site usage, with minimum limits of $1,000,000 per claim.

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.

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

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HMI Software Vendor	Trihedral Inc.
HMI Software Product	VTScada SCADA/HMI Software

Exhibit G
Contractor's proposal

Denton RFP 8741 HMI Software Pricing

		Unit Price	Quantity	Extended Price	Notes from Trihedral
	Lake Lewisville Water Treatment Plant				
1	Redundant HMI Server License with automatic syncing and automatic failover, 32K tags	$76,695	1	$76,695.00	50,000 tag VTScada Dual Server Premium (DSP) package
2	Operator Workstation Runtime License With Trending		10	$0.00	VTScada Thin Clients include runtime capability OWS with multi-monitor functionality. Unlimited Thin Clients included in DSP package
3	Operator Workstation Runtime License With Trending (concurr		5	$0.00	VTScada Thin Clients include runtime capability OWS with multi-monitor functionality. Unlimited Thin Clients included in DSP package
4	Development License		1	$0.00	VTScada Thin Client includes Development toolset. Included in DSP package.
5	Historical Server License, 10K tags		1	$8,131.69	Separate VM and licensing not required but is included here for completeness. May be removed for deduct
6	Allen-Bradley PLC Communications Driver		1	$0.00	Rockwell/Allen Bradley family of PLCs redundant server driver included with DSP package
7	SCADAPack PLC Communications Driver		1	$0.00	DNP3 and Modbus redundant server drivers, compatible with SCADAPack PLCs/RTUs, included with DSP package
8	Schneider Electric M580/M340 PLC Communications Driver		1	$0.00	Modbus TCP/RTU and OPC DA and UA Client (if using Schneider OPC DA or UA Servers) redundant server drivers, compatible with Schneider Electric M580/M340 PLCs, included with DSP package
	Subtotal			$84,826.69	
	Ray Roberts Water Treatment Plant				
9	Redundant HMI Server License with automatic syncing and aut	$76,695	1	$76,695.00	50,000 tag VTScada Dual Server Premium (DSP) package
10	Operator Workstation Runtime License With Trending		10	$0.00	VTScada Thin Clients include runtime capability OWS with multi-monitor functionality. Unlimited Thin Clients included in DSP package
11	Operator Workstation Runtime License With Trending (concurr		5	$0.00	VTScada Thin Clients include runtime capability OWS with multi-monitor functionality. Unlimited Thin Clients included in DSP package
12	Development License		1	$0.00	VTScada Thin Client includes Development toolset. Included in DSP package.
13	Historical Server License, 10K tags		1	$8,131.69	Each redundant server license includes integrated VTScada Historian with realtime replication. Separate VM and licensing not required but is included here for completeness. May be removed for
14	Allen-Bradley PLC Communications Driver		1	$0.00	Rockwell/Allen Bradley family of PLCs redundant server driver included with DSP package
15	SCADAPack PLC Communications Driver		1	$0.00	DNP3 and Modbus redundant server drivers, compatible with SCADAPack PLCs/RTUs, included with DSP package
16	Schneider Electric M580/M340 PLC Communications Driver		1	$0.00	Modbus TCP/RTU and OPC DA and UA Client (if using Schneider OPC DA or UA Servers) redundant server drivers, compatible with Schneider Electric M580/M340 PLCs, included with DSP package
	Subtotal			$84,826.69	
	Pecan Creek Water Reclamation Facility				
17	Redundant HMI Server License with automatic syncing and aut	$76,695	1	$76,695.00	50,000 tag VTScada Dual Server Premium (DSP) package
18	Operator Workstation Runtime License With Trending		10	$0.00	VTScada Thin Clients include runtime capability OWS with multi-monitor functionality. Unlimited Thin Clients included in DSP package
19	Operator Workstation Runtime License With Trending (concurr		5	$0.00	VTScada Thin Clients include runtime capability OWS with multi-monitor functionality. Unlimited Thin Clients included in DSP package
20	Development License		1	$0.00	VTScada Thin Client includes Development toolset. Included in DSP package.
21	Historical Server License, 10K tags		1	$8,131.69	Separate VM and licensing not required but is included here for completeness. May be removed for deduct
22	Allen-Bradley PLC Communications Driver		1	$0.00	Rockwell/Allen Bradley family of PLCs redundant server driver included with DSP package
23	SCADAPack PLC Communications Driver		1	$0.00	DNP3 and Modbus redundant server drivers, compatible with SCADAPack PLCs/RTUs, included with
24	Schneider Electric M580/M340 PLC Communications Driver		1	$0.00	Modbus TCP/RTU and OPC DA and UA Client (if using Schneider OPC DA or UA Servers) redundant server drivers, compatible with Schneider Electric M580/M340 PLCs, included with DSP package
	Subtotal			$84,826.69	

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	Robson Ranch Water Reclamation Facility				
25	Redundant HMI Server License with automatic syncing and aut	$27,695	1	$27,695.00	5,000 tag VTScada Dual Server Premium (DSP) package
26	Operator Workstation Runtime License With Trending		5	$0.00	VTScada Thin Clients include runtime capability OWS with multi-monitor functionality. Unlimited Thin Clients included in DSP package
27	Operator Workstation Runtime License With Trending (concurr		5	$0.00	VTScada Thin Clients include runtime capability OWS with multi-monitor functionality. Unlimited Thin Clients included in DSP package
28	Development License		1	$0.00	VTScada Thin Client includes Development toolset. Included in DSP package.
29	Historical Server License, 5K tags		1	$4,876.69	Each redundant server license includes integrated VTScada Historian with realtime replication. Separate VM and licensing not required but is included here for completeness. May be removed for deduct
30	Allen-Bradley PLC Communications Driver		1	$0.00	Rockwell/Allen Bradley family of PLCs redundant server driver included with DSP package
31	SCADAPack PLC Communications Driver		1	$0.00	DNP3 and Modbus redundant server drivers, compatible with SCADAPack PLCs/RTUs, included with
32	Schneider Electric M580/M340 PLC Communications Driver		1	$0.00	Modbus TCP/RTU and OPC DA and UA Client (if using Schneider OPC DA or UA Servers) redundant server drivers, compatible with Schneider Electric M580/M340 PLCs, included with DSP package
	Subtotal			$32,571.69	
	System-Wide Costs				
33	Win911 integration to HMI Server for alarm callout		1	$0.00	All DSPs include integrated redundant VTScada Alarm Notification System (email, text message, voice). Integration between VTScada servers and VTScada Alarm Notification is not automatic.
34	Hatch WIMS integration to Historian Server for reporting		1	$0.00	All DSPs include OPC DA Server and ODBC SQL driver to VTScada Historian. This functionality is included with all Servers with embedded Historians. As such there is no cost to enable this feature.
35	Classroom Training - HMI Software Fundamentals, 5 seats	$3,500	Lot	$3,500.00	All DSPs include $1000 credit toward a regularly-scheduled in-class course (LEVEL 1 - VTScada Operations and Configuration) to be held at a Trihedral designated facility or online via Zoom. As such, 4 course credits are included and only 1 additional course payment is required
36	Classroom Training, HMI Software Administration covering communications and redundancy, 4 seats	$3,000	Lot	$3,000.00	Lot amount. Assumes all students will be trained in a single, 8-hr session using selected sections of the VTScada O&C and VTScada Advanced Config courses.
37	HMI Software Configuration Support, hourly rate (online)	$165	40	$6,600.00	
38	Annual System Support Agreement with 24/7 online support, 5 years w/ option to renew for an additional 5 years	$57,410	Lot	$469,827.00	Quantity of additional year reduced to 9 as all DSPs include 1st year of Supportplus + 24/7 Emergency Support. Multi-year support discounts applied.
	Subtotal			$482,927.00	
	Total			**$769,978.75**	Includes all support plus 10yrs Supportplus + 24/7 Emergency Support

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Exhibit H

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.**

TRIHEDRAL, INC

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

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

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

N/A

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

4 ☑ **I have no Conflict of Interest to disclose.**

5

Signature of vendor doing business with the governmental entity — Date: 5/14/25

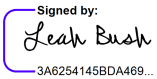
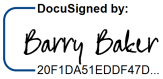
Certificate Of Completion

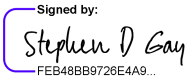
Envelope Id: 45380197-9792-4041-BE64-5489B2D8E8C9
Status: Sent
Subject: Please DocuSign: City Council Contract 8741 HMI Software
Source Envelope:
Document Pages: 26
Signatures: 3
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

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

Record Tracking

Status: Original
3/11/2026 2:43:40 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: 3/11/2026 2:50:15 PM Viewed: 3/11/2026 2:50:29 PM Signed: 3/11/2026 3:09:48 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: 3/11/2026 3:09:50 PM Viewed: 3/11/2026 4:16:44 PM Signed: 3/11/2026 4:21:59 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: 198.49.140.104	Sent: 3/11/2026 4:22:01 PM Viewed: 3/17/2026 8:44:01 AM Signed: 3/17/2026 9:25:06 AM
Barry Baker barry.baker@trihedral.com Vice-President Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/17/2026 11:38:00 AM ID: 2784c587-c9d1-4e16-98d2-6751c7d7a919	 Signature Adoption: Pre-selected Style Using IP Address: 98.97.54.104	Sent: 3/17/2026 9:25:09 AM Viewed: 3/17/2026 11:38:00 AM Signed: 3/17/2026 11:39:18 AM

Signer Events	Signature	Timestamp
Stephen D Gay Stephen.Gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None)	Signed by:  FEB48BB9726E4A9... Signature Adoption: Pre-selected Style Using IP Address: 2607:fb90:8a62:94f1:8508:32f0:4e50:7a9d Signed using mobile	Sent: 3/17/2026 11:39:20 AM Viewed: 3/18/2026 2:21:19 PM Signed: 3/18/2026 2:21:56 PM
Electronic Record and Signature Disclosure: Accepted: 3/18/2026 2:21:19 PM ID: e6c654c6-dcc6-4bdc-ba76-e8812d1c3f5e		
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)		Sent: 3/18/2026 2:22:00 PM
Electronic Record and Signature Disclosure: Not Offered via Docusign		
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: 3/11/2026 3:09:50 PM
Electronic Record and Signature Disclosure: Not Offered via Docusign		

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 3/18/2026 2:21:58 PM Viewed: 3/20/2026 3:37:32 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
John Dillard john.dillard@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/9/2026 2:50:12 PM ID: 10d63fa7-12d2-41db-a840-1e1e782c280c		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/11/2026 2:50:15 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: April 13, 2026

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive bids under IFB for the supply of reinforced concrete pipe, polypropylene pipe, precast box culverts, and related components for the Drainage Department; and providing an effective date (IFB 8884).

INFORMATION/BACKGROUND

The City of Denton issued an Invitation for Bid seeking bids for reinforced concrete pipe, polypropylene pipe and fittings, precast reinforced concrete box culverts, precast safety end treatments, and sloped end sections to support stormwater and drainage infrastructure projects.

After evaluating the project scope and current operational priorities, staff determined that a different delivery method would better serve the City's needs. Staff recommends obtaining the required materials through the City's warehouse on an as-needed basis. This item will not be resolicited.

According to Local Government Code 252.043, the City Council may reject any and all bids.

RECOMMENDATION

Staff recommends rejection of all bids for the supply of reinforced concrete pipe, polypropylene pipe, precast box culverts, and related components for the Drainage Department.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Ordinance

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

For information concerning this acquisition, contact: Stephen Gay, 940-349-8489.

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, REJECTING ANY AND ALL COMPETITIVE BIDS UNDER IFB FOR THE SUPPLY OF REINFORCED CONCRETE PIPE, POLYPROPYLENE PIPE, PRECAST BOX CULVERTS, AND RELATED COMPONENTS FOR THE DRAINAGE DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE (IFB 8884).

WHEREAS, the City has solicited, received, and tabulated competitive proposals to evaluate the supply of reinforced concrete pipe, polypropylene pipe, precast box culverts, and related components for the Drainage Department (IFB 8884) in accordance with the procedures of state laws and the City's ordinances; and

WHEREAS, the City staff recommends, and the City Council has determined, that it is in the best interest of the City that the herein described proposals should be rejected; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. All competitive proposals, as described in the "Request for Proposal", "Bid Proposals", or plans and specifications on file in the Office of the City's Purchasing Agent filed according to the bid number assigned herein (IFB 8884 – Storm Drain Pipe and Structure) are hereby rejected.

SECTION 2. The City Manager, or their designee, is hereby authorized to execute all necessary documents for the rejection of said proposals. The City Manager, or their designee, is hereby authorized, in their discretion, to re-advertise to receive competitive bids, or proceed otherwise, to procure goods and services described in IFB 8884.

SECTION 3. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under the IFB 8884 to reject said proposals to the City Manager, or their designee.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

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

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

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

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: April 13, 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 Black & Veatch Corporation and C3 AcquisitionCO, LLC dba POWERx Inc., for relay commissioning services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8901 – awarded to Black & Veatch Corporation and C3 AcquisitionCO, LLC dba POWERx Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $4,875,000.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

Denton Municipal Electric (DME) developed a Request for Qualifications (RFQ) to establish two (2) contracts with qualified consultants for relay commissioning services. These services encompass a wide range of tasks, including but not limited to testing, commissioning, installation, replacement, repair, and other related activities associated with protection systems, equipment, and devices. The scope of work applies to facilities located within DME and Texas Municipal Power Agency (TMPA) substations, switch stations, and interchanges in the Denton area.

The purpose of the proposed services is to ensure the proper operation and reliability of all substation protection systems. This includes verifying functionality, identifying and correcting deficiencies, assisting with installations, performing repairs, and providing technical support as needed. Consultants may also be called upon to conduct periodic testing required by the North American Electric Reliability Corporation (NERC), support Texas Reliability Entity (TRE) audits by verifying and interpreting records and test results, and offer technical consultation in response to system protection events or inquiries. Additional responsibilities may involve reviewing and analyzing relay operations following system events and advising on compliance with NERC standards.

CIP Projects:

The following are projects within the next five (5) years that will require relay commissioning services.

- Underwood Substation
- Core Substation
- Masch Branch Substation T2 Addition
- RD Wells Substation Panel Replacement
- Denton West Interchange Panel Replacement
- Denton West Interchange Breaker Replacement
- Jim Christal Substation T3 Addition
- Fort Worth Substation Transformer Replacement
- RD Wells Substation Auto Decommissioning
- 345kV Switch Station
- Two 345kV Interchanges
- Arco Substation Modifications
- Masch Branch Substation Modifications
- Southwest Substations
- NERC Substation PRC-005
- Future Large Load Customer Substations
- Emergency Assistance

The total NTE amount is cumulative and is based on the estimated expenditure of upcoming relay commissioning service projects, as shown in the chart below:

Project Description	Estimated 5-Year Expenditure
Relay Commissioning Year 1	$1,105,000
Relay Commissioning Year 2	420,000
Relay Commissioning Year 3	315,000
Relay Commissioning Year 4	1,790,000
Relay Commissioning Year 5	1,245,000
Total	**$4,875,000**

Each consultant will be provided with the opportunity to submit a cost proposal on packages of work put forth by DME. The consultant 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 work package throughout the duration of the contract.

Request for Qualifications (RFQ) for professional relay commissioning services was sent to 866 prospective firms for these services, including 23 Denton firms. In addition, the RFQ was placed on the Procurement website for prospective respondents to download, and advertised in the local newspaper. Six (6) statements of qualifications (SOQ) were received. The SOQs were evaluated based on published criteria, including quality, misoperations caused, and safety. Based upon this evaluation, the recommended awards are to Black & Veatch Corporation and C3 AcquisitionCO, LLC dba POWERx Inc., and are determined to be the most qualified firms for the City.

NIGP Code Used for Solicitation:	207, 285, 691
Notifications sent for Solicitation sent in IonWave:	866
Number of Suppliers that viewed Solicitation in IonWave:	27
HUB-Historically Underutilized Business Invitations sent out:	120
SBE-Small Business Enterprise Invitations sent out:	336
Responses from Solicitation:	6

RECOMMENDATION

Award a contract with Black & Veatch Corporation and C3 AcquisitionCO, LLC dba POWERx Inc., for relay commissioning services for Denton Municipal Electric, in a three (3) year, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $4,875,000.

PRINCIPAL PLACE OF BUSINESS

Black & Veatch Corporation
Houston, TX

C3 AcquisitionCO, LLC dba POWERx Inc.
Phoenix, AZ

ESTIMATED SCHEDULE OF PROJECT

This is an initial three (3) year contract with options to extend the contract for two (2) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

The costs for materials and services purchased under the proposed agreement will be funded out of amounts budgeted for specific CIP projects. The majority of the work proposed will be in the transmission category. Therefore, these costs for transmission projects will ultimately be recovered through the Public Utility Commission of Texas, Transmission Cost of Service Program (TCOS). The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Evaluation Sheet
Exhibit 3: Ordinance and Contracts

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

For information concerning this acquisition, contact: Mark Zimmerer, 940-349-7169.

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

Exhibit 2
RFQ 8901 - Evaluation Sheet for Protection System Commissioning and Maintenance

		Black & Veatch Corporation	**C3 AcquisitionCO, LLC dba POWERx Inc.**	POWER Engineers, Inc.	GERS USA	RMS Energy Co. LLC	LND Technical Services
Respondent's Business Name:							
Principal Place of Business (City and State):		**Houston, TX**	**Phoenix, AZ**	Hailey, ID	Weston, FL	Grand Prairie, TX	Houston, TX
Item #	**Standard Criteria**						
1	Quality, Reputation, and Ability to Complete Similar Projects on Schedule and Within Budget - 40%	**37.33**	**37.33**	24.00	24.00	24.00	10.67
2	Misoperations Caused - 35%	**30.33**	**30.33**	25.67	21.00	21.00	14.00
3	Safety - 25%	**16.67**	**16.67**	16.67	16.67	16.67	16.67
	Total Score:	**84.33**	**84.33**	66.33	61.67	61.67	41.33

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH BLACK & VEATCH CORPORATION AND C3 ACQUISITIONCO, LLC DBA POWERX INC., FOR RELAY COMMISSIONING SERVICES FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8901 – AWARDED TO BLACK & VEATCH CORPORATION AND C3 ACQUISITIONCO, LLC DBA POWERX INC., FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF $4,875,000.00).

WHEREAS, Black & Veatch Corporation and C3 AcquisitionCO, LLC dba POWERx Inc., the professional services providers (the "Provider") set forth in this ordinance, are being selected as the most highly qualified on the basis of their demonstrated competence and qualifications to perform the proposed professional services; and

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

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is authorized to enter into the service contract attached hereto with Black & Veatch Corporation and C3 AcquisitionCO, LLC dba POWERx Inc., for relay commissioning services for Denton Municipal Electric.

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

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

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

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

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

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

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

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

RFQ	8901
File Name	Protection System Commissioning and Maintenance
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: FCAF4C8D-5A20-4A1E-80C0-3C69BCA4EA00

CONTRACT BY AND BETWEEN CITY OF DENTON, TEXAS AND BLACK & VEATCH CORPORATION (CONTRACT 8901)

THIS CONTRACT is made and entered into this date _____, by and between **Black & Veatch Corporation** a Delaware corporation, whose address is 11401 Lamar Avenue Overland Park, Kansas 66211 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

SCOPE OF SERVICES

Contractor shall provide services in accordance with the City's document RFQ 8901 – Protection Systems Commissioning and Maintenance, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFQ 8901 **(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) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "F")**

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

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

Prohibition on Contracts with Companies Boycotting Certain Energy Companies
Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains

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written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization***. Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

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

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

CONTRACTOR

BY: Signed by: Christopher C. Hueste EEF1CEFB98CC41F... _____
AUTHORIZED SIGNATURE

Printed Name: Christopher C. Hueste

Title: AVP, Project Director

979-314-2248
PHONE NUMBER

HuesteCC@BV.com
EMAIL ADDRESS

2026-1412676
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

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

Signed by: Antonio Puente, Jr. E3760944C2BF4B5... Antonio Puente, Jr.
SIGNATURE PRINTED NAME

DME General Manager
TITLE

Electric
DEPARTMENT

Docusign Envelope ID: FCAF4C8D-5A20-4A1E-80C0-3C69BCA4EA00

Exhibit A
Special Terms and Conditions

1. Total Contract Amount

Black & Veatch Corporation is pre-qualified for RFQ 8901 – Protection Systems Commissioning and Maintenance. All pre-qualified contractors will be issued a Request for Cost that defines the scope of work, project material list, and project timeline dates. The pre-qualified contractors will have (10) business 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 timeline schedule requirements. If a response to the Request for Cost request is not received in the applicable time period, such pre-qualified contractor will be disqualified from that Request for Cost. The cumulative contract total for all awarded projects to all pre-qualified contractors for contract 8901 shall not exceed $4,875,000.

2. Contract Terms

The contract term will be three (3) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

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Exhibit B
City of Denton's RFQ 8901 File

On File at the Office of the Purchasing Agent

Docusign Envelope ID: FCAF4C8D-5A20-4A1E-80C0-3C69BCA4EA00

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. **Not Used**

4. **Not Used**

5. **Not Used**

6. **Not Used**

7. **Not Used**

8. **Not Used**

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

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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. Nothing in this Section 9 shall be construed as a waiver or limitation of Contractor's right to equitable adjustments as set forth in this Agreement.

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

10. **WORKFORCE** This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way.

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

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.**

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

12. **INVOICES**:

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

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

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. Not used

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:

A. All proper invoices need to be sent to Accounts Payable – accountspayable@cityofdenton.com. Approved invoices will be paid within thirty (30) calendar days of the invoice being received in Accounts Payable.

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

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

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

i. delivery of defective or non-conforming deliverables by the Contractor;

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed.

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, caused by the Contractor, 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

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be adequate to cover actual or liquidated damages for the anticipated delay; vi. failure of the Contractor to submit proper invoices with purchase order number, all required attachments, and supporting documentation; or vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given to any awarded firm who is in arrears to the City for delinquent taxes of any kind or otherwise indebted to the City that the City shall be entitled to counterclaim and/or offset against any such debt, claim, demand, or account owed to the City through payment withholding until the debt is paid in full, and no assignment of such debt, claim, demand, or account after the said taxes or debt are due shall affect the right of the City to offset the said taxes or debt against same.

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

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

14. **TRAVEL EXPENSES**: All travel, lodging, and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the Contract Documents. During the term of this Contract, the Contractor shall bill and the City shall reimburse Contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the Contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. **FINAL PAYMENT AND CLOSE-OUT**:

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

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

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

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ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. **RIGHT TO AUDIT**:

A. The Contractor agrees that the City shall, until the expiration of five (5) years after final payment under this Contract unless required to be retained for longer under applicable law, have electronic access to and the right to examine all books, records, and computations pertaining to this Contract. If necessary, the City shall have the right to audit and make copies of the books, records, and computations pertaining to the Contract. The Contractor shall retain such books, records, documents, and other evidence pertaining to the Contract period and five (5) years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case 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.

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

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract Documents, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment 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. Not Used

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, 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.**

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21. **WARRANTY – DELIVERABLES**: The Contractor warrants and represents that all deliverables sold the City under the Contract shall conform in all material respects to the specifications, drawings, and descriptions in the Contract Documents, to any samples furnished by the Contractor, to the terms, covenants, and conditions of the Contract, and to all applicable State, federal, or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned. In addition, Contractor warrants that the goods sold to City shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA). In the event the product does not conform to OSHA standards, City may return the product for correction or replacement at the Contractor's expense. In the event Contractor fails to make the appropriate correction within a reasonable time, correction made by City will be at Contractor's expense.

A. Recycled deliverables shall be clearly identified as such.

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

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 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 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. Not Used

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

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services again in accordance with above standard at no additional cost to the City. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then , 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.

D. The obligations and representations contained in this section are Contractor 's sole warranty and guarantee obligations and City's exclusive remedy in respect of quality of the services. *EXCEPT AS PROVIDED IN THIS ARTICLE,* CONTRACTOR *MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO* CONTRACTOR*'S SERVICES AND* CONTRACTOR *DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.*

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. 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

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payments to the Contractor for the purpose of an offset until such time as the amount of damages due the City from the Contractor can be determined.

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, commences to cure 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;

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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. . 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.

31. **TIME OF COMPLETION AND LIQUIDATED DAMAGES**: Contractor agrees and acknowledges that completing the services and/or delivering the goods described in this Contract in a timely manner is very important to the City. Contractor agrees to perform all obligations within the timeframes required. As it is impracticable and extremely difficult to fix the actual damages, if any, that may proximately result from a failure by Contractor to provide the goods or perform the service, should Contractor fail to timely perform its obligations, Contractor agrees to pay to City, or have withheld and offset from monies due it, the amount stated in the Contract Documents as liquidated damages for each calendar day of delay or nonperformance. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract. Execution of the Contract shall constitute agreement by the City and Contractor that said amount is the minimum value of the costs and actual damage caused by the Contractor's failure to timely perform. Adjustments to the contract times can only be made as provided in the Contract Documents and any conditions or specifications referenced therein.
The liquidated damages paid by Contractor shall be the City's sole and exclusive remedy for Contractor's unexcused delay. Contractor's maximum liability for liquidated damages shall not exceed 10% (ten percent) of the total Contract price.

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 mean the, negligence or, willful misconduct of Contractor.

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

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33. Not Used

34. **INSURANCE**: The Contractor shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton outlined in the Insurance Exhibit attached hereto, if applicable. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton. The City of Denton reserves the right to add insurance during the contract term.
B. Specific Coverage Requirements: Specific insurance requirements are contained in the Solicitation and the Insurance Exhibit.

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

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SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM: (I) ANY CLAIM THAT THE CITY'S EXERCISE ANYWHERE IN THE WORLD OF THE RIGHTS ASSOCIATED WITH THE CITY'S' OWNERSHIP, AND IF APPLICABLE, LICENSE RIGHTS, AND ITS USE OF THE DELIVERABLES INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; OR (II) THE CONTRACTOR'S BREACH OF ANY OF CONTRACTOR'S REPRESENTATIONS OR WARRANTIES STATED IN THIS CONTRACT. IN THE EVENT OF ANY SUCH CLAIM, THE CITY SHALL HAVE THE RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF. FURTHER, CONTRACTOR AGREES THAT THE CITY'S SPECIFICATIONS REGARDING THE DELIVERABLES SHALL IN NO WAY DIMINISH CONTRACTOR'S WARRANTIES OR OBLIGATIONS UNDER THIS PARAGRAPH AND THE CITY MAKES NO WARRANTY THAT THE PRODUCTION, DEVELOPMENT, OR DELIVERY OF SUCH DELIVERABLES WILL NOT IMPACT SUCH WARRANTIES OF CONTRACTOR. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

39. **CONFIDENTIALITY**: In order to provide the deliverables to the City, both parties may require access to certain of the other party's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which either party considers confidential) (collectively, "Confidential Information"). Both parties acknowledge and agree that the Confidential Information is the valuable property and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City, its licensors, and/or the Contractor. Both parties (including its employees, subcontractors, agents, or representatives) agree that they will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, or recreate the Confidential Information without the prior written consent of the disclosing party or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the receiving party promptly notifies the disclosing party before disclosing such information so as to permit the disclosing party reasonable time to seek an appropriate protective order. Both parties agree to use protective measures no less stringent than each uses within their 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. Contractor acknowledges that the City of Denton must strictly comply with the Public Information Act, Chapter 552, Texas Government Code in responding to any request for public information related to this Agreement. This obligation supersedes any conflicting provisions of this Agreement. All material submitted by Contractor to the City of Denton shall become property of the City upon receipt. Any portions of such material claimed by 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.

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

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

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 41 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 41 A., B., and C. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should 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

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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 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

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no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

50. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

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

52. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties 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

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regarding the dispute, however any decision requiring approval of the City Council of the City will be required to be submitted to the City Council and the senior level person shall have authority to recommend approval of any resolution. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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

C. The parties shall not be required to submit to binding arbitration.

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

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

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Labor Day
Veteran's Day
Thanksgiving Day
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

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

57. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract for fifteen (15) years.

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

59. **EQUAL OPPORTUNITY** Contractor agrees that during the performance of its contract it will:
A. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age, or handicap.
B. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or request.
The Contractor shall be advised of any complaints filed with the City alleging that Contractor is 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) Not Used.**

61. **RIGHT TO INFORMATION:** The City of Denton reserves the right to use any and all

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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.

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

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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 promptly notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

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

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

72. **RECORDS RETENTION:** The Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Contractor shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract. In the event the value of this Contract is One Million ($1,000,000) Dollars or greater: (i) all contracting information related to this contract will be preserved for the duration of the Contact; (ii) the Contractor shall provide any contracting information in its possession promptly upon request by the City; and (iii) at the expiration of this Contract, the Contractor will either provide all contracting information in its possession to the City or preserve same as required by the record retention requirements of the State of Texas.

73. **PROCUREMENT LAWS**: The City will not agree to any terms or conditions that cause the City to violate any federal, State, or local procurement laws, including its own Charter or Procurement Policy and any such laws included in boilerplate terms, online terms or other terms provided by the Contractor are considered null and void.

74. **AUTHORITY**: Contractor represents and warrants to the other that (a) it has company authority to execute and perform this Contract; (b) executing this Contract does not constitute a material conflict with, breach, or default under any applicable law, its respective organizational

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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.

75. Limitations

A. Neither party shall be liable to the other party for loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities,; cost of capital; cost of replacement power; governmental and regulatory sanctions; and claims of customers for such damages; or, any special, consequential, incidental, indirect or exemplary damages. Property damage and bodily injury are not considered to be special, consequential, incidental, indirect or exemplary damages.
B. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Contractor and Contractor 's officers, directors, members, partners, agents, employees, and consultants, to City and anyone claiming by, through, or under City for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the services or the Agreement from any cause or causes, including but not limited to professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Contractor or Contractor's officers, directors, members, partners, agents, employees, or consultants, shall not exceed the greater sum of the total compensation received by Contractor under this Agreement, or $500,000.

76. City-Furnished Data. Contractor may rely upon the accuracy, timeliness, and completeness of the information provided by the City.

77. Changes. The City may make or approve changes within the general Scope of Services in this Agreement. If such changes affect the Contractor'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.

78. Contractor makes no representations, covenants, warranties, or guarantees, express or implied, other than those expressly set forth in this Agreement. The Parties' rights, liabilities, responsibilities and remedies with respect to the services shall be exclusively those expressly set forth in this Agreement and are in lieu of any others available at law or otherwise.

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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 8901 – 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, except Professional Liability and Workers Compensaton/Employers Liability, shall be endorsed to provide the following:

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- Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.

- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

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

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following 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 $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

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B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: $100,000.00 Each Accident
Bodily Injury by Disease: $100,000.00 Each Employee
Bodily Injury by Disease: $500,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of $500,000.00 per occurrence.

NOTE:

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

D. 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

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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.

Docusign Envelope ID: FCAF4C8D-5A20-4A1E-80C0-3C69BCA4EA00

EXHIBIT F
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.**

BLACK & VEATCH COPORATION

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

_____ 10/29/2025

Signature of vendor doing business with the governmental entity — Date

Certificate Of Completion

Envelope Id: FCAF4C8D-5A20-4A1E-80C0-3C69BCA4EA00
Status: Sent
Subject: Please DocuSign: City Council Contract 8901 Protection System Commissioning and Maintenance - B&V
Source Envelope:
Document Pages: 32
Signatures: 3
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

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

Record Tracking

Status: Original
3/5/2026 2:54:36 PM
Holder: Christa Christian
Christa.Christian@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Christa Christian Christa.Christian@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 3/5/2026 3:06:17 PM Viewed: 3/5/2026 3:06:25 PM Signed: 3/5/2026 3:06:33 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/5/2026 3:06:35 PM Viewed: 3/5/2026 3:19:08 PM Signed: 3/5/2026 3:20:36 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: 198.49.140.10	Sent: 3/5/2026 3:20:38 PM Viewed: 3/9/2026 9:32:37 AM Signed: 3/9/2026 9:53:59 AM
Christopher C. Hueste HuesteCC@BV.com AVP, Project Director Black & Veatch Corporation Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/9/2026 10:01:22 AM ID: 2e736e47-54a9-4ade-ab4d-2eba5d8a5d6d	Signed by: EEF1CEFB98CC41F... Signature Adoption: Pre-selected Style Using IP Address: 170.85.98.207	Sent: 3/9/2026 9:54:02 AM Viewed: 3/9/2026 10:01:22 AM Signed: 3/10/2026 12:39:33 PM

Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Denton Municipal Electric Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/10/2026 12:43:42 PM ID: babd837a-5079-4019-8ba0-cab76229aeb7	Signed by: E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/10/2026 12:39:38 PM Viewed: 3/10/2026 12:43:42 PM Signed: 3/10/2026 12:44:11 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: 3/10/2026 12:44:15 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: 3/5/2026 3:06:35 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 3/10/2026 12:44:14 PM Viewed: 3/11/2026 3:28:45 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		
Mark Zimmerer mark.zimmerer@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Accepted: 2/10/2026 12:54:54 PM ID: 2a2aaaa2-6c1d-467d-bcac-39e2802f930e		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/5/2026 3:06:17 PM
Envelope Updated	Security Checked	3/6/2026 8:04:05 AM
Envelope Updated	Security Checked	3/6/2026 8:29:27 AM
Envelope Updated	Security Checked	3/6/2026 2:56:52 PM
Envelope Updated	Security Checked	3/6/2026 2:56:52 PM
Envelope Updated	Security Checked	3/6/2026 2:56:52 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.

Docusign Envelope ID: 61C8A2B9-3861-41ED-9615-6938D241580B

Docusign City Council Transmittal Coversheet

RFQ	8901
File Name	Protection System Commissioning and Maintenance
Purchasing Contact	Christa Christian
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 C3 ACQUISITIONCO, LLC DBA POWERx INC. (CONTRACT 8901)

THIS CONTRACT is made and entered into this date _____, by and between **C3 AcquisitionCO, LLC dba POWERx Inc.** a Delaware Limited Liability Company, whose address is 24647 S 50th St Phoenix, AZ 85044 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

SCOPE OF SERVICES

Contractor shall provide products and/or services in accordance with the City's document RFQ 8901 – Protection Systems Commissioning and Maintenance, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFQ 8901 **(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) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "F")**

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

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

Prohibition on Contracts with Companies Boycotting Certain Energy Companies
Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is

Docusign Envelope ID: 61C8A2B9-3861-41ED-9615-6938D241580B

prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization***. Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

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

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

CONTRACTOR

BY: Signed by: Travis Livermore 6DF9F21942CD464...
AUTHORIZED SIGNATURE

Printed Name: Travis Livermore

Title: Corporate Counsel

1 (210) 517-6314
PHONE NUMBER

Legal@powerxco.com
EMAIL ADDRESS

2026-1423717
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Signed by: Leah Bush 2A936B08B5D7485...

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

Signed by: Antonio Puente, Jr. E3760944C2BF4B5... Antonio Puente, Jr.
SIGNATURE PRINTED NAME

DME General Manager
TITLE

Electric
DEPARTMENT

Docusign Envelope ID: 61C8A2B9-3861-41ED-9615-6938D241580B

Exhibit A
Special Terms and Conditions

1. Total Contract Amount

C3 AcquisitionCO, LLC dba POWERx Inc. is pre-qualified for RFQ 8901 – Protection Systems Commissioning and Maintenance. All pre-qualified contractors will be issued a Request for Cost that defines the scope of work, project material list, and project timeline 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 timeline schedule requirements. If a response to the Request for Cost request is not received in the applicable time period, such pre-qualified contractor will be disqualified from that Request for Cost. The cumulative contract total for all awarded projects to all pre-qualified contractors for contract 8901 shall not exceed $4,875,000.

2. Contract Terms

The contract term will be three (3) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. Price Escalation and De-escalation

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

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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. <u>Performance Liquidated Damages</u>

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, but only if the Contractor is provided a reasonable opportunity to cure and fails to cure any work that does not meet the performance standards outlined above. 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, but only if the Contractor is provided a reasonable opportunity to cure and fails to cure any work that does not meet the performance standards outlined above. 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 but only if the Contractor fails to cure any work that does not meet performance standards after being given a reasonable opportunity to do so.

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Exhibit B
City of Denton's RFQ 8901 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.

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 ;

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 and which was caused by the acts or omissions of 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 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 after being given reasonable notice and an opportunity to cure any failures.

E. Notice is hereby given to any awarded firm who is in arrears to the City for delinquent taxes of any kind or otherwise indebted to the City that the City shall be entitled to counterclaim and/or offset against any such debt, claim, demand, or account owed to the City through payment withholding until the debt is paid in full, and no assignment of such debt, claim, demand, or account after the said taxes or debt are due shall affect the right of the City to offset the said taxes or debt against same.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or

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electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
G. The Contractor acknowledges and agrees that the awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City will not incur a debt or obligation to pay Contractor any amounts the City does not have the current funds available to pay. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty or liability to the City, nor removal fees, cancellation fees, or the like charged to the City.

14. **TRAVEL EXPENSES**: All travel, lodging, and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the Contract Documents. During the term of this Contract, the Contractor shall bill and the City shall reimburse Contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the Contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. **FINAL PAYMENT AND CLOSE-OUT**:
A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the fifteenth (15^{th}) calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.
B. The making and acceptance of final payment will constitute:

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

ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. **RIGHT TO AUDIT**:
A. The Contractor agrees that the City shall, until the expiration of five (5) years after final payment under this Contract unless required to be retained for longer under applicable law, have

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electronic access to and the right to examine all books, records, and computations pertaining to this Contract. If necessary, the City shall have the right to audit and make copies of the books, records, and computations pertaining to the Contract. The Contractor shall retain such books, records, documents, and other evidence pertaining to the Contract period and five (5) years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents, and other evidence shall be available, within ten (10) business days of written request. All books and records will be made available within a fifty (50) mile radius of the City of Denton if the vendor is not able to provide electronic access. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Subcontractor, material supplier, or other payee agrees that the City shall, until the expiration of five (5) years after final payment under the subcontract unless required to be retained for longer under applicable law, have electronic access to and the right to examine all books, records, documents, and other evidence of the Subcontractor, material supplier, or other payee involving transactions relating to the subcontract. If necessary, the City maintains the right to photocopy any physical books, documents, papers, and records of the subconsultant involving transactions relating to the subcontract. All books and records will be made available within a fifty (50) mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

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

18. **SUBCONTRACTORS**:

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

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract Documents, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract

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without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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

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

19. **WARRANTY-PRICE**:

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

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

C. In the event Contractor breaches this warranty, in addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase, or in the alternative, the City may cancel this Contract without liability to Contractor for breach.

20. **WARRANTY – TITLE**: **The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests, and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.**

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

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U.S. Department of Labor under the Occupational Safety and Health Act (OSHA). In the event the product does not conform to OSHA standards, City may return the product for correction or replacement at the Contractor's expense. In the event Contractor fails to make the appropriate correction within a reasonable time, correction made by City will be at Contractor's expense.

A. Recycled deliverables shall be clearly identified as such.

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

C. Unless otherwise specified in the Contract or required by the Solicitation, the warranty period shall be at least one (1) year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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

F. Contractor shall not limit, exclude, or disclaim any implied warranties, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

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

A. The Contractor may not limit, exclude, or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one (1) year from the date of acceptance of the work. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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

24. **RIGHT TO ASSURANCE**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified (being a minimum of 5 days) after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

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

26. **DEFAULT**:
A. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely, and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 25, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
B. In the event the City terminates the awarded contract for default or any other reason, the Contractor shall not be relieved of liability to the City for damages sustained by the City by reason of any default of the contract by the Contractor or otherwise, and the City may withhold any payments to the Contractor for the purpose of an offset until such time as the amount of damages due the City from the Contractor can be determined.

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs,

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losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and/or any offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause and/or for convenience any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof, provided such payment amount is not disputed by City. The City reserves all rights, causes of action, and remedies available under law or in equity with respect to any dispute under this Contract and a termination under this provision does not waive such rights, causes of action, and remedies.

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

30. **DELAYS**:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in Paragraph 53. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

31. **TIME OF COMPLETION**: Contractor agrees and acknowledges that completing the services and/or delivering the goods described in this Contract in a timely manner is very important to the City. Contractor agrees to perform all obligations within the timeframes required. Adjustments to the contract times can only be made as provided in the Contract Documents and any conditions or specifications referenced therein.

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32. **INDEMNITY**:

A. Definitions:

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

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

33. **LIMITATION OF LIABILITY**: This Contract does not, and shall not be interpreted to, contain an artificial limitation of liability (e.g. liability limited to contract price or liability capped at an amount actually paid in previous 3 months, etc.) or an artificial statute of limitations (e.g. any lawsuit must be commenced within one year of the event).

34. **INSURANCE**: The Contractor shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton outlined in the Insurance Exhibit attached hereto, if applicable. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton. The City of Denton reserves the right to add insurance during the contract term.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the Solicitation and the Insurance Exhibit.

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

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the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

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

37. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

38. **INDEMNIFICATION AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. Moreover, Contractor does not know of any valid basis for any such claims. **THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM: (I) ANY CLAIM THAT THE CITY'S EXERCISE ANYWHERE IN THE WORLD OF THE RIGHTS ASSOCIATED WITH THE CITY'S' OWNERSHIP, AND IF APPLICABLE, LICENSE RIGHTS, AND ITS USE OF THE DELIVERABLES INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; OR (II) THE CONTRACTOR'S BREACH OF ANY OF CONTRACTOR'S REPRESENTATIONS OR WARRANTIES STATED IN THIS CONTRACT. IN THE EVENT OF ANY SUCH CLAIM, THE CITY SHALL HAVE THE 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

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

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

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

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 41 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon 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

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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 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.

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46. **NO SUBCONTRACTING BID AFTER AWARD**: Following the award of the Contract, no subcontracting except that specifically identified in the response to the Solicitation will be permitted without the express prior written consent of the City.

47. **NO GIFT OF PUBLIC PROPERTY**: The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Contractor.

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

49. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

50. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either 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

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document submitted to the City by Contractor shall have any force or effect to change the terms, covenants, and conditions of the Contract.

52. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

53. **DISPUTE RESOLUTION**:

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

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

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refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

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

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

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

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

57. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract for fifteen (15) years.

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.

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59. **EQUAL OPPORTUNITY** Contractor agrees that during the performance of its contract it will:

A. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age, or handicap.

B. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or request. The Contractor shall be advised of any complaints filed with the City alleging that Contractor is not an Equal Opportunity Employer. The City reserves the right to consider its reports from its human relations administrator in response to such complaints in determining whether or not to terminate any portion of this contract for which purchase orders or authorities to deliver have not been included, however, the Contractor is specifically advised that no Equal Opportunity Employment complaint will be the basis for cancellation of this contract for which a purchase order has been issued or authority to deliver granted.

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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

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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:** Not Used.

64. **COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The Contractor or supplier shall comply with all State, federal, and local laws and requirements. The Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; and (iii) Chapter 552 of the Texas Government Code, which outlines policy for public information. The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

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

66. **ATTORNEY'S FEES; LEGAL COSTS:** Contractor and City agree that the City will not be required to pay Contractor's attorney's fees or legal costs under any circumstances, unless expressly required by law.

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

68. **CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Contractor shall be liable for all damages to government-owned, leased, or occupied property and

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equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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

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

72. **RECORDS RETENTION:** The Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Contractor shall grant access 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

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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 8901 – 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 $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. <u>WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE</u>

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Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: $100,000.00 Each Accident
Bodily Injury by Disease: $100,000.00 Each Employee
Bodily Injury by Disease: $500,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of $500,000.00 per occurrence.

NOTE:

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

D. 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.

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

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Exhibit F -
Form CIQ

CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 **Name of vendor who has a business relationship with local governmental entity.**
C3 AcquisitionCO, LLC dba POWERx 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.
X

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

5

Ed Kavanagh
Signature of vendor doing business with the governmental entity

2/20/2026
Date

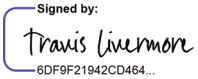
Certificate Of Completion

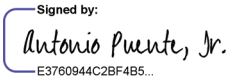
Envelope Id: 61C8A2B9-3861-41ED-9615-6938D241580B
Status: Sent
Subject: Please DocuSign: City Council Contract 8901 Protection System Commissioning and Maintenance - POWERx
Source Envelope:
Document Pages: 34
Signatures: 3
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

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

Record Tracking

Status: Original
2/18/2026 9:21:22 AM
Holder: Christa Christian
Christa.Christian@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Christa Christian Christa.Christian@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 2/18/2026 9:22:36 AM Viewed: 2/18/2026 9:22:47 AM Signed: 2/18/2026 9:22:56 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: 2/18/2026 9:22:59 AM Viewed: 2/18/2026 10:06:34 AM Signed: 2/18/2026 10:06:50 AM
Leah Bush leah.bush@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 2/19/2026 1:27:05 PM ID: bc667824-865b-43c9-a44d-c29cd855617d	Signed by: 2A936B08B5D7485... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 2/18/2026 10:06:52 AM Viewed: 2/19/2026 1:27:05 PM Signed: 2/19/2026 3:10:44 PM
Travis Livermore Legal@powerxco.com Corporate Counsel Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 2/20/2026 12:07:11 PM ID: efcb8b98-2831-4be9-b839-09b46eee984a	Signed by:  6DF9F21942CD464... Signature Adoption: Pre-selected Style Using IP Address: 108.250.170.204	Sent: 2/19/2026 3:10:47 PM Viewed: 2/20/2026 12:07:11 PM Signed: 2/20/2026 12:28:01 PM

Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Denton Municipal Electric Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 2/20/2026 1:16:11 PM ID: 19f7eb63-f87d-46aa-8e01-f4d45b6788af	Signed by:  E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 2/20/2026 12:28:05 PM Viewed: 2/20/2026 1:16:11 PM Signed: 2/20/2026 1:16:40 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: 2/20/2026 1:16:44 PM
Cassey Ogden Cassandra.ogden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/12/2026 5:00:16 PM ID: 0c4dbe9c-18c0-433a-8b34-ef6d70091ffd		
Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

Data Verification Events	Status	Timestamps
Name: Travis Livermore Email: Legal@powerxco.com Title: Corporate Counsel	Fields PhoneNumber. Group 739d6c06. Vonage app (Verify.Version3.PhoneNumber) Result: Verified	Result: 2/20/2026 12:13:06 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: 2/18/2026 9:22:59 AM

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 2/20/2026 1:16:43 PM Viewed: 3/11/2026 3:30:38 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
Mark Zimmerer mark.zimmerer@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 2/10/2026 12:54:54 PM ID: 2a2aaaa2-6c1d-467d-bcac-39e2802f930e		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/18/2026 9:22:36 AM
Envelope Updated	Security Checked	3/6/2026 3:02:59 PM
Envelope Updated	Security Checked	3/6/2026 3:02:59 PM
Envelope Updated	Security Checked	3/6/2026 3:02:59 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: April 13, 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 Storm Services Texas, LLC, to provide disaster recovery logistical services for Denton Municipal Electric as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8976 – Professional Services Agreement for logistical services awarded to Storm Services Texas, 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 $4,000,000.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

Natural disasters and major weather events can be extremely damaging to electric grids. Electric companies must plan to prepare for disaster response. Comprehensive logistical support for responding personnel is necessary for efficient electric system recovery. Food, housing, sanitation facilities, and other services are needed to support the recovery effort.

In the event of a disaster or emergency, Storm Services shall be “on-call” to provide services to DME first and be prepared to deploy pre-event staging of equipment and staff to ensure the safety and well-being of electric emergency response personnel. Response will be activated only in the event of an emergency and in accordance with an awarded contract. This contract does not have an annual minimum cost and does not guarantee or invoke cost unless utilized to respond to an emergency. Response activation will be through a directive issued by the City of Denton’s City Manager or designee.

The response of the Storm Services to the disaster recovery process must be immediate, rapid, and efficient, with acceptable cost controls, accountability procedures, written reports, and submittals to ensure compliance with FEMA reporting requirements and any other federal, state, or local regulation. This is to ensure that the City shall have the means to be reimbursed for all eligible disaster recovery costs from the appropriate federal, state, and private agencies.

Request for Qualifications (RFQ) for logistical services was sent to 473 prospective firms for these services, including 14 Denton firms. In addition, the RFQ was placed on the Procurement website for prospective respondents to download, and advertised in the local newspaper. Four (4) statements of qualifications

(SOQ) were received. The SOQs were evaluated based on published criteria, including Qualifications, experience, and references; project approach and management; deployment schedule; and scope of services. Based upon this evaluation, the recommended award is to Storm Services Texas, LLC, and is determined to be the most qualified firm for the City.

NIGP Code Used for Solicitation:	**958**-Management and Operation Services
Notifications sent for Solicitation sent in IonWave:	473
Number of Suppliers that viewed Solicitation in IonWave:	11
HUB-Historically Underutilized Business Invitations sent out:	83
SBE-Small Business Enterprise Invitations sent out:	194
Responses from Solicitation:	4

RECOMMENDATION

Award a contract with Storm Services Texas, LLC, to provide disaster recovery logistical services for Denton Municipal Electric, in a one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $4,000,000.

PRINCIPAL PLACE OF BUSINESS

Storm Services Texas, LLC
Thomasville, GA

ESTIMATED SCHEDULE OF PROJECT

This is an initial one (1) year contract with options to extend the contract for four (4) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

These services will be funded from DME Operating budget. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is $4,000,000. The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

EXHIBITS

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

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

For information concerning this acquisition, contact: Jerry Looper, 940-349-7676.

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

Exhibit 2
RFQ 8976 - Evaluation Sheet for Disaster Recovery Logistic Services

Evaluation - Section 1					
	Respondent's Business Name:	**Storm Services, LLC**	SLSCO LTD.	Recovery Logistics LLC	Deliver 4 Every1 Logistics LLC
	Principal Place of Business (City and State):	**Thomasville, GA**	Galveston, TX	Apex, NC	McKinney, TX
Item #	**Standard Criteria**				
1	Qualifications/Experience & References- 10%	**8.00**	3.50	3.00	2.50
2	Project Approach & Management- 20%	**18.00**	7.00	6.00	6.00
3	Deployment Schedule - 30%	**25.50**	12.00	12.00	9.00
4	Scope of Services - 40%	**34.00**	14.00	12.00	12.00
	Total Score:	**85.50**	36.50	33.00	29.50

Evaluation - Section 2					
Item #	**Standard Criteria**	**Storm Services, LLC**	Recovery Logistics LLC	SLSCO LTD.	Deliver 4 Every1 Logistics LLC
1	Qualifications/Experience & References- 10%	**8.00**	6.40	5.60	3.20
2	Project Approach & Management- 20%	**17.60**	13.60	12.00	6.40
3	Deployment Schedule - 30%	**25.20**	20.40	16.80	8.40
4	Scope of Services - 40%	**40.00**	24.00	22.40	12.80
	Total Score:	**90.80**	64.40	56.80	30.80

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 STORM SERVICES TEXAS, LLC, TO PROVIDE DISASTER RECOVERY LOGISTICAL SERVICES FOR DENTON MUNICIPAL ELECTRIC AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8976 – PROFESSIONAL SERVICES AGREEMENT FOR LOGISTICAL SERVICES AWARDED TO STORM SERVICES TEXAS, 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 $4,000,000.00).

WHEREAS, Storm Services Texas, LLC, the professional services provider (the "Provider") set forth in this ordinance, is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

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

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is authorized to enter into the service contract attached hereto with Storm Services Texas, LLC, to provide disaster recovery logistical services for Denton Municipal Electric.

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

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

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

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

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

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

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

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

RFQ	8976
File Name	Disaster Recovery Logistic Services
Purchasing Contact	Christa Christian
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 STORM SERVICES TEXAS, LLC
(Contract #8976)

THIS CONTRACT is made and entered into this date _____, by and between **STORM SERVICES TEXAS, LLC** a Texas Limited Liability Company, whose address3 949 HWY 93 South, Thomasville, GA 31792, 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 **RFQ #8976 - Disaster Recovery Logistic Services** a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFQ 8976 (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 Cost 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 prohibited from entering into a contract with a company for goods or services unless the contract contains

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written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the 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
STORM SERVICES TEXAS, LLC

Glynese Irby
Authorized Signature

Printed Name: Glynese Irby

Title: Owner/Manager

Email Adress: glynese@stormsl.com

2026- 1433357
TEXAS ETHICS COMMISSION CERTIFICATE NUMBER (Instructions in Exhibit D)

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...

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

Signed by: Antonio Puente, Jr. E37609A4C2BE4B5...
SIGNATURE

DME General Manager
TITLE

Electric
DEPARTMENT

Contract 8976

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Exhibit A
Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed $4,000,000. This contract does not have an annual minimum cost and does not guarantee or invoke cost unless utilized to respond to an emergency. Response activation will be through a directive issued by the City of Denton's City Manager or designee. Pricing shall be per Exhibit F attached.

2. On-Call Terms

In the event of a disaster or emergency, Storm Services shall be "on-call" to provide services to DME first and be prepared to deploy pre-event staging of equipment and staff to ensure the safety and well-being of electric emergency response personnel.

3. 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.

4. Contract Terms

The contract term will be one (1) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional 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.

The contract will be effective from date of award or notice to proceed with a purchase order as determined by the City of Denton Purchasing Department.

5. Price Escalation and De-escalation

On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment 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

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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. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

6. <u>Performance Liquidated Damages</u>

The Contractor shall incur contractual payment losses, as initiated by the City for performance that falls short of specified performance standards as outlined below:

- Delivery beyond contracted lead times
- Performance below contracted levels (services only)

The Contractor shall be assessed a one (1%) percent fee each month when any one of the performance standards outlined above are not met in full. The Contractor shall be assessed a two (2%) percent profit fee each month when any two (2) or more performance standards outlined above are not met in full. At the end of each month, the City will review the monthly reports and determine the percentage of penalty to be assessed to the Contractor's monthly profit margin.

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Exhibit B
City of Denton's RFP 8976 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:

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- Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.

- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

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

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following 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

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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. <u>WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE</u>

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: $500,000.00 Each Accident
Bodily Injury by Disease: $500,000.00 Each Employee
Bodily Injury by Disease: $500,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. <u>BUSINESS AUTOMOBILE LIABILITY INSURANCE</u>

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of $1,000,000.00 per occurrence.

NOTE:

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

D. <u>PROFESSIONAL LIABILITY INSURANCE</u>

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

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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.

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EXHIBIT F - CONTRACTOR'S PROPOSAL

Position	Day	ST Rate	OT Rate	ST Hours	OT Hours	Cost
Assessor	Monday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Driver	Monday	$ 56.96	$ 76.86	8	4	$ 923.12
Vehicle	Monday	$ 31.00	$ 31.00	8	4	$ 372.00
Assessor	Tuesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Driver	Tuesday	$ 56.96	$ 76.86	8	4	$ 923.12
Vehicle	Tuesday	$ 31.00	$ 31.00	8	4	$ 372.00
Assessor	Wednesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Driver	Wednesday	$ 56.96	$ 76.86	8	4	$ 923.12
Vehicle	Wednesday	$ 31.00	$ 31.00	8	4	$ 372.00
Assessor	Thursday	$ 90.50	$ 122.18	4	8	$ 1,499.44
Driver	Thursday	$ 56.96	$ 76.86	4	8	$ 1,002.72
Vehicle	Thursday	$ 31.00	$ 31.00	4	8	$ 372.00
Assessor	Friday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Driver	Friday	$ 56.96	$ 76.86	0	12	$ 1,082.32
Vehicle	Friday	$ 31.00	$ 31.00	0	12	$ 372.00
Assessor	Saturday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Driver	Saturday	$ 56.96	$ 76.86	0	12	$ 1,082.32
Vehicle	Saturday	$ 31.00	$ 31.00	0	12	$ 372.00
Assessor	Sunday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Driver	Sunday	$ 56.96	$ 76.86	0	12	$ 1,082.32
Vehicle	Sunday	$ 31.00	$ 31.00	0	12	$ 372.00

Total Weekly Cost	$ 20,119.12
Total Daily Cost	$ 2,874.16
Total Hourly Cost	$ 239.51

Position	Day	ST Rate	OT Rate	ST Hours	OT Hours	Cost
Wire Guard	Monday	$ 75.07	$ 101.34	8	4	$ 1,165.92
Vehicle	Monday	$ 31.00	$ 31.00	8	4	$ 372.00
Wire Guard	Tuesday	$ 75.07	$ 101.34	8	4	$ 1,165.92
Vehicle	Tuesday	$ 31.00	$ 31.00	8	4	$ 372.00
Wire Guard	Wednesday	$ 75.07	$ 101.34	8	4	$ 1,165.92
Vehicle	Wednesday	$ 31.00	$ 31.00	8	4	$ 372.00
Wire Guard	Thursday	$ 75.07	$ 101.34	4	8	$ 1,271.00
Vehicle	Thursday	$ 31.00	$ 31.00	4	8	$ 372.00
Wire Guard	Friday	$ 75.07	$ 101.34	0	12	$ 1,376.08
Vehicle	Friday	$ 31.00	$ 31.00	0	12	$ 372.00
Wire Guard	Saturday	$ 75.07	$ 101.34	0	12	$ 1,376.08
Vehicle	Saturday	$ 31.00	$ 31.00	0	12	$ 372.00
Wire Guard	Sunday	$ 75.07	$ 101.34	0	12	$ 1,376.08
Vehicle	Sunday	$ 31.00	$ 31.00	0	12	$ 372.00

Docusign Envelope ID: D3AC3909-906E-4195-90C0-E6A3418A1D9D

Total Weekly Cost	$ 11,501.00
Total Daily Cost	$ 1,643.00
Total Hourly Cost	$ 136.92

Docusign Envelope ID: D3AC3909-906E-4195-90C0-E6A3418A1D9D

Position	Day	ST Rate	OT Rate	ST Hours	OT Hours	Cost
Foreman (working)	Monday	$ 100.74	$ 129.52	16	0	$ 1,771.84
Bucket Operator	Monday	$ 77.23	$ 99.30	16	0	$ 1,395.68
Groundman	Monday	$ 60.44	$ 77.71	16	0	$ 1,127.04
Pickup	Monday	$ 40.25	$ 40.25	16	0	$ 644.00
Bucket Truck	Monday	$ 65.52	$ 65.52	16	0	$ 1,048.32
Foreman (working)	Tuesday	$ 100.74	$ 129.52	16	0	$ 1,771.84
Bucket Operator	Tuesday	$ 77.23	$ 99.30	16	0	$ 1,395.68
Groundman	Tuesday	$ 60.44	$ 77.71	16	0	$ 1,127.04
Pickup	Tuesday	$ 40.25	$ 40.25	16	0	$ 644.00
Bucket Truck	Tuesday	$ 65.52	$ 65.52	16	0	$ 1,048.32
Foreman (working)	Wednesday	$ 100.74	$ 129.52	16	0	$ 1,771.84
Bucket Operator	Wednesday	$ 77.23	$ 99.30	16	0	$ 1,395.68
Groundman	Wednesday	$ 60.44	$ 77.71	16	0	$ 1,127.04
Pickup	Wednesday	$ 40.25	$ 40.25	16	0	$ 644.00
Bucket Truck	Wednesday	$ 65.52	$ 65.52	16	0	$ 1,048.32
Foreman (working)	Thursday	$ 100.74	$ 129.52	16	0	$ 1,771.84
Bucket Operator	Thursday	$ 77.23	$ 99.30	16	0	$ 1,395.68
Groundman	Thursday	$ 60.44	$ 77.71	16	0	$ 1,127.04
Pickup	Thursday	$ 40.25	$ 40.25	16	0	$ 644.00
Bucket Truck	Thursday	$ 65.52	$ 65.52	16	0	$ 1,048.32
Foreman (working)	Friday	$ 100.74	$ 129.52	16	0	$ 1,771.84
Bucket Operator	Friday	$ 77.23	$ 99.30	16	0	$ 1,395.68
Groundman	Friday	$ 60.44	$ 77.71	16	0	$ 1,127.04
Pickup	Friday	$ 40.25	$ 40.25	16	0	$ 644.00
Bucket Truck	Friday	$ 65.52	$ 65.52	16	0	$ 1,048.32
Foreman (working)	Saturday	$ 100.74	$ 129.52	0	16	$ 2,232.32
Bucket Operator	Saturday	$ 77.23	$ 99.30	0	16	$ 1,748.80
Groundman	Saturday	$ 60.44	$ 77.71	0	16	$ 1,403.36
Pickup	Saturday	$ 40.25	$ 40.25	0	16	$ 644.00
Bucket Truck	Saturday	$ 65.52	$ 65.52	0	16	$ 1,048.32
Foreman (working)	Sunday	$ 100.74	$ 129.52	0	16	$ 2,232.32
Bucket Operator	Sunday	$ 77.23	$ 99.30	0	16	$ 1,748.80
Groundman	Sunday	$ 60.44	$ 77.71	0	16	$ 1,403.36
Pickup	Sunday	$ 40.25	$ 40.25	0	16	$ 644.00
Bucket Truck	Sunday	$ 65.52	$ 65.52	0	16	$ 1,048.32

Total Weekly Cost	$ 44,088.00
Total Daily Cost	$ 6,298.29
Total Hourly Cost	$ 393.64

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Position	Day	ST Rate	OT Rate	ST Hours	OT Hours	Cost
Foreman (working)	Monday	$ 154.61	$ 198.78	16	0	$ 2,633.76
Lineman	Monday	$ 141.76	$ 182.26	16	0	$ 2,428.16
Lineman 2	Monday	$ 133.49	$ 171.63	16	0	$ 2,295.84
Lineman 1	Monday	$ 92.03	$ 118.32	16	0	$ 1,632.48
Groundman	Monday	$ 84.87	$ 109.12	16	0	$ 1,517.92
Pickup	Monday	$ 37.44	$ 37.44	16	0	$ 599.04
Bucket Truck	Monday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Bucket Truck	Monday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Digger Derrick	Monday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Pole Trailer	Monday	$ 19.80	$ 19.80	16	0	$ 316.80
Foreman (working)	Tuesday	$ 154.61	$ 198.78	16	0	$ 2,633.76
Lineman	Tuesday	$ 141.76	$ 182.26	16	0	$ 2,428.16
Lineman 2	Tuesday	$ 133.49	$ 171.63	16	0	$ 2,295.84
Lineman 1	Tuesday	$ 92.03	$ 118.32	16	0	$ 1,632.48
Groundman	Tuesday	$ 84.87	$ 109.12	16	0	$ 1,517.92
Pickup	Tuesday	$ 37.44	$ 37.44	16	0	$ 599.04
Bucket Truck	Tuesday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Bucket Truck	Tuesday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Digger Derrick	Tuesday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Pole Trailer	Tuesday	$ 19.80	$ 19.80	16	0	$ 316.80
Foreman (working)	Wednesday	$ 154.61	$ 198.78	16	0	$ 2,633.76
Lineman	Wednesday	$ 141.76	$ 182.26	16	0	$ 2,428.16
Lineman 2	Wednesday	$ 133.49	$ 171.63	16	0	$ 2,295.84
Lineman 1	Wednesday	$ 92.03	$ 118.32	16	0	$ 1,632.48
Groundman	Wednesday	$ 84.87	$ 109.12	16	0	$ 1,517.92
Pickup	Wednesday	$ 37.44	$ 37.44	16	0	$ 599.04
Bucket Truck	Wednesday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Bucket Truck	Wednesday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Digger Derrick	Wednesday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Pole Trailer	Wednesday	$ 19.80	$ 19.80	16	0	$ 316.80
Foreman (working)	Thursday	$ 154.61	$ 198.78	16	0	$ 2,633.76
Lineman	Thursday	$ 141.76	$ 182.26	16	0	$ 2,428.16
Lineman 2	Thursday	$ 133.49	$ 171.63	16	0	$ 2,295.84
Lineman 1	Thursday	$ 92.03	$ 118.32	16	0	$ 1,632.48
Groundman	Thursday	$ 84.87	$ 109.12	16	0	$ 1,517.92
Pickup	Thursday	$ 37.44	$ 37.44	16	0	$ 599.04
Bucket Truck	Thursday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Bucket Truck	Thursday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Digger Derrick	Thursday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Pole Trailer	Thursday	$ 19.80	$ 19.80	16	0	$ 316.80
Foreman (working)	Friday	$ 154.61	$ 198.78	16	0	$ 2,633.76
Lineman	Friday	$ 141.76	$ 182.26	16	0	$ 2,428.16
Lineman 2	Friday	$ 133.49	$ 171.63	16	0	$ 2,295.84

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Lineman 1	Friday	$ 92.03	$ 118.32	16	0	$ 1,632.48
Groundman	Friday	$ 84.87	$ 109.12	16	0	$ 1,517.92
Pickup	Friday	$ 37.44	$ 37.44	16	0	$ 599.04
Bucket Truck	Friday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Bucket Truck	Friday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Digger Derrick	Friday	$ 93.60	$ 93.60	16	0	$ 1,497.60
Pole Trailer	Friday	$ 19.80	$ 19.80	16	0	$ 316.80
Foreman (working)	Saturday	$ 154.61	$ 198.78	0	16	$ 3,340.48
Lineman	Saturday	$ 141.76	$ 182.26	0	16	$ 3,076.16
Lineman 2	Saturday	$ 133.49	$ 171.63	0	16	$ 2,906.08
Lineman 1	Saturday	$ 92.03	$ 118.32	0	16	$ 2,053.12
Groundman	Saturday	$ 84.87	$ 109.12	0	16	$ 1,905.92
Pickup	Saturday	$ 37.44	$ 37.44	0	16	$ 599.04
Bucket Truck	Saturday	$ 93.60	$ 93.60	0	16	$ 1,497.60
Bucket Truck	Saturday	$ 93.60	$ 93.60	0	16	$ 1,497.60
Digger Derrick	Saturday	$ 93.60	$ 93.60	0	16	$ 1,497.60
Pole Trailer	Saturday	$ 19.80	$ 19.80	0	16	$ 316.80
Foreman (working)	Sunday	$ 154.61	$ 198.78	0	16	$ 3,340.48
Lineman	Sunday	$ 141.76	$ 182.26	0	16	$ 3,076.16
Lineman 2	Sunday	$ 133.49	$ 171.63	0	16	$ 2,906.08
Lineman 1	Sunday	$ 92.03	$ 118.32	0	16	$ 2,053.12
Groundman	Sunday	$ 84.87	$ 109.12	0	16	$ 1,905.92
Pickup	Sunday	$ 37.44	$ 37.44	0	16	$ 599.04
Bucket Truck	Sunday	$ 93.60	$ 93.60	0	16	$ 1,497.60
Bucket Truck	Sunday	$ 93.60	$ 93.60	0	16	$ 1,497.60
Digger Derrick	Sunday	$ 93.60	$ 93.60	0	16	$ 1,497.60
Pole Trailer	Sunday	$ 19.80	$ 19.80	0	16	$ 316.80

Total Weekly Cost	$ 116,964.80
Total Daily Cost	$ 16,709.26
Total Hourly Cost	$ 1,044.33

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Position	Day	ST Rate	OT Rate	ST Hours	OT Hours	Cost
Material Supply Manager	Monday	$ 98.57	$ 133.07	8	4	$ 1,480.84
Warehouseman	Monday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Warehouseman	Monday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Certified Forklift Operator	Monday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Certified Forklift Operator	Monday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Vehicle	Monday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Monday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Monday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Monday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Monday	$ 31.00	$ 31.00	8	4	$ 372.00
Material Supply Manager	Tuesday	$ 98.57	$ 133.07	8	4	$ 1,480.84
Warehouseman	Tuesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Warehouseman	Tuesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Certified Forklift Operator	Tuesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Certified Forklift Operator	Tuesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Vehicle	Tuesday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Tuesday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Tuesday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Tuesday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Tuesday	$ 31.00	$ 31.00	8	4	$ 372.00
Material Supply Manager	Wednesday	$ 98.57	$ 133.07	8	4	$ 1,480.84
Warehouseman	Wednesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Warehouseman	Wednesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Certified Forklift Operator	Wednesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Certified Forklift Operator	Wednesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Vehicle	Wednesday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Wednesday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Wednesday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Wednesday	$ 31.00	$ 31.00	8	4	$ 372.00
Vehicle	Wednesday	$ 31.00	$ 31.00	8	4	$ 372.00
Material Supply Manager	Thursday	$ 98.57	$ 133.07	4	8	$ 1,618.84
Warehouseman	Thursday	$ 90.50	$ 122.18	4	8	$ 1,499.44
Warehouseman	Thursday	$ 90.50	$ 122.18	4	8	$ 1,499.44
Certified Forklift Operator	Thursday	$ 90.50	$ 122.18	4	8	$ 1,499.44
Certified Forklift Operator	Thursday	$ 90.50	$ 122.18	4	8	$ 1,499.44
Vehicle	Thursday	$ 31.00	$ 31.00	4	8	$ 372.00
Vehicle	Thursday	$ 31.00	$ 31.00	4	8	$ 372.00
Vehicle	Thursday	$ 31.00	$ 31.00	4	8	$ 372.00
Vehicle	Thursday	$ 31.00	$ 31.00	4	8	$ 372.00
Vehicle	Thursday	$ 31.00	$ 31.00	4	8	$ 372.00
Material Supply Manager	Friday	$ 98.57	$ 133.07	0	12	$ 1,756.84
Warehouseman	Friday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Warehouseman	Friday	$ 90.50	$ 122.18	0	12	$ 1,626.16

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Certified Forklift Operator	Friday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Certified Forklift Operator	Friday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Vehicle	Friday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Friday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Friday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Friday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Friday	$ 31.00	$ 31.00	0	12	$ 372.00
Material Supply Manager	Saturday	$ 98.57	$ 133.07	0	12	$ 1,756.84
Warehouseman	Saturday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Warehouseman	Saturday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Certified Forklift Operator	Saturday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Certified Forklift Operator	Saturday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Vehicle	Saturday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Saturday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Saturday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Saturday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Saturday	$ 31.00	$ 31.00	0	12	$ 372.00
Material Supply Manager	Sunday	$ 98.57	$ 133.07	0	12	$ 1,756.84
Warehouseman	Sunday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Warehouseman	Sunday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Certified Forklift Operator	Sunday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Certified Forklift Operator	Sunday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Vehicle	Sunday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Sunday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Sunday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Saturday	$ 31.00	$ 31.00	0	12	$ 372.00
Vehicle	Saturday	$ 31.00	$ 31.00	0	12	$ 372.00

Total Weekly Cost	$ 66,336.20
Total Daily Cost	$ 9,476.60
Total Hourly Cost	$ 789.72

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Position	Day	ST Rate	OT Rate	ST Hours	OT Hours	Cost
Assessor	Monday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Vehicle	Monday	$ 31.00	$ 31.00	8	4	$ 372.00
Assessor	Tuesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Vehicle	Tuesday	$ 31.00	$ 31.00	8	4	$ 372.00
Assessor	Wednesday	$ 90.50	$ 122.18	8	4	$ 1,372.72
Vehicle	Wednesday	$ 31.00	$ 31.00	8	4	$ 372.00
Assessor	Thursday	$ 90.50	$ 122.18	4	8	$ 1,499.44
Vehicle	Thursday	$ 31.00	$ 31.00	4	8	$ 372.00
Assessor	Friday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Vehicle	Friday	$ 31.00	$ 31.00	0	12	$ 372.00
Assessor	Saturday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Vehicle	Saturday	$ 31.00	$ 31.00	0	12	$ 372.00
Assessor	Sunday	$ 90.50	$ 122.18	0	12	$ 1,626.16
Vehicle	Sunday	$ 31.00	$ 31.00	0	12	$ 372.00

Total Weekly Cost	$ 13,100.08
Total Daily Cost	$ 1,871.44
Total Hourly Cost	$ 155.95

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Category	Task	Hourly Rate	Daily Rate	Weekly Rate	Mob	Demob
Damage Assessment	Feeder sweeps - listing system damage	$ 239.51	$ 2,874.16	$ 20,119.12	$ 2,874.16	$ 2,874.16
Damage Assessment	Inspections - verify customer-side damage	$ 239.51	$ 2,874.16	$ 20,119.12	$ 2,874.16	$ 2,874.16
Damage Assessment	Map changes	$ 239.51	$ 2,874.16	$ 20,119.12	$ 2,874.16	$ 2,874.16
Damage Assessment	Line guards (day/night)	$ 136.92	$ 1,643.00	$ 11,501.00	$ 1,643.00	$ 1,643.00
Warehouse	Oversight of DME-provided materials and equipment	$ 789.72	$ 9,476.60	$ 66,336.20	$ 9,476.60	$ 9,476.60
Warehouse	Forklift services	$ 789.72	$ 9,476.60	$ 66,336.20	$ 9,476.60	$ 9,476.60
Warehouse	Material handling services	$ 789.72	$ 9,476.60	$ 66,336.20	$ 9,476.60	$ 9,476.60
Engineering Services	Make ready efforts, inspections, audits, material lists	$ 155.95	$ 1,871.44	$ 13,100.08	$ 1,871.44	$ 1,871.44
Vegetation Management	Clear vegetation from damaged electrical lines	$ 393.64	$ 6,298.29	$ 44,088.00	$ 6,298.29	$ 6,298.29
Vegetation Management	Dispose of cleared vegetation	$ 393.64	$ 6,298.29	$ 44,088.00	$ 6,298.29	$ 6,298.29
Material Recovery	Clean up damaged/leftover material	$ 393.64	$ 6,298.29	$ 44,088.00	$ 6,298.29	$ 6,298.29
Line Crew	Storm Restoration	$ 1,044.33	$ 16,709.26	$ 116,964.80	$ 16,709.26	$ 16,709.26

Damage Assesment rates are based upon the following

-Two person team made up of a Driver, one Damage Assessor, and a Vehicle

-Per Diem of $160 per day per person: ($20 per meal, $100 lodging)

-12 hour days with ST being the first 8 hours of the day until 40 hours total are accumulated for the week. The excess of 8 hours in a day are billed at OT and all hours after 40 hours in a week are billed OT

-The weekly rate is calculated with the rules mentioend above.

-The daily rate was calcuated by dividing the weekly rate by 7 days since the actual daily rate would depend on the day itself

-The hourly rate was calculated by dividing the daily rate by 12 hours since the actual hourly rate would depend on the day itself

Damage Assesment (Wire Guard) rates are based upon the following

-One person team made up of a Wire Guard and a Vehicle

-Per Diem of $160 per day per person: ($20 per meal, $100 lodging)

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-12 hour days with ST being the first 8 hours of the day until 40 hours total are accumulated for the week. The excess of 8 hours in a day are billed at OT and all hours after 40 hours in a week are billed OT
-The weekly rate is calculated with the rules mentioend above.
-The daily rate was calcuated by dividing the weekly rate by 7 days since the actual daily rate would depend on the day itself
-The hourly rate was calculated by dividing the daily rate by 12 hours since the actual hourly rate would depend on the day itself

Warehouse rates are based upon the following
-Five person team made up of a Material Supply Manager, Four Warehouseman/Certified Forklift Operators, and Five Vehicles (vehicles to be used to transport material to crews)
-Per Diem of $160 per day per person: ($20 per meal, $100 lodging)
-12 hour days with ST being the first 8 hours of the day until 40 hours total are accumulated for the week. The excess of 8 hours in a day are billed at OT and all hours after 40 hours in a week are billed OT
-The weekly rate is calculated with the rules mentioend above.
-The daily rate was calcuated by dividing the weekly rate by 7 days since the actual daily rate would depend on the day itself
-The hourly rate was calculated by dividing the daily rate by 12 hours since the actual hourly rate would depend on the day itself

Engineering rates are based upon the following
-One person team made up of a Damage Assessor and a Vehicle.
-Per Diem of $160 per day per person: ($20 per meal, $100 lodging)
-12 hour days with ST being the first 8 hours of the day until 40 hours total are accumulated for the week. The excess of 8 hours in a day are billed at OT and all hours after 40 hours in a week are billed OT
-The weekly rate is calculated with the rules mentioend above.
-The daily rate was calcuated by dividing the weekly rate by 7 days since the actual daily rate would depend on the day itself
-The hourly rate was calculated by dividing the daily rate by 12 hours since the actual hourly rate would depend on the day itself
-Assuming a storm restoration event. Blue-sky rates for multiple positions are available.

Vegetation rates are based upon the following
-Three person crew made up of a Working Foreman, one Bucket Operator, one Groundman, one Pickup Truck, and one Bucket Truck
-Per Diem of $160 per day per person: ($20 per meal, $100 lodging)
-16 hours per day
-Weekend hours are billed at premium rate
-The weekly rate is calculated with the rules mentioend above.
-The daily rate was calcuated by dividing the weekly rate by 7 days since the actual daily rate would depend on the day itself

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-The hourly rate was calculated by dividing the daily rate by 12 hours since the actual hourly rate would depend on the day itself

Material Recovery rates are based upon the following

-Three person crew made up of a Working Foreman, one Bucket Operator, one Groundman, one Pickup Truck, and one Bucket Truck
-Per Diem of $160 per day per person: ($20 per meal, $100 lodging)
-16 hours per day
-Weekend hours are billed at premium rate
-The weekly rate is calculated with the rules mentioend above.
-The daily rate was calcuated by dividing the weekly rate by 7 days since the actual daily rate would depend on the day itself
-The hourly rate was calculated by dividing the daily rate by 12 hours since the actual hourly rate would depend on the day itself

Line Crew rates are based upon the following

-Five person crew made up of a Working Foreman, one Journeyman Lineman, one Lineman 2, one Lineman 1, one Groundman, one Pickup Truck, two Bucket Trucks, one Digger Derrick, and one Pole Trailer.
-Per Diem of $160 per day per person: ($20 per meal, $100 lodging)
-16 hours per day
-Weekend hours are billed at premium rate
-The weekly rate is calculated with the rules mentioend above.
-The daily rate was calcuated by dividing the weekly rate by 7 days since the actual daily rate would depend on the day itself
-The hourly rate was calculated by dividing the daily rate by 12 hours since the actual hourly rate would depend on the day itself

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Turn-Key Base Camps					
		Daily	**Weekly**	**Mobilization**	**Demobilization**
1	**NIMS Type I-1000 persons**	$ 733,392.00	$ 5,133,750.00	$ 491,477.00	$ 934,950.00
2	**NIMS Type II-750 persons**	$ 576,454.00	$ 4,035,178.00	$ 447,162.00	$ 865,950.00
3	**NIMS Type III-500 persons**	$ 448,175.00	$ 3,137,225.00	$ 423,329.00	$ 838,350.00
4	**NIMS Type IV-250 persons**	$ 324,071.00	$ 2,268,503.00	$ 383,890.00	$ 686,550.00
Site Preparation for Temporary Housing					
5	**Acre Size**	**SITE PREPARATION PACKAGE (Team to prepare a site to accept equipment, staging area, Base Camp, Shelter System, MDRC etc.)**	**Cost Weekly**		
6	**50-Acre Site**	*Package to prepare a 50-acre site. Debris clearance, debris haul away, grading and leveling area, packing/compressing with water and roller. Must include personnel and equipment to accomplish work in 72-hours. (PLANNING Assumption: 1 Acre = 4,840 Square Yards. Volume of 90% light vegetation & 10% C&D debris per acre at 1' high = 4,840 CY/AC X 50 Acres = 242,000 CY)*	$ 813,800.00		

7	**25-Acre Site**	*Package to prepare a 25-acre site. Debris clearance, debris haul away, grading and leveling area, packing/compressing with water and roller. Must include personnel and equipment to accomplish work in 60-hours.(PLANNING Assumption: 1 Acre = 4,840 Square Yards. Volume of 90% light vegetation & 10% C&D debris per acre at 1' high = 4,840 CY/AC X 50 Acres = 121,000 CY)*	$ 471,250.00		
8	**10-Acre Site**	*Package to prepare a 10-acre site. Debris clearance, debris haul away, grading and leveling area, packing/compressing with water and roller. Must include personnel and equipment to accomplish work in 48-hours.(PLANNING Assumption: 1 Acre = 4,840 Square Yards. Volume of 90% light vegetation & 10% C&D debris per acre at 1' high = 4,840 CY/AC X 50 Acres = 48,400 CY)*	$ 182,000.00		

9	**5-Acre Site**	*Package to prepare a 5-acre site. Debris clearance, debris haul away, grading and leveling area, packing/compressing with water and roller. Must include personnel and equipment to accomplish work in 24-hours.(PLANNING Assumption: 1 Acre = 4,840 Square Yards. Volume of 90% light vegetation & 10% C&D debris per acre at 1' high = 4,840 CY/AC X 50 Acres = 24,200 CY)*	$ 94,250.00		

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Line Item #	Description	Unit	Price per Unit per Day (24hrs)	Price per Unit per Week (24hrs/7 days)	Mobilization Price per Unit (one-time cost)	Demobilization Price per Unit (one-time cost)
	Generators & Accessories:					
1	*20 kW Generator	EA	$925.60	$1,856.40	$350.00	$350.00
2	*36 kW Generator	EA	$1,368.90	$2,727.40	$585.00	$585.00
3	*56 kW Generator	EA	$1,636.70	$3,278.60	$875.00	$875.00
4	*100 kW Generator	EA	$2,065.70	$4,124.90	$875.00	$875.00
5	*120 kW Generator	EA	$2,217.80	$4,436.90	$875.00	$875.00
6	*150 kW Generator	EA	$2,301.00	$4,600.70	$875.00	$875.00
7	*175 kW Generator	EA	$2,996.50	$5,989.10	$875.00	$875.00
8	*250 kW Generator	EA	$3,247.40	$6,498.70	$1,170.00	$1,170.00
9	*320 kW Generator	EA	$3,929.90	$7,858.50	$1,750.00	$1,750.00
10	*500 kW Generator	EA	$6,125.60	$12,251.20	$1,750.00	$1,750.00
11	*750 kW Generator	EA	$7,880.60	$15,759.90	$3,500.00	$3,500.00
12	*1000 kW Generator	EA	$12,359.10	$24,722.10	$3,500.00	$3,500.00
13	#2 Banded 5-wire and Fittings	EA	$68.00	$136.50	$150.00	$150.00
14	4/0 Camlock Cable 50'	EA	$26.00	$52.00	$150.00	$150.00
15	600 Amp Line Panel	EA	$380.00	$755.00	$150.00	$150.00
16	800 Amp Line Panel	EA	$520.00	$1,041.30	$150.00	$150.00
17	200 Amp Feeder Panel	EA	$215.00	$429.00	$150.00	$150.00
18	400 Amp Feeder Panel	EA	$215.00	$429.00	$150.00	$150.00
19	*4000W Narrow Verticle Mast Light Tower	EA	$256.00	$1,600.00	$1,500.00	$1,500.00
20	Power Distribution Box (Spider Boxes)	EA	$130.00	$258.00	$150.00	$150.00

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21	Spider Box Cable	EA	$32.00	$110.00	$50.00	$50.00
22	*Variable Message Boards 83″ x 145″ Solar Powered	EA	$613.60	$1,400.00	$1,500.00	$1,500.00
	Pumps, Hoses, & Fittings:					
23	*4" Diesel pump	EA	$533.00	$1,125.00	$150.00	$150.00
24	*6" Diesel pump	EA	$673.40	$1,430.00	$250.00	$250.00
25	*8" Diesel pump	EA	$1,119.30	$2,239.90	$1,250.00	$1,250.00
26	*12" Diesel pump	EA	$3,563.30	$4,290.00	$1,250.00	$1,250.00
27	4" suction 10'	EA	$70.20	$140.40	$250.00	$250.00
28	4" discharge 50'	EA	$53.30	$102.70	$250.00	$250.00
29	6" suction 10'	EA	$104.00	$208.00	$350.00	$350.00
30	6" discharge 50'	EA	$133.90	$269.10	$350.00	$350.00
31	8" suction 20'	EA	$315.90	$633.10	$350.00	$350.00
32	8" discharge 50'	EA	$102.70	$206.70	$450.00	$450.00
33	12" suction 10'	EA	$331.50	$664.30	$350.00	$350.00
34	12" discharge 50'	EA	$192.40	$564.20	$450.00	$450.00
	Ancillary Equipment:					
35	10" x 10" Popup Tents w/ weight bags	EA	$271.42	$1,900.00	$300.00	$300.00
36	Foldable Plastic Chairs	EA	$8.00	$55.65	$50.00	$50.00
37	8' Foldable Banquet Tables	EA	$12.00	$80.00	$75.00	$75.00
38	16-24" Box Fans	EA	$30.00	$200.00	$50.00	$50.00
39	*53' Dry Van	EA	$300.00	$2,100.00	$3,500.00	$3,500.00
40	100' 12/3 Extension Cords	EA	$10.00	$32.00	$75.00	$75.00
41	30' X 50' Climate Ctrl GP Large Tent, Tables & Chairs	EA	$23,400.00	$162,500.00	$2,500.00	$2,500.00

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42	430 piece Medical First Aid Kit	EA	$75.00		$50.00	$50.00
43	Tarps (minimum size per tarp: 20ft. X 25ft.) Quanity: 5,000	EA	$360,000.00			
	MHE					
44	*5k Warehouse Forklift	EA	$643.50	$1,492.00	$950.00	$950.00
45	*5k Rough Terrain Forklift	EA	$990.60	$2,258.00	$950.00	$950.00
46	*6k Extended Reach Forklift	EA	$1,100.00	$2,457.00	$950.00	$950.00
47	*7K Extended Reach Forklift	EA	$1,197.00	$2,628.50	$1,250.00	$1,250.00
48	*10K Extended Reach Forklift	EA	$1,592.50	$3,867.50	$1,750.00	$1,750.00
49	Pallet Jack	EA	$108.00	$750.00		
50	Electric Pallet Jack	EA	$143.00	$1,000.00		
	Environmental Control:					
51	*25 Ton AC W/ Heat	EA	$1,349.40	$3,200.00	$1,750.00	$1,750.00
52	20" X 25' DUCT	EA	$50.00	$300.00	$350.00	$350.00
53	*145 Pint Rollable Dehumidifier	EA	$250.00	$1,400.00	$150.00	$150.00
	Support Equipment:					
54	GPS Satellite Tracking Unit - Only Units deployed will be billed	EA	$50.00	$250.00	$25.00	$25.00
	Bottled Water & ICE Trailers					
55	53ft Trailer, 20 pallets of ice, 44,000 lbs of ice (7lb bags)	EA	$11,000.00		$3,250.00	$3,250.00
56	53ft Reefer Trailer daily rental (Client provides fuel) Mob/Dmob one time chg	EA	$500.00	$3,500.00	$6,500.00	$6,500.00
57	53ft Reefer daily detention rate (truck, driver,& trailer)	EA	$2,400.00	$16,800.00		
58	53ft Trailer, 19 Pallets per trailer, 84 cases per pallet, 24 bottles per case, 5060 gal	EA	$12,000.00		$1,000.00	$1,000.00
59	Water Tankers for potable water storage (6000 gal)	EA	$8,000.00	$56,000.00	$2,000.00	$2,000.00

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	Transportation					
60	*Company Vehicle (Per Vehicle)	EA	$475.00	$3,325.00	$250.00	$250.00
61	*Mechanics Trucks	EA	$675.00	$4,725.00	$350.00	$350.00
62	*Power Only Semi -Trk w/CDL Licensed Driver (4.5 per mile if exceeds daily rate)	EA	$2,405.00	$16,835.00	$3,000.00	$3,000.00
63	*Semi-Trk w/ 53ft Dry Van w/CDL lic drvr (4.5 per mile if exceeds daily rate)	EA	$3,055.00	$21,385.00	$3,000.00	$3,000.00
64	*48ft Fltbed w/Pwr & Driver (5.25 per mile if exceeds daily rate)	EA	$3,705.00	$25,935.00	$3,000.00	$3,000.00
65	*Roll-Back Unit	EA	$4,250.00	$31,850.00	$1,500.00	$1,500.00
66	*Rotator (12 hour shift)	EA	$4,250.00	$31,850.00	$1,500.00	$1,500.00
67	*Landoll	EA	$4,250.00	$31,850.00	$1,500.00	$1,500.00
68	*Box Truck	EA	$2,015.00	$14,105.00	$500.00	$500.00
69	*Refrigerated Box Truck	EA	$3,055.00	$21,385.00	$500.00	$500.00
	Fueling					
70	*Fuel - Diesel	GAL	$10.00			
71	*Fuel - Gas	GAL	$8.00			
72	*Fuel Transport	EA	$7,020.00	$49,140.00	$3,500.00	$3,500.00
73	*Bobtail Fuel Truck	EA	$7,020.00	$49,140.00	$3,000.00	$3,000.00
74	*Mobile Fueling Trailer 8K gal w/multiple fueling positions trk & driver	EA	$7,020.00	$49,140.00	$3,000.00	$3,000.00
75	*Mini-Mobile Fueling Stations (900 gal trailer w/pump)	EA	$5,600.00	$39,200.00	$3,000.00	$3,000.00
	Personnel:					
76	Project / Operations Managers/EOC Rep	HR	$200.00		$500.00	$500.00
77	Project / Operations Managers OT	HR	$300.00		$500.00	$500.00
78	Resource Supervisors	HR	$180.00		$500.00	$500.00
79	Resource Supervisor OT	HR	$270.00		$500.00	$500.00

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80	Resource Technicians	HR	$100.00		$500.00	$500.00
81	Resource Technicians OT	HR	$150.00		$500.00	$500.00
82	Electrical Technicians	HR	$160.00		$500.00	$500.00
83	Electrical Technicians OT	HR	$240.00		$500.00	$500.00
84	Electrical Technicians DT	HR	$300.00		$500.00	$500.00
85	Maintenance Technicians	HR	$100.00		$500.00	$500.00
86	Maintenance Technicians OT	HR	$150.00		$500.00	$500.00
87	Equipment Operators ST	HR	$150.00		$500.00	$500.00
88	Equipment Operators OT	HR	$225.00		$500.00	$500.00
89	Rollback - Equipment Operators ST	HR	$150.00		$500.00	$500.00
90	Rollback - Equipment Operators OT	HR	$225.00		$500.00	$500.00
91	Rotator - Equipment Operators ST	HR	$150.00		$500.00	$500.00
92	Rotator - Equipment Operators OT	HR	$225.00		$500.00	$500.00
93	Landoll - Equipment Operators ST	HR	$150.00		$500.00	$500.00
94	Landoll - Equipment Operators OT	HR	$225.00		$500.00	$500.00
95	Riggers, Box, CDL Drivers ST	HR	$150.00		$500.00	$500.00
96	Riggers, Box, CDL Drivers OT	HR	$225.00		$500.00	$500.00
97	General Laborer	HR	$75.00		$500.00	$500.00
	LSA Support:					
98	Communications satellite, modem, wireless router	EA	$150.00	$600.00	$150.00	$150.00
99	Electrical strips	EA	$3.00	$21.00	$15.00	$15.00
100	KA band satellite data unit	EA	$350.00	$2,000.00	$150.00	$150.00
101	Cradlepoint	EA	$90.00	$600.00	$150.00	$150.00
102	VOIP Lines	EA	$15.00	$75.00	$75.00	$75.00

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103	Verizon network extender	EA	$50.00	$350.00	$75.00	$75.00
104	AT&T network extender	EA	$50.00	$350.00	$75.00	$75.00
105	Conex Style Storage Unit 20'					
106	Conex Style Storage Unit 40'					
107	Mobile Command Center (53ft Trailer, Lg)	EA	$3,630.00	$25,410.00	$4,500.00	$4,500.00
	Living and Sanitation:					
108	*RESTROOM TRAILER: - TOILET STATIONS: 8-10 STALLS - WASH BASINS/SINKS: 1-2 - FRESH WATER TANK, AS REQUIRED: 800-1000 US GAL - WASTE WATER TANK(S), AS REQUIRED: 800-1000 US GAL - WATER HEATER: ELEC OR LPG, ON-DEMAND - POWER: 35 AND/OR 50 AMP GENSET CONNECTION(S) - LIGHTING: CEILING-MOUNT FLUORESCENT THROUGHOUT - A/C UNIT: 13.5-15 AMP - INCLUDES DAILY SERVICE/MAINTENANCE	EA	$3,992.85	$27,950.00	$3,250.00	$3,250.00

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109	*SHOWER TRAILER, FULLY ENCLOSED: - SHOWER STATIONS: 8-10 STALLS - FRESH WATER TANK, AS REQUIRED: 800-1000 US GAL - WASTE WATER TANK(S), AS REQUIRED: 800-1000 US GAL - WATER HEATER: ELEC OR LPG, ON-DEMAND - POWER: 35 AND/OR 50 AMP GENSET CONNECTION(S) - LIGHTING: CEILING-MOUNT FLUORESCENT THROUGHOUT - A/C UNIT: 13.5-15 AMP - INCLUDES DAILY SERVICE/MAINTENANCE	EA	$3,992.85	$27,950.00	$3,250.00	$3,250.00
110	*MOBILE SLEEPING UNIT: - DIMENSIONS: 28' x 14' - BEDS: 8-12 - GENERATOR: 20 kW TURBO DIESEL - FIRE SAFETY: CA FIRE MARSHAL COMPLIANT - HEATING/COOLING SINGLE HVAC UNIT; TEMPERATURE CONTROLLED	EA	$2,535.71	$17,750.00	$3,000.00	$3,000.00
111	*MOBILE OFFICE COMMAND TRAILER: 30' X 8'4" - GENERATOR: 20 kW TURBO DIESEL - FIRE SAFETY: CA FIRE MARSHAL COMPLIANT - HEATING/COOLING SINGLE HVAC UNIT; TEMPERATURE CONTROLLED		$1,950.00	$13,650.00	$3,000.00	$3,000.00

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112	*ADA RESTROOM TRAILER: - ADA COMPLIANT - WASH BASINS/SINKS: 1-2 - FRESH WATER TANK, AS REQUIRED: 800-1000 US GAL - WASTE WATER TANK(S), AS REQUIRED: 800-1000 US GAL - WATER HEATER: ELEC OR LPG, ON-DEMAND - POWER: 35 AND/OR 50 AMP GENSET CONNECTION(S) - LIGHTING: CEILING-MOUNT FLUORESCENT THROUGHOUT - A/C UNIT: 13.5-15 AMP - INCLUDES DAILY SERVICE/MAINTENANCE	EA	$4,428.57	$31,000.00	$3,250.00	$3,250.00
113	*LAUNDRY TRAILER: - WASHER AND DRYER STATIONS: 4-6 - FRESH WATER TANK, AS REQUIRED: 400-600 US GAL CAPACITY - WASTE WATER TANK, AS REQUIRED: 400-600 US GAL CAPACITY - WATER HEATER: ELEC OR LPG, ON-DEMAND - POWER: 35 AND/OR 50 AMP GENSET CONNECTION(S) - LIGHTING: CEILING-MOUNT FLUORESCENT THROUGHOUT - A/C UNIT: 13.5-15 AMP - INCLUDES DAILY SERVICE/MAINTENANCE	EA	$4,781.40	$33,475.00	$3,500.00	$3,500.00

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114	*PORTALET UNITS: - TOILET CAPACITY: 60 GALLONS - INCLUDES DAILY SERVICE/MAINTENANCE - INCLUDES ANY PORTABLE POWER REQUIREMENTS - INCLUDES CONSUMABLES (EX: HAND SOAP, TOILET PAPER, HAND TOWELS) - INCLUDES WASTE RECEPTACLE(S)	EA	$195.00	$1,365.00	$195.00	$195.00
115	*ADA PORTALETS: - TOILET CAPACITY: 60 GALLONS - ADA COMPLIANT - INCLUDES DAILY SERVICE/MAINTENANCE - INCLUDES ANY PORTABLE POWER REQUIREMENTS - INCLUDES CONSUMABLES (EX: HAND SOAP, TOILET PAPER, HAND TOWELS) - INCLUDES WASTE RECEPTACLE(S)	EA	$208.00	$1,456.00	$195.00	$195.00
116	*HAND WASH STATIONS	EA	$195.00	$1,365.00	$195.00	$195.00
117	*30 CU. YD. DUMPSTER ($ 1,235.00 per dump)	EA	$2,340.00	$16,380.00	$1,250.00	$1,250.00
118	*Vacum Truck Sewage (70bbl Liquid Vacum and Operator) ST Rate	HR	$195.00	Per Diem daily $287.3		
119	*Vacum Truck Sewage (70bbl Liquid Vacum and Operator) OT Rate	HR	$292.50	Per Diem daily $287.3		
120	*Vacum Truck Sewage (130bbl Liquid Vacum and Operator) ST Rate	HR	$214.50	Per Diem daily $287.3		
121	*Vacum Truck Sewage (130bbl Liquid Vacum and Operator) OT Rate	HR	$321.75	Per Diem daily $287.3		

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	full wrap around services, including daily fueling, service, and maintenance as required, as well as all consumables. Fueling will be based off cost per gallon in item 70 & 71. Maintenance will be charged					
	tagged and tracked.					

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EXHIBIT G - FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

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

STORM SERVICES TEXAS, LLC

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

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

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

_____

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

4 ☑ **I have no Conflict of Interest to disclose.**

5

_____ 01/06/2026

Signature of vendor doing business with the governmental entity Date

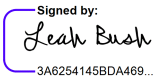
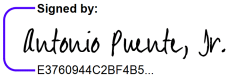
Certificate Of Completion

Envelope Id: D3AC3909-906E-4195-90C0-E6A3418A1D9D
Status: Sent
Subject: Please DocuSign: City Council Contract 8976 Disaster Recovery Logistic Services
Source Envelope:
Document Pages: 58
Signatures: 2
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

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

Record Tracking

Status: Original
3/18/2026 1:56:41 PM
Holder: Christa Christian
Christa.Christian@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Christa Christian Christa.Christian@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 3/18/2026 2:12:02 PM Viewed: 3/18/2026 2:12:14 PM Signed: 3/18/2026 2:16:44 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/18/2026 2:16:47 PM Viewed: 3/18/2026 2:39:03 PM Signed: 3/18/2026 2:40:00 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: 3/18/2026 2:40:05 PM Viewed: 3/19/2026 1:05:17 PM Signed: 3/20/2026 10:10:08 AM
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: 3/20/2026 10:19:49 AM ID: 2274b236-55f3-4f4f-bab5-bb489afea12f	Signed by:  E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/20/2026 10:10:13 AM Viewed: 3/20/2026 10:19:49 AM Signed: 3/20/2026 10:20:04 AM

Signer Events	Signature	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		Sent: 3/20/2026 10:20:10 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: 3/18/2026 2:16:48 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: 3/20/2026 10:20:09 AM Viewed: 3/20/2026 3:39:25 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		

Carbon Copy Events	Status	Timestamp
Jerry Looper jerry.looper@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/20/2026 7:32:27 AM ID: 93f140e3-620a-40da-9069-0b03b7756dbb		
Glynese Irby glynese@stormsl.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	3/18/2026 2:12:02 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: April 13, 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 T&W Tire, L.L.C., for the purchase and repairs of wheels and tires for heavy-duty vehicles and equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8988 - awarded to T&W Tire, L.L.C., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $2,211,300.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The City of Denton Fleet Services Department is establishing a contract for the procurement, maintenance, and repair of tires and wheels for its heavy-duty vehicle and equipment fleet, which consists of over 400 assets. Reliable tire and wheel maintenance is essential to keeping city operations running efficiently, particularly in supporting critical services such as solid waste collection, emergency response, and public works. Proper tire pressure maintenance, timely flat repairs, and routine tire rotations help maximize the lifespan of tires, ensuring the fleet remains operational with minimal disruptions.

Given the specialized equipment, safety risks, and expertise required for heavy-duty tire repairs and replacements, Fleet Services has determined that outsourcing these services to qualified providers is the most effective solution. The contract will cover on-site flat repairs, tire replacements, dismounting and mounting of various tire sizes, heavy-duty tire rotations, and the supply of essential components such as valve stems, tubes, and tire plugs. Additionally, contracted providers will conduct periodic fleet tire inspections to identify potential issues before they impact operations.

This contract is structured to enhance service efficiency by ensuring rapid response times, 24/7 availability for emergency repairs, and high-quality maintenance that extends the lifespan of fleet assets. By securing a reliable tire service provider, the City of Denton will reduce downtime, improve fleet safety, and maintain uninterrupted delivery of essential public services, including solid waste collection and infrastructure maintenance.

The contract value is based on historical fleet maintenance expenditures while accounting for future growth and service demands. By securing this agreement, the City ensures cost stability, reliable parts availability,

and uninterrupted service delivery, while reinforcing fiscal responsibility and strengthening the ability to maintain a safe and dependable fleet.

We are returning for approval because some services were not fully captured in the initial research, and a deeper review revealed overlapping services previously sourced from other vendors. Consolidating all fleet-related tire services under this contract requires increased spend authority, but it delivers economies of scale, reduces the price per service or item purchased, and ensures greater efficiency, transparency, and fiscal stewardship.

Estimated Contract Expenses

Category	FY 25/26	FY 26/27	FY 27/28	FY 28/29	FY 29/30	Total
Tire Replacements	$120,000.00	$126,000.00	$133,000.00	$140,000.00	$147,000.00	$666,000.00
Repair Services	260,000.00	273,000.00	287,000.00	302,000.00	318,000.00	1,440,000.00
Sub Total	**$380,000.00**	**$399,000.00**	**$420,000.00**	**$442,000.00**	**$465,000.00**	**$2,106,000.00**
Contingency 5%	19,000.00	19,950.00	21,000.00	22,100.00	23,250.00	105,300.00
Total	**$399,000.00**	**$418,950.00**	**$441,000.00**	**$464,100.00**	**$488,250.00**	**$2,211,300.00**

Request for Proposals was sent to 539 prospective suppliers, including 16 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Two (2) proposals were received, references were checked, and proposals were evaluated based upon published criteria, including compliance with specifications, experience, qualifications, and performance, and price. Best and Final Offer (BAFO) was requested from the top firm. Based upon this evaluation, T&W Tire, L.L.C. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	**863**-Tires & Tubes (Incl. Recapped/Retreaded Tires), **968**-(Service Only)-Public Works & Related Services
Notifications sent for Solicitation sent in IonWave:	539
Number of Suppliers that viewed Solicitation in IonWave:	18
HUB-Historically Underutilized Business Invitations sent out:	61
SBE-Small Business Enterprise Invitations sent out:	178
Responses from Solicitation:	2

RECOMMENDATION

Award a contract with T&W Tire, L.L.C., for the purchase and repairs of wheels and tires for heavy-duty vehicles and equipment for the Fleet Services Department, in a three (3) year, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $2,211,300.

PRINCIPAL PLACE OF BUSINESS

T&W Tire, L.L.C.
Lancaster, TX

ESTIMATED SCHEDULE OF PROJECT

This is an initial three (3) year contract with options to extend the contract for two (2) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

These products and services will be funded through Fleet Services operating accounts. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is $2,211,300. The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

EXHIBITS

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

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

For information concerning this acquisition, contact: Tom Gramer, 940-349-7467.

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

Exhibit 2
RFP 8988 - Pricing Evaluation for Heavy Duty Tires

				Respondent's Business Name:	**T&W TIRE L.L.C.**	Southern Tire Mart, LLC	
				Principal Place of Business (City and State):	**Oklahoma City, OK**	Columbia, MS	
Line #	**Description**	**QTY**	**UOM**	**Unit**	**Extended**	**Unit**	**Extended**
1	**SERVICES**						
2	Service Call during Normal Business Hours anywhere within DENTON City Limits	1,500	EA	**$95.00**	**$142,500.00**	$80.00	$120,000.00
3	Service Call after normal business hours anywhere within DENTON City Limits	250	EA	**$125.00**	**$31,250.00**	$115.00	$28,750.00
4	Service Call Outside City Limits (Defined by Area Code) PER MILE ONE-WAY	500	Per mile	**$2.00**	**$1,000.00**	$1.50	$750.00
5	Flat Repair - Heavy Duty / Commercial / Construction	2,000	EA	**$68.00**	**$136,000.00**	$45.00	$90,000.00
6	Mount and dismount tire on vehicle Heavy Duty / Commercial / Construction	900	EA	**$60.00**	**$54,000.00**	$40.00	$36,000.00
7	Mount and dismount tire off vehicle Heavy Duty / Commercial / Construction	900	EA	**$40.00**	**$36,000.00**	$20.00	$18,000.00
8	Rotate mounted tire / wheel assembly to new position Heavy Duty / Commercial / Construction	3,000	EA	**$20.00**	**$60,000.00**	$15.00	$45,000.00
9	Fleet check / tire inspection fee	5,000	Per Tire	**$2.00**	**$10,000.00**	$0.00	$0.00
10	**Optional/Additional Services**						
11	Hardware (Valve Stem, Lug Nuts, Caps, Weights)			**20%**		15%	
12	Tires			**20%**		0%	
13	Wheel			**20%**		15%	
14	Scrap tire disposal - Heavy Duty / Commercial / Construction	3,000	EA	**$15.00**	**$45,000.00**	$12.00	$36,000.00
15	Wheel Alignment Heavy Duty / Commercial / Construction	200	EA	**$250.00**	**$50,000.00**	$275.00	$55,000.00
16	Specialty Tire Disposal	200	EA	**$75.00**	**$15,000.00**	$125.00	$25,000.00
17	Off the road (OTR)/AG-HOURLY SERV	50	Per hour	**$145.00**	**$7,250.00**	$120.00	$6,000.00
18	Off the road (OTR)/AG-SERVICE CALL AFTER HOURS	50	Per hour	**$200.00**	**$10,000.00**	$160.00	$8,000.00
19	Off the road (OTR) FLAT REPAIR	50	EA	**$119.25**	**$5,962.50**	$100.00	$5,000.00
20	Off the road (OTR)/EM/IND MOUNT&DISMOUNT 13"14"	50	EA	**$35.00**	**$1,750.00**	$65.00	$3,250.00
21	Off the road (OTR) /EM/IND-MILEAGE (PER MILE)	100	EA	**$2.50**	**$250.00**	$1.50	$150.00
			Total:	**$605,962.50**		$476,900.00	

Evaluation			
Item #	**Scoring Criteria**	**T&W TIRE L.L.C.**	Southern Tire Mart, LLC
1	Compliance with Specifications - 30%	**26.00**	16.00
2	Experience, Qualifications & performance - 30%	**26.00**	16.00
3	Price, Total Cost of Ownership - 40%	**31.48**	40.00
	Total Score:	**83.48**	72.00

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH T&W TIRE, L.L.C., FOR THE PURCHASE AND REPAIRS OF WHEELS AND TIRES FOR HEAVY-DUTY VEHICLES AND EQUIPMENT FOR THE FLEET SERVICES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8988 - AWARDED TO T&W TIRE, L.L.C., FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF $2,211,300.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the purchase and repairs of wheels and tires for heavy-duty vehicles and equipment for the Fleet Services 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
8988	T&W Tire, L.L.C.	$2,211,300.00

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

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

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

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

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

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

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

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

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

Docusign Envelope ID: 1BD25465-4369-4AC1-9870-9BE847165D99

Docusign City Council Transmittal Coversheet

RFP	8988
File Name	Heavy Duty Tires
Purchasing Contact	Kayla Clark
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: 1BD25465-4369-4AC1-9870-9BE847165D99

CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND T & W TIRE, L.L.C.
(Contract #8988)

THIS CONTRACT is made and entered into this date _____, by and between **T & W TIRE, L.L.C.** an Oklahoma Limited Liability Company, whose address 25 N. Council road, Oklahoma City, OK 73127, 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# 8988 - Heavy Duty Tires, 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 8988 (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 prohibited from entering into a contract with a company for goods or services unless the contract contains

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written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the 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
T & W TIRE, L.L.C.

DocuSigned by:
Eddie Valdez
7C3EDFAEC0C74E8...

Authorized Signature

Printed Name: Eddie Valdez

Title: Manager

Email Adress: evaldez@tandwtire.com

2026-1435103
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...

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

DocuSigned by:
Tom Gramer
7B58DA8ECE5E49C...
SIGNATURE

Director
TITLE

Fleet
DEPARTMENT

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Exhibit A
Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed $2,211,300. 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 three (3) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

4. 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.

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Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

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 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>GARAGE LIABILITY</u>

Garage Liability Insurance including, but not limited to, Premises/Operations, Automobile, 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 other than Auto-each

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accident, $2,000,000 Other than Auto-aggregate, $1,000,000 Auto-each accident.

The policy shall include:

a) Garage Keepers on a direct primary basis to include coverage for Comprehensive and Collision for a limit equal to the Actual Cash Value of the CITY'S vehicle(s) in the CONTRACTOR'S care, custody, or control.

B. COMMERCIAL GENERAL LIABILITY INSURANCE

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 $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

C. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: $100,000.00 Each Accident
Bodily Injury by Disease: $100,000.00 Each Employee
Bodily Injury by Disease: $500,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

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

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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 **SERVICES**
(Line excluded from response total)

2 Service Call during Normal Business Hours anywhere within DENTON City Limits
Quantity: 1500 UOM: EA Price: $95.00 Total: $142,500.00

3 Service Call after normal business hours anywhere within DENTON City Limits
Quantity: 250 UOM: EA Price: $125.00 Total: $31,250.00

4 Service Call Outside City Limits (Defined by Area Code) PER MILE ONE-WAY
Quantity: 500 UOM: Per mile Price: $2.00 Total: $1,000.00

5 Flat Repair - Heavy Duty / Commercial / Construction
Quantity: 2000 UOM: EA Price: $68.00 Total: $136,000.00
Item Notes: REPAIR FLAT; CHECK ALL OTHER TIRES; IF NEW TIRE IS NEEDED, MOUNT ON VEHICLE AT LOCATION

6 Mount and dismount tire on vehicle Heavy Duty / Commercial / Construction
Quantity: 900 UOM: EA Price: $60.00 Total: $54,000.00

7 Mount and dismount tire off vehicle Heavy Duty / Commercial / Construction
Quantity: 900 UOM: EA Price: $40.00 Total: $36,000.00

8 Rotate mounted tire / wheel assembly to new position Heavy Duty / Commercial / Construction
Quantity: 3000 UOM: EA Price: $20.00 Total: $60,000.00

9 Fleet check / tire inspection fee
Quantity: 5000 UOM: Per Tire Price: $2.00 Total: $10,000.00
Item Notes: Define response (performed at no charge, will not perform or will perform at what level of frequency)
Supplier Notes: TIRE CARE FLEET CHECK PERFORMED AT THE LANDFILL BI-WEEKLY (EVERY OTHER FRIDAY). PERFORMED ELECTRONICALLY AND EMAILED AT THE TIME OF COMPLETION

10 **Optional/Additional Services**
(Line excluded from response total)
Item Notes: Please define % discount or % markup

11 Hardware (Valve Stem, Lug Nuts, Caps, Weights)
Total: 20% Markup
Supplier Notes: Hardware (Valve Stem, Lug Nuts, Caps, Weights) / EQUAL BALANCE

12 Tires
Total: 20% Markup
Supplier Notes: PRICED STATE PRICING THROUGH MANUFACTURES OR 20% markup IF NOT MANUFACTURED PROVIDED

13 Wheel

Total: 20% Markup

Supplier Notes: NEW STEEL/ALUMINUM ALL SIZES - REFURB (POWDER COAT) CUSTOMER STEEL WHEELS - POLISH CUSTOMER ALUMINUM WHEELS

14 Scrap tire disposal - Heavy Duty / Commercial / Construction

Quantity: 3000 UOM: EA Price: $15.00 Total: $45,000.00

15 Wheel Alignment Heavy Duty / Commercial / Construction

Quantity: 200 UOM: EA Price: $250.00 Total: $50,000.00

16 Specialty Tire Disposal

Quantity: 200 UOM: EA Price: $75.00 Total: $15,000.00

17 Off the road (OTR)/AG-HOURLY SERV

Quantity: 50 UOM: Per hour Price: $145.00 Total: $7,250.00

Item Notes: Normal Business hours

18 Off the road (OTR)/AG-SERVICE CALL AFTER HOURS

Quantity: 50 UOM: Per hour Price: $200.00 Total: $10,000.00

Item Notes: After Normal Business hours

19 Off the road (OTR) FLAT REPAIR

Quantity: 50 UOM: EA Price: $119.25 Total: $5,962.50

Supplier Notes: Off the road (OTR) FLAT REPAIR / DISMOUNT-MOUNT OF TIRE

20 Off the road (OTR)/EM/IND MOUNT&DISMOUNT 13"14"

Quantity: 50 UOM: EA Price: $35.00 Total: $1,750.00

21 Off the road (OTR) /EM/IND-MILEAGE (PER MILE)

Quantity: 100 UOM: EA Price: $2.50 Total: $250.00

22 List other value-added services provided at no charge that are not requested in this document. Please include list in response attachments

Total Price: *No response* Total: *No response*

Response Total: $605,962.50

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Exhibit G

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

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

T AND W TIRE LLC

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

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

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

_____

Name of Officer

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

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

4 ☒ **I have no Conflict of Interest to disclose.**

5

_____ 1.27.2026

Signature of vendor doing business with the governmental entity Date

Scanned with CamScanner

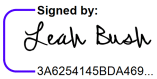
Certificate Of Completion

Envelope Id: 1BD25465-4369-4AC1-9870-9BE847165D99
Status: Sent
Subject: Please DocuSign: City Council Contract 8988 - Heavy Duty Tires
Source Envelope:
Document Pages: 35
Signatures: 3
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Envelope Originator:
Kayla Clark
901B Texas Street
Denton, TX 76209
kayla.clark@cityofdenton.com
IP Address: 198.49.140.10

Record Tracking

Status: Original
3/10/2026 1:50:31 PM
Holder: Kayla Clark
kayla.clark@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Kayla Clark kayla.clark@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	**Completed** Using IP Address: 198.49.140.10	Sent: 3/10/2026 1:50:44 PM Viewed: 3/10/2026 1:50:51 PM Signed: 3/10/2026 1:51:04 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	Initial Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/10/2026 1:51:07 PM Viewed: 3/10/2026 1:58:42 PM Signed: 3/10/2026 1:59:21 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: 3/10/2026 1:59:24 PM Viewed: 3/16/2026 10:01:07 AM Signed: 3/16/2026 10:04:19 AM
Eddie Valdez evaldez@tandwtire.com Manager Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/18/2026 6:53:24 AM ID: 91a8376d-ea66-4248-ba14-dccf799bc89d	DocuSigned by: 7C3EDFAEC0C74E8... Signature Adoption: Pre-selected Style Using IP Address: 12.30.7.82	Sent: 3/16/2026 10:04:23 AM Resent: 3/17/2026 11:07:58 AM Resent: 3/18/2026 6:22:03 AM Viewed: 3/18/2026 6:53:24 AM Signed: 3/18/2026 12:22:06 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:b331:47f:4c94:4b5:1f2:8bbf Signed using mobile	Sent: 3/18/2026 12:22:11 PM Viewed: 3/18/2026 12:33:49 PM Signed: 3/18/2026 12:34:07 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: 3/18/2026 12:34:13 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: 3/10/2026 1:51:07 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 3/18/2026 12:34:11 PM Viewed: 3/19/2026 2:36:54 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		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/10/2026 1:50:44 PM
Envelope Updated	Security Checked	3/18/2026 6:22:01 AM
Envelope Updated	Security Checked	3/18/2026 6:22:01 AM
Envelope Updated	Security Checked	3/18/2026 6:22:01 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

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

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

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

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

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

Required hardware and software

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

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

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

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

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

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

City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: **Denton Municipal Electric**

DCM: **Cassey Ogden**

DATE: **April 13, 2026**

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, approving a power purchase agreement between the City and Peterbilt Motors Company, a division of PACCAR Inc; and providing for an Effective Date.

BACKGROUND

Peterbilt Motors Company, a division of PACCAR Inc., has been in operation in Denton since 1980 and is one of the City's largest industrial employers. Peterbilt is within Denton Municipal Electric's service territory, and its operation represents a significant electric load on the Denton Municipal Electric ("DME") system. As part of ongoing coordination with key industrial customers, DME and Peterbilt have negotiated a Power Purchase Agreement ("PPA") that outlines the terms under which DME will continue providing electric service to support Peterbilt's operational and production needs at its Denton facilities.

This agreement ensures long-term service stability for Peterbilt while supporting DME's ability to plan for and reliably serve major industrial loads within the system. Staff has completed negotiations and is now bringing the PPA forward for Public Utilities Board and City Council consideration and approval.

RECOMMENDATION

Staff recommends approval of an ordinance authorizing the City Manager to execute a Power Purchase Agreement between the City of Denton and Peterbilt Motors Company, a division of PACCAR Inc.

EXHIBITS

1. Agenda Information Sheet
2. Ordinance

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

Prepared by:
Melissa Cuevas
940-349-7591
Division Manager of Business Services

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, APPROVING A POWER PUCHASE AGREEMENT BETWEEN THE CITY AND PETERBILT MOTORS COMPANY, A DIVISION OF PACCAR INC.; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Denton (the "City") owns and operates an electric utility which provides electric energy and related services to all customers within Denton Municipal Electric's ("DME") Public Utilities Commission of Texas ("PUCT") certificated jurisdiction; and

WHEREAS, the City and Peterbilt Motors Company have agreed to terms and conditions for the City's provision of electric energy and are set forth in a power purchase agreement ("PPA") which is attached as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds the unredacted PPA should be sealed and exempted from public disclosure, as permitted by the provisions of §552.133 of the Texas Government Code, as a document that is reasonably related to a competitive electric matter, the disclosure of which would provide an advantage to the competitors or prospective competitors of the City's municipal electric operation ("Competitive Information"); and

WHEREAS, the City Council finds that it is in the public interest that it exercises its right under the Texas Government Code to lawfully safeguard and keep the PPA sealed, as it contains Competitive Information; and

WHEREAS, the City Council finds that it is in the public interest that a copy of the PPA, redacted of Competitive Information, be made available to the public; and

WHEREAS, the City Council further finds that the PPA is in the best interest of DME's customers; NOW, THEREFOR,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitations contained in the preamble of this ordinance are incorporated herein by reference as findings of the City Council.

SECTION 2. The City Council approves and authorizes the City Manager, or designee, and City Secretary, or designee, to execute, attest and deliver, respectively, the PPA, attached as Exhibit "A", with Peterbilt Motors Company

SECTION 3. A copy of the PPA, redacted of Competitive Information, attached Exhibit "A", shall be available to the public for inspection and copying. Absent lawful order, the original PPA shall not be available for public inspection or copying and will be sealed as provided for in Section 5.

SECTION 4. The City Council approves and authorizes the City Manager, or designee, to take such additional actions as the City Manager, or designee, determines to be necessary and advisable to continue to effectuate the purpose, terms, and conditions of the PPA.

SECTION 5. Immediately following the execution, attestation, and delivery of the PPA, the City Secretary is directed to seal and maintain the PPA in their custody and control, as documents excepted from public disclosure under the provisions of Texas Government Code, Section 552.133 unless otherwise lawfully ordered to disclose said documents.

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

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

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

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

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

POWER PURCHASE AGREEMENT

This Power Purchase Agreement ("Agreement") is between the City of Denton, a Texas home-rule municipal corporation, acting by and through Denton Municipal Electric ("City" or "DME"), and Peterbilt Motors Company, a division of PACCAR Inc ("Peterbilt") (each, a "Party" and together, the "Parties").

Recitals

Whereas, the City owns an electric utility with a legislatively created franchise to provide electric power to all customers within the City's electric utility franchise territory;

Whereas, Peterbilt maintains electric service accounts and facilities located within the City's electric utility franchise territory and purchases electric service from the City pursuant to City ordinances and the City's Schedule of Rates for Electric Service; and

Whereas, the Parties desire to enter into this Agreement under which the City will provide electric service to [redacted] in support of Peterbilt's continued operations and economic development activities within the City of Denton, subject to City policies, applicable law, and the terms described herein; and

Now, therefore, for and in consideration of the recitals set forth above, the covenants, terms, conditions and releases herein contained, the receipt and sufficiency of which are acknowledged, the Parties warrant, represent and agree to the following terms:

Agreement

Section 1- definitions

"Base Rate" means the rates contained within the City's Schedule of Rates for Electric Service that do not include the Energy Cost Adjustment ("ECA") or Transmission Cost Recovery Factor ("TCRF").

"Business Day" means a day on which the City is open for business as prescribed by the City's annual holiday calendar; and a Business Day shall begin at 8:00 a.m. and close at 5:00 p.m. local time for each Party's principal place of business.

"Delivery Point(s)" means the point(s) where electricity leaves City-owned lines and/or apparatus and enters Peterbilt-owned lines and/or apparatus.

"Effective Date" means October 1, 2026.

IMPORTANT: This document may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

"Facilities" means above-ground and underground distribution lines, transmission lines, equipment, and infrastructure of the City located on Peterbilt property and necessary to deliver electric service.

"Force Majeure" means an event or circumstance preventing a Party from performing its obligations under this Agreement, that is not within the reasonable control of or the result of negligence of the claiming Party, and which the claiming Party, by the exercise of due diligence, is unable to overcome or avoid. Force Majeure may include, without limitation: strike or labor stoppage, riot, fire, flood, tornados, invasion, civil commotion, insurrection, embargo, sabotage, epidemics, except for the COVID-19 epidemic, explosions, acts of terrorism, orders of courts or governmental authorities, acts of God, acts or omissions of a transmission or distribution utility, and material changes in law; provided that such events were not in effect at the time of execution.

"Good Utility Practice" has the meaning ascribed thereto in the Public Utility Commission of Texas Substantive Rule 25.5(56), as amended, or its successor.

"Law" means any law, rule, regulation, order, writ, judgment, decree, or other legal or regulatory determination by a court, regulatory agency, regional transmission organization, or governmental authority of competent jurisdiction.

"Power" means energy expressed in megawatt-hours (MWh) and/or capacity expressed in kilovolt-ampere (kVA) or megawatts (MW), as applicable. Energy supplied shall be three-phase, sixty-hertz electric energy delivered at the nominal voltage of the Delivery Point(s).

"Price" means total monthly charges calculated and billed, including Base Rates and applicable riders, adjustments, and fees (e.g., ECA,TCRF, late fees, and other tariffed charges).

"Schedule of Rates for Electric Service" means the City's electric rate tariff provided within the City's ordinances.

[redacted]

Section 2- Prior Agreements

There is no current power purchase agreement in effect between the Parties prior to this Agreement;

[redacted]

POWER PURCHASE AGREEMENT
IMPORTANT: This document may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

Section 3- Term Of Agreement; Early Termination

3.1 Term. The term of this Agreement shall begin on the Effective Date and continue through September 30, 2029, unless earlier terminated pursuant to this Agreement (the "Term").

3.2 Early Termination. Either Party may terminate this Agreement by providing written notice to the other Party at least ninety (90) days prior to October 1 of any year during the Term. If proper notice is provided, this Agreement will terminate effective September 30 of that year.

Section 4- Provision Of Electric Service

4.1 Obligations. Subject to this Agreement, the City shall sell and deliver, or cause to be delivered, and Peterbilt shall purchase and receive, or cause to be received, at the Delivery Point(s), Peterbilt's electric Power requirements for [redacted]. The City shall provide continuous and reliable deliveries of electric Power and shall not interrupt or curtail deliveries except as permitted by the City's Schedule of Rates for Electric Service, Force Majeure, Good Utility Practice, or pursuant to orders or directives of ERCOT, the Public Utility Commission of Texas ("PUCT"), or the Texas Legislature.

4.2 Title and Risk of Loss. Title to and risk of loss for electric Power transfers from the City to Peterbilt at the Delivery Point(s). The City warrants delivery free and clear of liens or claims arising prior to the Delivery Point(s).

4.3 Condition of Equipment. Peterbilt represents that its electrical facilities comply with applicable codes and standards.

4.4 Grant of Access. When necessary, Peterbilt shall provide the City with reasonable rights of access to Facilities located on Peterbilt property. Upon notice to Peterbilt, the City may enter Peterbilt premises for temporary construction or to effect repairs to Facilities.

Section 5- Price And Delivery Points

5.1 Basis of Rates. Changes to Rates. Monthly charges will be calculated using the City's effective Schedule of Rates for Electric Service applicable to Peterbilt's rate class and service characteristics (including Base Rates and applicable riders and adjustments such as ECA, RCA, and TCRF as such terms are defined in such schedule). Any changes to rates or riders or new rates or riders adopted by the City will apply to Peterbilt on a prospective basis pursuant to City ordinance.

[redacted]

IMPORTANT: This document may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

[redacted]

5.3 Delivery Points. [redacted]

5.4 EGR Ineligibility. Peterbilt shall not be eligible to participate in the City's Economic Growth Rider ("EGR") at any time during the Term. This restriction applies to all qualifying expansions, load additions, or new facilities associated with Peterbilt during the Term.

Section 6- Metering

6.1 Measurement. Charges are calculated using metering equipment owned, installed, and read by the City. The City will provide measurement data monthly in the invoice. Meter services will be performed by the City in accordance with the applicable tariff and Good Utility Practice.

6.2 Meter Testing. The City will test its meters in accordance with American National Standards Institute (ANSI) schedules and standards. Upon Peterbilt's notice, the City will perform additional accuracy tests at Peterbilt's expense within a reasonable time. Following any test, the City will promptly advise Peterbilt of test details and results.

6.3 Invoice Adjustment for Inaccuracy. If a meter is determined to be outside ANSI accuracy standards, proper corrections will be made and charges adjusted accordingly following City ordinances and regulations.

Section 7- Billing

7.1 Invoicing. Within fifteen (15) Business Days after the end of each month, the City shall deliver an invoice reflecting amounts due for Power delivered in the prior month, with calculations provided in the manner detailed in the City's Schedule of Rates for Electric Service. Peterbilt's payment is due on the fifteenth (15th) day following receipt of each invoice.

7.2 Late Payments. Late payments will be assessed a late payment charge and interest on past-due balances as provided in the City's Schedule of Rates for Electric Service.

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7.3 Disputed Amounts. Either Party may, in good faith, dispute any invoice. The undisputed portion must be paid when due; the disputing Party shall notify the other Party in writing with the basis and supporting calculations. Payment of the disputed amount is not required until resolution. Upon resolution, any required payment plus interest from (and including) the original due date to (but excluding) the paid date will be included in the next invoice.

Section 8- Events Of Default And Remedies

8.1 Events of Default include:

(a) Failure to Pay. Failure to make any due payment (other than amounts disputed in good faith) not remedied within five (5) Business Days after written notice.

(b) Material Breach. Material breach of this Agreement not remedied within thirty (30) days after written notice; provided that if the breach is not reasonably capable of being remedied within thirty days but efforts have commenced and are continuing, the remedy period shall extend to ninety (90) days.

8.2 Remedies. Upon an Event of Default, the non-defaulting Party may:

(a) Terminate this Agreement upon notice, with an early termination date not later than twenty (20) days after effective notice; and/or

(b) Exercise remedies available at law or in equity, including recovery of damages and amounts accrued, subject to the limitations herein. Each Party shall use commercially reasonable efforts to mitigate damages.

Section 9- Change In Law

If a material change in law occurs affecting [redacted] for electricity, the City's bond covenants, or requiring the City to opt into ERCOT retail competition (or if the City elects retail competition), then to the extent permitted, the provisions of this Agreement will control and such change shall not otherwise alter the Price terms herein. If any change renders this Agreement illegal or unenforceable, the Parties will promptly and in good faith negotiate the minimal changes necessary to comply with law while preserving the benefits, burdens, and obligations of each Party.

Section 10- Force Majeure

In the event that either of the Parties should be delayed in or prevented from performing or carrying out any of the agreements, covenants, and obligations under this Agreement by reason of Force Majeure, then, during the pendency of such Force Majeure but for no longer period, the obligations of the Party affected by the event shall be suspended to the extent required. Neither Party shall be liable to the other Party for, or on account of, any loss, damage, injury, or expense resulting from

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or arising out of any such delay or prevention from performing; provided, however, the pendency of such Force Majeure will be of no greater scope and of no longer duration than is reasonably required by the Force Majeure, and the Party suffering such delay or prevention shall use its commercially reasonable efforts to provide the other Party with written notice within such period as is commercially reasonable under the circumstances after the occurrence of such event and shall take all commercially reasonable efforts to mitigate the effects of such event of Force Majeure and to remove the cause(s) thereof. Neither Party shall be required by the foregoing provisions to settle a strike affecting it except when, according to its best judgment, such a settlement seems advisable.

Section 11- Limitations And Warranties

11.1 Limitation of Peterbilt Liability. Except as provided herein, Peterbilt's sole liability and the City's sole remedy under this Agreement are for Peterbilt to timely pay and the City to collect amounts charged for Power delivered and services rendered, or obligations arising under Section 4. In no event shall Peterbilt be liable for consequential, incidental, punitive, exemplary, or indirect damages, lost profits, or business interruption damages, whether in contract, tort, statute, or otherwise, except to the extent caused by Peterbilt's gross negligence or willful misconduct.

11.2 Limitation of City Liability. To the extent allowed by Texas law, City liability for damage or injury, interruption of service, and disclaimer of warranties shall be as set forth in the General Terms and Conditions of the City's Schedule of Rates for Electric Service and applicable Texas and federal law.

Section 12- Audit

Each Party (and its representatives) may, at its expense and during normal working hours, examine the records of the other Party as necessary to verify statements, charges, or computations under this Agreement. If any examination reveals inaccuracies, adjustments and interest (calculated in accordance with the Texas Government Code, Chapter 2251) shall be promptly made; provided no adjustment will be made unless an objection was raised within two (2) years from statement issuance.

Section 13- Confidentiality

To the extent permitted by law, the Parties will maintain the confidentiality of the competitive portions of this Agreement and information acquired in performance relating to the operations of the other Party. This Agreement is intended to be a power purchase agreement and the competitive portions are exempt from public disclosure under Texas Government Code § 552.133(a-1)(1)(C) and (F). Each Party agrees not to divulge such information to third parties without first providing written notice to the other Party and giving a reasonable opportunity to assert rights under the Texas Public Information Act (Chapter 552, Texas Government Code).

IMPORTANT: This document may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

Section 14- Representations And Warranties

Each Party represents and warrants that:

(a) It has taken all necessary action to authorize execution, delivery, and performance of this Agreement;

(b) This Agreement is a valid and binding obligation, enforceable per its terms, subject to laws of general application relating to creditors' rights, bankruptcy, insolvency, and debtor relief;

(c) Execution and delivery and compliance with this Agreement do not violate or conflict with any organizational documents, statute, regulation, judgment, order, decree, injunction, or material agreement; and

(d) It is the full and sole owner of claims or causes of action arising from or relating to this Agreement.

Section 15- Miscellaneous

15.1 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and shall completely and fully supersede all prior understandings or agreements, both written and oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. The section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.

15.2 Severability. If any article, section, phrase or portion of this Agreement is held to be invalid, illegal or unenforceable for any reason, such article, section, phrase or portion so adjudges will be deemed separate, severable and independent and replaced automatically by a legal, valid and enforceable provision which most nearly accomplishes and reflects the original intention of the Parties. This Agreement, as so modified, shall remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected thereby. If the application of any provision of this Agreement to any Person or circumstance is determined to be void, unlawful or unenforceable, then that provision shall remain valid, lawful, and enforceable as applied to other Persons and circumstances.

15.3 Amendment; Binding Effect. This Agreement shall become effective and binding upon the Parties as of the Effective Date upon the execution and delivery of this Agreement by each of the Parties. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties. This

IMPORTANT: This document may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

Agreement shall inure to the benefit of all and shall be binding upon the Parties and their respective successors and assigns.

15.4 No Waiver. No waiver of any of the terms of this Agreement shall be binding unless in writing and signed by all Parties hereto. No waiver of any terms of this Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

15.5 Governing Law; Venue. This Agreement shall be governed by and shall be construed, enforced, and performed in accordance with the Laws of the State of Texas, without regard to principles of conflicts of law that would require the application of the laws of any other jurisdiction. Each Party agrees to the exclusive jurisdiction of the federal and state courts in Denton County, Texas as necessary to enforce this Agreement.

15.6 Waiver of Jury Trial. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP BETWEEN THEM BY THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

15.7 Contract Claims Resolution. The dispute resolution process that is provided for in Texas Government Code, Chapter 2260 shall be used by the Parties to resolve any unresolved claim for breach of contract or any other claimed default arising under this Agreement. Pursuant to said Chapter 2260, the submission, processing, and resolution of any claim made by City and/or Peterbilt is governed by the published rules adopted by the Office of the Texas Attorney General, as are currently effective, hereafter enacted, or subsequently amended.

15.8 Further Assurances. Each Party shall deliver or cause to be delivered to the other Party such instruments, documents, statements, certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available, upon reasonable request, personnel and records relating to the Party's facilities required to deliver electric power from the City to Peterbilt at Peterbilt's interconnection points with the City to the extent required to carry out the purposes of this Agreement, to fulfill any legal obligation or regulatory reporting requirement, or to ensure the reliability of the City's electric distribution system.

15.9 Further Instruments. The Parties expressly covenant and agree that they will each execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Agreement.

15.10 No Rights of Third Parties. This Agreement is intended only for the Parties' benefit and nothing in this Agreement may be construed to create any duty to, or any standard of care concerning, or liability to, any person not a party to this Agreement.

IMPORTANT: This document may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

15.11 Joint Effort. This Agreement has been prepared by the joint efforts of the Parties or the attorneys for the Parties and each Party acknowledges and agrees that the general rule of contract construction providing that the provisions of a contract are to be strictly construed against the drafter of the agreement is hereby waived.

15.12 No Reliance. Neither Party is relying on any promise, undertaking, or understanding not expressly set forth herein.

15.13 No Joint Venture; No Lending of Credit. Nothing herein creates a partnership, joint venture, or other legal entity between the Parties, or a loan or pledge of credit or assets by the State of Texas or the City, as prohibited by the Texas Constitution or otherwise.

15.14 Counterparts. This Agreement may be executed in multiple counterparts, with the same effect as if all Parties hereto had signed the same counterpart. All counterparts shall be construed together and shall constitute one agreement.

15.15 Survival. Provisions expressly or by implication continuing after expiration or termination shall remain in effect, including Sections 5, 9–14, and this Section 15.

15.16 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

15.17 Notices. All notices, requests, statements, or payments shall be made in writing as specified below. Notices required to be in writing shall be delivered by letter, electronic media, facsimile, or another documentary form. Notice shall be deemed to have been received by the close of the day on which it was transmitted or hand delivered (unless transmitted or hand delivered after the close of recipient's business or on a day on which recipient is not open for business, in which case it shall be deemed received at the close of the next day on which recipient is open for business). Notice by overnight mail or overnight courier shall be deemed to have been received one (1) day after it was sent (unless delivered after the close of recipient's business or on a day on which recipient is not open for business, in which case it shall be deemed received on the next day on which recipient is open for business). A Party may change its addresses by providing notice of same in accordance herewith

IMPORTANT: This document may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

If intended for City, to:

Denton Municipal Electric
1659 Spencer Rd
Denton, TX 76205
Fax: (940) 349 7334
Phone: (940) 349 8487
Attn: General Manager

and

City of Denton
City Attorney
215 East McKinney Street
Denton, TX 76201
Fax: (940) 382-7923
Phone: (940) 349-8333

and

City of Denton, Texas
215 East McKinney Street
Denton, TX 76201
Fax: (940) 349 8596
Phone: (940) 349 8560
Attn: City Manager

If intended for Peterbilt

Peterbilt Motors Company
3200 Airport Rd
Denton, TX 76207
Phone: 940-566-7100
Email: [●]
Attn: Plant Manager

and

PACCAR Inc
777 - 106th Ave. N. E
Bellevue, WA 98009
Attn: Director of Indirect Purchasing

15.18 Electronically Transmitted Signatures. Signatures delivered electronically (e.g., .pdf, .jpeg, .tif/.tiff) are deemed original and fully effective for all purposes.

15.19 Understanding. The Parties represent that they fully understand this Agreement and its terms and, with this understanding, voluntarily enter into this Agreement, as evidenced by signing below.

——————— SIGNATURE PAGES FOLLOW ———————

IMPORTANT: This document may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION

By: _____

Name: _____

Title: City Manager

Date: _____

ATTEST:

_____

City Secretary

APPROVED AS TO FORM:

_____

City Attorney

PETERBILT MOTORS COMPANY,

a division of PACCAR Inc

By: E-SIGNED by Jacob Montero on 2026-04-06 08:07:04 CDT

Name: Jacob Montero

Title: VP and General Manager

Date: April 06, 2026

PACCAR Inc

By: E-SIGNED by Howard Wright on 2026-04-06 17:00:28 CDT

Name: Howard Wright

Title: Exec Director of Purchasing

Date: April 06, 2026

APPROVED AS TO FORM:

Rafael Virmond E-SIGNED by Rafael Virmond on 2026-04-03 03:42:44 CDT

[Peterbilt/PACCAR Legal Counsel]

IMPORTANT: This document may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
March 23, 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, March 23, 2026, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Aaron Newquist, Robert Rayner, Billy Cheek, Susan Parker, Thomas Plock

Also present: General Manager Antonio Puente, Jr. and First Assistant City Attorney Marcella Lunn

Absent: Chair Devin Taylor, Lee Riback

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-D.

Board Member Parker moved to recommend adoption of agenda items 2 A-D. Motion seconded by Board Member Plock; motion carried.
YES (5): Aaron Newquist, Billy Cheek, Susan Parker, Robert Rayner, Thomas Plock
NO (0):

A. PUB26-022 Consider recommending adoption of an ordinance of the City of Denton adopting and approving a pole attachment license agreement with Spectrum Gulf Coast, LLC ("Charter") for all pole attachments involving poles and conduits owned by the City of Denton ("City"); authorizing the City Manager to execute said agreements; authorizing the expenditure of funds therefor; and providing an effective date.

B. PUB26-034 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 Schweitzer Engineering Laboratories, Inc., for the purchase of protective relay panels for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8965 - awarded to Schweitzer Engineering Laboratories, Inc., in the not-to-exceed amount of $110,583.00).

C. PUB26-035 Consider recommending adoption of an ordinance authorizing the City Manager to execute and deliver Supplemental Agreement No. 1 to the Standard Utility Agreement ("Agreement") by and between the City of Denton and the Texas Department of Transportation ("TxDOT"), for the reimbursement of design, property acquisition and related services, construction, inspection, project management, and other direct costs associated with the adjustment, removal, and/or relocation of wastewater utilities along I-35E

from Mayhill to Loop 288 more specifically called the I-35E/Mayhill Utility Relocations Project (Utility ID No. U00011546) for wastewater relocation efforts, within the County and City of Denton, Texas; providing for the expenditure of funds not to exceed an increase of One Hundred Sixty-Two Thousand, Eight Hundred Fifteen and 90/100 dollars ($162,815.90) therefore; and providing an effective date.

D. PUB26-036 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 Closner Equipment Co., Inc., for the acquisition, rental, maintenance, and repairs of various medium-duty and heavy-duty construction equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8987 - awarded to Closner Equipment Co., Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $4,168,500.00).

3. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB26-038 Consider approval of the March 9, 2026 minutes.

Board Member Rayner moved to recommend adoption of agenda items 2 A-D. Motion seconded by Board Member Plock; motion carried.
YES (5): Aaron Newquist, Billy Cheek, Susan Parker, Robert Rayner, Thomas Plock
NO (0):

B. PUB26-033 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 Accelleron US Inc., for turbo replacement, parts, and service for the Denton Energy Center; providing for the expenditure of funds therefor; and providing an effective date (RFP 8816 - awarded to Accelleron US Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of $9,520,000.00).

Jose Gaytan gave a presentation. Arthur Pando, Lori Hewell, and Jose Gaytan answered questions from members of the board.

Board Member Parker moved to recommend adoption of agenda items 2 A-D. Motion seconded by Board Member Plock; motion carried.

YES (5): Aaron Newquist, Billy Cheek, Susan Parker, Robert Rayner, Thomas Plock

NO (0):

C. PUB26-039 Management Reports

1. Future Agenda Items
2. New Business Action Items

4. CONCLUDING ITEMS

With no further business, the meeting was adjourned at 9:27 AM.

DEVIN TAYLOR
CHAIR
CITY OF DENTON, TEXAS

CASSIE BLACKBURN
ADMINISTRATION MANAGER
CITY OF DENTON, TEXAS

Minutes approved on: 4/13/26

City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement

ACM: Christine Taylor

DATE: April 13, 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 Badger Meter, Inc., for the Advanced Metering Infrastructure (AMI) Implementation Program for the Water Metering Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8623 – awarded to Badger Meter, Inc., for five (5) years, with the option for five (5) additional one (1) year extensions, in the total ten (10) year not-to-exceed amount of $26,000,000.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

Water Utilities manages approximately 44,000 water meters across the city. These meters are currently read manually at an average cost of $1.05 per meter each month. Manual reading presents challenges, including standing water, pests, and physical obstructions, and increases the likelihood of human error, which often requires costly re-reads to correct missing or inaccurate data.

A 2021 Feasibility Study by Jacobs Engineering Group identified significant cost-saving opportunities associated with transitioning to an Advanced Metering Infrastructure (AMI) system. Benefits include reduced meter reading costs, improved accuracy, lower vehicle and labor expenses, and enhanced data precision. When factoring in full system implementation and meter replacement, Jacobs projected a return on investment of 8.9–11.0%, with the system paying for itself in 11–13 years, well within the typical 20-year meter lifespan.

The study also highlighted several non-monetary advantages, such as improved customer service, environmental benefits, and operational efficiencies. Customers would gain real-time insight into their water use, enabling earlier leak detection and better consumption management. Enhanced data would support more accurate capacity planning, while operational risks and safety hazards would be reduced by limiting the need for field staff to access meter pits.

Denton Municipal Electric (DME) successfully implemented an AMI system for electric meters beginning in 2010, completing deployment in 2015 using City personnel. DME continues to oversee meter reading for both Electric and Water. Progress on Water AMI has been slower due to the complexity of in-ground

meter pits, but the Jacobs study confirmed that current technology and available vendors now offer reliable, cost-effective solutions.

The proposed Water AMI Implementation Program includes new water meters, AMI endpoints, installation services, system integration, and support for connecting the system with other City platforms. It also includes a flexible communications network to support advanced monitoring and future smart-city applications, along with pilot testing and staff training. According to the consultant's proposal, the project is expected to be completed by Q2 2028, resulting in a fully operational AMI system for Denton Water Utilities.

Water AMI Program	Estimated 10-Year Expenditure
Year 1	$6,604,552.83
Year 2	13,880,327.42
Year 3	317,930.40
Year 4	317,930.40
Year 5	317,930.40
Year 6	324,289.01
Year 7	330,647.62
Year 8	337,006.22
Year 9	343,894.72
Year 10	350,783.21
Sub total	**$23,125,292.23**
Contingency	2,874,707.77
Total	**$26,000,000.00**

Request for Proposals was sent to 590 prospective suppliers, including 17 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Six (6) proposals were received, references were checked, and proposals were evaluated based upon published criteria, including AMI requirements, commercial evaluation (Appendix B), and price. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, Badger Meter, Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	490, 720, 968
Notifications sent for Solicitation sent in IonWave:	590
Number of Suppliers that viewed Solicitation in IonWave:	38
HUB-Historically Underutilized Business Invitations sent out:	56
SBE-Small Business Enterprise Invitations sent out:	211
Responses from Solicitation:	6

RECOMMENDATION

Award a contract with Badger Meter, Inc., for the Advanced Metering Infrastructure (AMI) Implementation Program for the Water Metering Department, in a five (5) year, with the option for five (5) additional one (1) year extensions, in the total ten (10) year not-to-exceed amount of $26,000,000.

PRINCIPAL PLACE OF BUSINESS

Badger Meter, Inc.
Milwaukee, WI

SUSTAINABILITY MEASURES

The project will enhance water conservation by providing customers with increased transparency into their consumption data, enabling early detection of leaks and promoting more efficient usage. Waste will be reduced through improved system monitoring and automated data collection. In addition, the project will help mitigate fossil fuel emissions by significantly reducing the need for vehicle trips traditionally required for manual meter reading and maintenance.

ESTIMATED SCHEDULE OF PROJECT

This is an initial five (5) year contract with options to extend the contract for five (5) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

These services will be funded from Water Metering account 630465523. Requisition #174860 has been entered into the Purchasing software system in the amount of $6,604,552.83. The budgeted amount for this item is $26,000,000.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Pricing Evaluation
Exhibit 3: Presentation
Exhibit 4: Ordinance and Contract

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

For information concerning this acquisition, contact: Tiffany Sherrane, 940-349-7331.

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

Exhibit 2
RFP 8623 - Pricing Evaluation for Water AMI Program

	Respondent's Business Name:	**Badger Meter, Inc.**	Zenner USA, Inc	Core & Main	Aqua Metric Sales Company	Metron Farnier	Wesco (Anixter Inc.)
	Principal Place of Business (City and State):	**Milwaukee, WI**	Addison, TX	St Louis, MO	Selma, TX	Boulder, CO	San Antonio, TX
Line #	**Description**	**Unit**	**Unit**	**Unit**	**Unit**	**Unit**	**Unit**
1	Water Meters - Solid State	**$7,890,135.84**	$5,985,233.00	$13,756,012.00	$12,113,981.55	$12,785,926.00	$8,832,184.39
2	Modules/ Endpoints	**$4,175,927.49**	$4,283,229.00	incl	$5,438,817.69	$784,905.00	$4,676,523.74
3	Installation Services	**$8,058,750.46**	$9,200,191.29	$5,709,897.50	$10,527,785.43	$7,884,623.85	$5,226,170.82
4	Implementation Services	**$8,520.00**	$118,000.00	$270,000.00	$4,570,742.49	Incl	$27,025.00
5	Software-as-a-Service (SaaS)	**$3,456,795.89**	$709,224.56	$1,374,469.67	$3,679,783.09	Incl	$542,564.19
6	Network-as-a-Service (NaaS)	**Incl in SAAS**	$1,152,532.59	$4,414,216.10	$4,954,341.43	incl	$2,798.13
	Total:	**$23,590,129.68**	$21,448,410.44	$25,524,595.26	$41,285,451.69	$21,455,454.85	$19,307,266.27

Total Overall after best and final offer:	**23,125,292.23**
Contingency:	**2,874,707.77**
Total Contract NTE Amount:	**26,000,000.00**

Evaluation

Item #	**Scoring Criteria**	**Badger Meter, Inc.**	Zenner USA, Inc	Core & Main	Aqua Metric Sales Company	Metron Farnier	Wesco (Anixter Inc.)
1	AMI Requirements per Appendix C - 55%	**41.25**	22.00	24.75	30.25	16.50	11.00
2	Commercial Evaluation per Appendix B - 15%	**12.75**	5.25	6.75	9.00	6.00	5.25
3	Price, Total Cost of Ownership per Appendix D2 - 30%	**24.55**	27.01	22.69	14.03	27.00	30.00
	Total Score:	**78.55**	54.26	54.19	53.28	49.50	46.25

Water Advanced Metering Infrastructure Implementation Program

Stephen Gay
General Manager, Water Utilities and Street Operations

April 13, 2026

File ID PUB26-041

CITY OF DENTON

Overview of Advanced Metering Infrastructure (AMI)

AMI is an integrated system of smart meters, communication networks and data management systems that enables two-way communication between the utility and meter.

- Primary System Components include:
  - Solid State Meters
  - Endpoints (data transmitters)
  - Data Collection System
  - System Management
- Benefits:
  - Improves water utility metrics associated with water use
  - Allows Customers real time access to view their water usage
  - Ensures regulatory compliance
  - Eliminates manual meter reading efforts
  - Increases response time to leaks or unusual consumption patterns
  - Sustainability and Water conservation enhancements

Project Scope

- Implementation of city-wide smart meters, network connectivity and software.
  - Acquisition and installation of solid-state meters, endpoints, and boxes
  - Connectivity to cellular network for usage transmittal
  - Integration and support for Software systems necessary to operations and management
- Major Project Milestones
  - Proof of Concept
  - System Acceptance Testing
  - City-wide deployment

Estimated timeline of 2 years for project completion

Evaluation Process & Fiscal Considerations

- RFP issued to Ten prospective suppliers; advertised publicly
- Six proposals received
- Evaluation based on delivery capability, specification compliance, and price
- Fiscal impact:

Year 1	$6.6M	Year 7	$331K
Year 2	$13.9M	Year 8	$337K
Year 3-5	$954K	Year 9	$344K
Year 6	$325K	Year 10	$351K

- Additional contingency of approximately 12%
- Total contract value not to exceed $26M over ten years

Recommendation & Next Steps

Staff Recommendation:

- Award contract to Badger Meter, Inc.
- Contract Term: Five-year with five one-year renewals under the same terms and conditions

Next Steps: Council consideration and approval

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 BADGER METER, INC., FOR THE ADVANCED METERING INFRASTRUCTURE (AMI) IMPLEMENTATION PROGRAM FOR THE WATER METERING DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8623 – AWARDED TO BADGER METER, INC., FOR FIVE (5) YEARS, WITH THE OPTION FOR FIVE (5) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL TEN (10) YEAR NOT-TO-EXCEED AMOUNT OF $26,000,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the Advanced Metering Infrastructure (AMI) Implementation Program for the Water Metering 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 [Water and sewer service]; 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
8623	Badger Meter, Inc.	$26,000,000.00

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

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

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

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

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

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

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

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

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

Docusign Envelope ID: A2B9D753-13BE-47EC-8E8C-E250BD8A0539

Docusign City Council Transmittal Coversheet

RFP	8623
File Name	Water AMI Program
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

Initial
LH

Docusign Envelope ID: A2B9D753-13BE-47EC-8E8C-E250BD8A0539

CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND BADGER METER, INC.
(Contract #8623)

THIS CONTRACT is made and entered into this date _____, by and between Badger Meter, Inc. a Wisconson corporation, whose address 4545 W. Brown Deer Rd. Milwaukee, WI 53223, 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 8623 Water AMI Program, 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 Standard Terms and Conditions **(Exhibit "B");**
(c) Certificate of Interested Parties Electronic Filing **(Exhibit "C");**
(d) Insurance Requirements **(Exhibit "D");**
(e) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "E");**
(f) Contractor's Proposal, ("Contractor's Offer") **(Exhibit "F" on file at the office of the Purchasing Agent)**;
(g) City of Denton's RFP 8623 (the "Solicitation") **(Exhibit "G" on file at the office of the Purchasing Agent**);
(h) Schedule of Values **(Exhibit "H");**
(i) Contractor's' SaaS MSA **(Exhibit "I");**
(j) **Badger Meter Standard Sales Terms & Conditions (Exhibit "J");**

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.

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Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Contractor acknowledges that in accordance with Chapter 2276 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" 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.

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

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

Signed by:
Stephen D Gay
SIGNATURE

Stephen D Gay
PRINTED NAME

General Manager
TITLE

Water Utilities and Street Operations.
DEPARTMENT

CONTRACTOR

BY: Signed by: Shauna Griffin
AUTHORIZED SIGNATURE

Printed Name: Shauna Griffin

Title: Senior Director, Sales

4142025803
PHONE NUMBER

SGriffin@badgermeter.com
EMAIL ADDRESS

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

CITY OF DENTON, TEXAS

BY: _____
CASSEY OGDEN
INTERIM CITY MANAGER

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Signed by: Leah Bush
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Exhibit A
Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed $26,000,000. Pricing shall be per Exhibit H attached.

2. The Quantities

The quantities indicated on Exhibit H 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. The City and the Supplier shall have the option to renew this contract for an additional five (5) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

4. 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

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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; provided; however, Badger Meter reserves the right, upon notice to Buyer, to revise selling prices to adjust for changes in laws, such as changes to taxes, tariffs, fees, trade penalties, trade policy or any and all other government required duties on goods or services (the "Fees"); provided that Badger Meter provides documentation sufficient to show the required Fees to City of Denton's satisfaction and that such change in law occurs after Contract execution. City of Denton reserves the right to adjust the quantities per Exhibit A Section 2 in the event of a pricing change due to a required Fee. This exception does not allow for price changes due to inflation or other costs that were estimated as part of the Contractor's Proposal for future years as those are deemed to be incorporated in the pricing schedule of values.

2. Performance Liquidated Damages

If Contractor fails to achieve certian milestones (the "Milestone(s)") as described Statement of Work incorporated in Exhibit F attached hereto (the "SOW") based on the timeline set forth in the SOW, and such failure is solely due to Contractor-caused delay (and not due to (i) City-caused delay, change, suspension, interference, or late approvals; (ii) delays by third parties under City's control (including other contractors or vendors); (iii) Force Majeure events; or (iv) concurrent delay, the City may assess liquidated damages against the Contractor, by providen written notice regarding the delay, at the rate of $250 per day for each day beyond the applicable Milestone date until the Milestone is achieved.

Liquidated damages apply only to the specific Milestones listed in the SOW. Liquidated Damages do not apply to non-critical delays, punch-list items, or work not tied to a Milestone. Contractor is entitled to time extensions for excusable delays (e.g. City-caused, Force Majeure, or concurrent delay). Liquidated Damages are suspended for the duration of approved time extensions.

Liquidated Damages are a reasonable pre-estimate for costs of delay that are difficult to quantify at contract formation and are not a penalty. Liquidated damages are the City's sole and exclusive monetary remedy for delay to Milestones. Either party may present evidence of actual damages at the time of breach to confirm the liquidated damages remain a reasonable measure of just compensation and not an unenforceable penalty against the Contractor.

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Exhibit B
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.

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

10. **WORKFORCE** This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way.

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

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

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immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

IMMIGRATION: THE CONTRACTOR REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE REQUIREMENTS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 AND 1990 REGARDING EMPLOYMENT VERIFICATION AND RETENTION OF VERIFICATION FORMS FOR ANY INDIVIDUALS HIRED ON OR AFTER NOVEMBER 6, 1986, WHO WILL PERFORM ANY LABOR OR SERVICES UNDER THE CONTRACT AND THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 ("IIRIRA) ENACTED ON SEPTEMBER 30, 1996.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS**: This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules, and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**

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

12. **INVOICES**:
A. The Contractor shall submit separate invoices on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
B. **Proper Invoices must include a unique invoice number, invoice date, the purchase order number, and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department**. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
C.Intentionally Omitted.
D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:
A. All proper invoices need to be sent to Accounts Payable – accountspayable@cityofdenton.com. Approved invoices will be paid within thirty (30) calendar days of receipt of invoice.

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

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

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

i. delivery of defective or non-conforming deliverables by the Contractor;

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

iii. failure of the Contractor to pay Subcontractors, or for labor, materials, or equipment;

iv. damage to the property of the City or the City's agents, employees, or contractors, which is not covered by insurance required to be provided by the Contractor;

v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, all required attachments, and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given to any awarded firm who is in arrears to the City for delinquent taxes of any kind or otherwise indebted to the City that the City shall be entitled to counterclaim and/or offset against any such debt, claim, demand, or account owed to the City through payment withholding until the debt is paid in full, and no assignment of such debt, claim, demand, or account after the said taxes or debt are due shall affect the right of the City to offset the said taxes or debt against same.

F. Payment will be made by check 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; provided, however, the City will make payment for any purchase orders the City has issued prior to any change in appropriations under this Section. 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, charged to the City.

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14. **TRAVEL EXPENSES**: All travel, lodging, and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the Contract Documents. During the term of this Contract, the Contractor shall bill and the City shall reimburse Contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the Contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. **FINAL PAYMENT AND CLOSE-OUT**:

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

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

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

ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. **RIGHT TO AUDIT**:

A. Upon fourteen (14) day prior written notice, the Contractor agrees 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.

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B. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Subcontractor, material supplier, or other payee agrees that the City shall, until the expiration of five (5) years after final payment under the subcontract unless required to be retained for longer under applicable law, have electronic access to and the right to examine all books, records, documents, and other evidence of the Subcontractor, material supplier, or other payee involving transactions relating to the subcontract. If necessary, the City maintains the right to photocopy any physical books, documents, papers, and records of the subconsultant involving transactions relating to the subcontract. All books and records will be made available within a fifty (50) mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

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

18. **SUBCONTRACTORS**:

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

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract Documents, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment 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.

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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 substantially similar to 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.

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 are warranted in accordance with the manufacturer's standard warranties as provided in the proposal.

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.
B. Unless otherwise specified in the Contract, the warranty period shall be at least one (1) year from the date of acceptance of the work. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources.

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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 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

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.

27. **TERMINATION FOR CAUSE:**

A. City's Right to Terminate 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 thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such thirty (30) 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

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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.

B. Contractor's Right to Terminate for Cause. The Contractor shall have the right to terminate this Agreement by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the City, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the Contractor's reasonable satisfaction that such default does not, in fact, exist: (i) in order to protect its Confidential Information, or its Intellectual Property Rights in the Portal or Service; (ii) in order to comply with applicable law (iii) if the City makes any relevant representation or warranty which is materially untrue as of the Effective Date or at any time during the Term; or (iv) upon an assignment for the benefit of creditors, if the City suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under any statute relating to insolvency or for the protection of creditor rights or if a party becomes insolvent or technically bankrupt.

C. Effects of Termination. Upon delivery of the Termination Notice by a either party to other: (i) the Contractor may cease providing Services to the City, its Authorized Users and Authorized Consumers; (ii) the City, its Authorized Users and Authorized Consumers will have no further right to use the Portal, Service or Documentation, will immediately cease using the Portal, Service and Documentation, and will receive no further Service; (iii) the City will deliver to the Contractor any Confidential Information of the Contractor's in its possession or control, and (iv) the Contractor may cease gathering data from the City's endpoints, within a reasonable time, up to one hundred twenty (120) days after termination. Within a reasonable time after termination, at the Contractor's discretion, the Contractor will scrub the personally identifiable information from the Customer Data. The City must immediately return, or at the Contractor's option, destroy all Documentation provided to the City by the Contractor. For purposes of this Section 27, the terms "Authorized Users", "Authorized Consumers", "Customer Data", "Documentation", "Portal", and "Service(s)" shall have the same definition as stated in Exhibit I.

28. **TERMINATION WITHOUT CAUSE**:

A. The City shall have the right to terminate the Contract, in whole or in part, without cause and/or for convenience any time upon sixty (60) 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 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

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any dispute under this Contract and a termination under this provision does not waive such rights, causes of action, and remedies.

B. Effects of Termination. Upon delivery of the Termination Notice by a either party to other: (i) the Contractor may cease providing Services to the City, its Authorized Users and Authorized Consumers; (ii) the City, its Authorized Users and Authorized Consumers will have no further right to use the Portal, Service or Documentation, will immediately cease using the Portal, Service and Documentation, and will receive no further Service; (iii) the City will deliver to the Contractor any Confidential Information of the Contractor's in its possession or control, and (iv) the Contractor may cease gathering data from the City's endpoints, within a reasonable time, up to one hundred twenty (120) days after termination. Within a reasonable time after termination, at the Contractor's discretion, the Contractor will scrub the personally identifiable information from the Customer Data. The City must immediately return, or at the Contractor's option, destroy all Documentation provided to the City by the Contractor. For purposes of this Section 28, the terms "Authorized Users", "Authorized Consumers", "Customer Data", "Documentation", "Portal", and "Service(s)" shall have the same definition as stated in Exhibit I.

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**: Intentionally Omitted.

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

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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. Intentionally Omitted.

34. **INSURANCE**: The Contractor shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton outlined in the Insurance Exhibit attached hereto, if applicable. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton.
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

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to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

37. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

38. **INDEMNIFICATION AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. Moreover, Contractor does not know of any valid basis for any such claims. **THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM: (I) ANY CLAIM THAT THE CITY'S EXERCISE ANYWHERE IN THE WORLD OF THE RIGHTS ASSOCIATED WITH THE CITY'S' OWNERSHIP, AND IF APPLICABLE, LICENSE RIGHTS, AND ITS USE OF THE DELIVERABLES INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; OR (II) THE CONTRACTOR'S BREACH OF ANY OF CONTRACTOR'S REPRESENTATIONS OR WARRANTIES STATED IN THIS CONTRACT. IN THE EVENT OF ANY SUCH CLAIM, THE CITY SHALL HAVE THE RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF. FURTHER, CONTRACTOR AGREES THAT THE CITY'S SPECIFICATIONS REGARDING THE DELIVERABLES SHALL IN NO WAY DIMINISH CONTRACTOR'S WARRANTIES OR OBLIGATIONS UNDER THIS PARAGRAPH AND THE CITY MAKES NO WARRANTY THAT THE PRODUCTION, DEVELOPMENT, OR DELIVERY OF SUCH DELIVERABLES WILL NOT IMPACT SUCH WARRANTIES OF CONTRACTOR. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

39. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business 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

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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**: Intentionally Omitted.

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 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

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Contractor shall complete and submit the City's Conflict of Interest Questionnaire. The Contractor agrees to maintain current, updated disclosure of information on file with the Procurement Department throughout the term of this Contract.

46. **NO SUBCONTRACTING BID AFTER AWARD**: Following the award of the Contract, no subcontracting except that specifically identified in the response to the Solicitation will be permitted without the express prior written consent of the City.

47. **NO GIFT OF PUBLIC PROPERTY**: The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Contractor.

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

49. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.
The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

50. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either 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.

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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 (i) submitted to the City by Contractor or (ii) submitted by the City to Contractor shall have any force or effect to change the terms, covenants, and conditions of the Contract.

52. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

53. **DISPUTE RESOLUTION**:

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

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

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The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
C. The parties shall not be required to submit to binding arbitration.

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

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

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

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or their authorized designee.
57. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

58. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**
The City of Denton is prohibited from contracting with or making prime or sub-awards to parties

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

59. **EQUAL OPPORTUNITY** Contractor agrees that during the performance of its contract it will:

A. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age, or handicap.

B. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or request. The Contractor shall be advised of any complaints filed with the City alleging that Contractor is not an Equal Opportunity Employer. The City reserves the right to consider its reports from its human relations administrator in response to such complaints in determining whether or not to terminate any portion of this contract for which purchase orders or authorities to deliver have not been included, however, the Contractor is specifically advised that no Equal Opportunity Employment complaint will be the basis for cancellation of this contract for which a purchase order has been issued or authority to deliver granted.

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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.

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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.

66. Intentionally Omitted.

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

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and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

68. **CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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

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

72. **RECORDS RETENTION:** The Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Contractor shall grant access 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.

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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 C
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 D
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:

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- Name as Additional Insured the City of Denton, its Officials, Agents, Employees, and volunteers.

- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any 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 $1,000,000.00 per occurrence and $2,000,000.00 general aggregate.

B. <u>WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE</u>

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

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Bodily Injury by Accident: $100,000.00 Each Accident

Bodily Injury by Disease: $100,000.00 Each Employee

Bodily Injury by Disease: $500,000.00 Policy Limit NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

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. CONTRACTOR's maintenance of a Cybersecurity Insurance Policy with a Technology Errors & Omissions endorsement with the limits stated here shall satisfy this requirement.

SUBCONTRACTING LIABILITY

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

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

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Exhibit E

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.**

Badger Meter, 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:

Shauna Griffin
9FDE4644A8AB474...
Signature of Vendor doing business with the governmental entity

3/18/2026
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.

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Exhibit H- Schedule of Values

ITEM	BMI Description	Badger Part Number	QUANTITY PER CONTRACT	QUANTITY PER CHANGE ORDERS	UPDATED QUANTITY (After Change Orders)	TOTAL UNIT PRICE IN CONTRACT - EXCL TAX	ORIGINAL TOTAL EXT PRICE IN CONTRACT EXCL TAX	TOTAL EXT PRICE IN CONTRACT EXCL TAX - w/ Change Orders
	Badger Product (Billed Upon Shipment)							
1	E-Series B-Alloy, 5/8"x3/4"(7-1/2), Thk Wshr, Enc, 4CXN2 ORION, 9D-0.01 Gal, TS-568, SN Yr 9D & PBB, TT-5', BMI STD	104-9323	35,800	0	35,800	$ 123.00	$ 4,403,400.00	$ 4,403,400.00
2	E-Series B-Alloy, 3/4" (7-1/2), Thk Wshr, Enc, 4CXN2 ORION, 9D-0.01 Gal, TS-729, SN Yr 9D & PBB, TT-5', BMI STD,	105-0267	3,600	0	3,600	$ 140.00	$ 504,000.00	$ 504,000.00
3	E-Series B-Alloy, 1"(10-3/4), Thk Wshr, Enc, 4CXN2 ORION, 9D-0.01 Gal, TS-766, SN Yr 9D & PBB, TT-5', BMI STD,	108-6857	1,754	0	1,754	$ 172.10	$ 301,863.40	$ 301,863.40
4	E-Series SS, 1-1/2" EL(13), NONE-SS HW- Std Gskt, Enc, 4CXN2 ORION, 9D-0.1 Gal, SN Yr 9D & PBB, TT-5', BMI STD,	113-8066	939	0	939	$ 523.80	$ 491,848.20	$ 491,848.20
5	E-Series SS, 2" EL(17), NONE-SS HW- Std Gskt, Enc, 4CXN2 ORION, 9D-0.1 Gal, SN Yr 9D & PBB, TT-5', BMI STD,	113-6624	1,541	0	1,541	$ 662.07	$ 1,020,249.87	$ 1,020,249.87
6	E-Series B-Alloy, 3" RND(12), TP NONE-SS HW- Std Gskt, Prsr, Enc, 4CXN2 ORION, 9D-0.1 Gal, SN Yr 9D & PBB, TT-10',	113-8317	346	0	346	$ 1,725.79	$ 597,123.34	$ 597,123.34
7	E-Series B-Alloy, 4" RND(14), TP NONE-SS HW- Std Gskt, Prsr, Enc, 4CXN2 ORION, 9D-0.1 Gal, SN Yr 9D & PBB, TT-10',	113-8318	72	0	72	$ 2,187.60	$ 157,507.20	$ 157,507.20
8	E-Series B-Alloy, 6"x18" RND NONE-SS HW- Std Gskt, Prsr, Enc, 4CXN2 ORION, 9D-1 Gal, SN Yr 9D & PBB, TT-10', BMI	113-8320	30	0	30	$ 3,426.30	$ 102,789.00	$ 102,789.00
9	E-Series B-Alloy, 8"x20" RND, TP NONE-SS HW- Std Gskt, Prsr, Enc, 4CXN2 ORION, 9D-1 Gal, SN Yr 9D & PBB, TT-10', B	113-6600	73	0	73	$ 4,153.50	$ 303,205.50	$ 303,205.50
10	M5, 10 " ASME; 150, Carbon Steel, Hard Rubber, Alloy C; No Gnd, 316 SS, Badger, Bat (4-PK), Plug, 2M cable, Dig Out	113-8399	2	0	2	$ 3,698.10	$ 7,396.20	$ 7,396.20
11	EP Only, For Enc, ORION CELL C, Thru Ld Instl Kit, TT-8in, Grnd/Ocean-Pause, BMI STD,	103-6671	44,157	0	44,157	$ 94.57	$ 4,175,927.49	$ 4,175,927.49
12	E-Series Plus Brz, 5/8"x3/4"(7-1/2), Thk Wshr, Enc, 4CXN2 ORION, 9D-0.01 Gal, SN Yr 9D & PBB, TT-5', BMI STD,	100-2317	0	0	0	$ 367.43	$ -	$ -
13	E-Series Plus Brz, 3/4" (7-1/2), Thk Wshr, Enc, 4CXN2 ORION, 9D-0.01 Gal, SN Yr 9D & PBB, TT-5', BMI STD,	100-3325	0	0	0	$ 385.70	$ -	$ -
14	IR COMMUMNICATION DEVICE KIT - LTE	68891-001	6	0	6	$ 121.54	$ 729.24	$ 729.24
	Third Party Product (Billed Upon Shipment)							
15	DFW37C-12-BODY - METER BOX (11 x 18)		0	0	0	$ 64.57	$ -	$ -
16	DFW1324WBC-12-BODY - METER BOX (13 x 24)		0	0	0	$ 110.20	$ -	$ -
17	DFW1730WBC-18-BODY - METER BOX (17 x 30)		0	0	0	$ 181.68	$ -	$ -
18	DFW37C-1MKF SMALL REED DENTON-LID (11 x 18)		39,400	0	39,400	$ 50.77	$ 2,000,338.00	$ 2,000,338.00
19	DFW1324C-1MKF SMALL REED DENTON-LID (13 x 24)		1,754	0	1,754	$ 65.04	$ 114,080.16	$ 114,080.16
20	DFW1730C-1MKF SMALL REED DENTON-LID (17 x 30)		2,480	0	2,480	$ 110.11	$ 273,072.80	$ 273,072.80
21	DFW18AMR-1KT (12" Round) SMALL REED DENTON-LID		0	0	0	$ 21.00	$ -	$ -
22	DFW20AMRD-1KT (20" Round) SMALL REED DENTON-LID		0	0	0	$ 72.06	$ -	$ -
23	DFW1818F-DR - Cast Iron Ring 12"		0	0	0	$ 118.25	$ -	$ -
24	DFW2818F-DR - Cast Iron Ring 20"		0	0	0	$ 321.08	$ -	$ -
25	NICOR Read-Rite Model Retro-fit Vault Kit (45 x 35)		0	0	0	$ 102.00	$ -	$ -
	Installation Labor							
26	New Meter Exchange / Endpoint Installation - 5/8"		35,800	0	35,800	$ 45.45	$ 1,627,110.00	$ 1,627,110.00
27	New Meter Exchange / Endpoint Installation - 3/4"		3,600	0	3,600	$ 45.45	$ 163,620.00	$ 163,620.00
28	New Meter Exchange / Endpoint Installation - 1"		1,754	0	1,754	$ 45.45	$ 79,719.30	$ 79,719.30
29	New Meter Exchange / Endpoint Installation - 1.5"		939	0	939	$ 62.57	$ 58,753.23	$ 58,753.23
30	New Meter Exchange / Endpoint Installation - 2"		1,541	0	1,541	$ 62.57	$ 96,420.37	$ 96,420.37
31	New Meter Exchange / Endpoint Installation - 3"		346	0	346	$ 588.46	$ 203,607.16	$ 203,607.16
32	New Meter Exchange / Endpoint Installation - 4"		72	0	72	$ 588.46	$ 42,369.12	$ 42,369.12
33	New Meter Exchange / Endpoint Installation - 6"		30	0	30	$ 1,725.00	$ 51,750.00	$ 51,750.00
34	New Meter Exchange / Endpoint Installation - 8"		73	0	73	$ 2,070.00	$ 151,110.00	$ 151,110.00
35	New Meter Exchange / Endpoint Installation - 10"		2	0	2	$ 2,875.00	$ 5,750.00	$ 5,750.00
36	Water Meter Box Installation - Softscape/Grass (11x18, 13x24, 17x30)		0	0	0	$ 92.00	$ -	$ -
37	Water Meter Box Installation - Softscape/Grass (45x35)		0			$ 500.00	$ -	$ -
38	Water Meter Lid Installation (11 x 18 and 13 x 24)		41,154	0	41,154	$ 2.50	$ 102,885.00	$ 102,885.00
39	Water Meter Lid Installation (17 x 30)		2,480	0	2,480	$ 5.75	$ 14,260.00	$ 14,260.00
40	Water Meter Lid Installation - Vault Kit (45 x 35)		1	0	1	$ 11.50	$ 11.50	$ 11.50
41	Lid Drilling - Non-Metallic Lid Only		200	0	200	$ 2.59	$ 518.00	$ 518.00
42	Box Excavation - Dirt or Debris below the top of the register		0	0	0	$ 12.08	$ -	$ -
43	Box Excavation - Dirt or Debris above the top of the register		0	0	0	$ 12.08	$ -	$ -
44	Box Dewatering - Standing water below the top of the register		0	0	0	$ 12.08	$ -	$ -
45	Box Dewatering - Standing water above the top of the register		0	0	0	$ 12.08	$ -	$ -
46	Box Reset - Return to flush plane with ground (In Dirt, Grass, or Similar)		0	0	0	$ 92.00	$ -	$ -
	Other Services							
47	BEACON ENGAGEMENT FEE	EACON-ENGAGEMEI	1	0	1	$ 37,500.00	$ 37,500.00	$ 37,500.00
48	BEACON SINGLE SIGN-ON SSO INTEGRATION	66220-263	1	0	1	$ 5,000.00	$ 5,000.00	$ 5,000.00
49	INTERFACE DESIGN WORKSHOPS FOR BILLING INTEGRATION	66220-251	1	0	1	$ 18,900.00	$ 18,900.00	$ 18,900.00
50	INTERFACE DESIGN WORKSHOPS FOR EVENTS AND ALARMS	66220-254	1	0	1	$ 3,500.00	$ 3,500.00	$ 3,500.00
51	BEACON-HOSTED SFTP FOR IMPORTS AND/OR MANF CERT	66220-261	1	0	1	$ 7,500.00	$ 7,500.00	$ 7,500.00
52	ON-SITE, GETTING STARTED W/BEACON AMA	69328-202	1	0	1	$ 3,045.00	$ 3,045.00	$ 3,045.00
53	ON-SITE TRAINING,CUSTOM, ADDIT CONSECUTIVE DAY	69328-912	3	0	3	$ 1,825.00	$ 5,475.00	$ 5,475.00
54	Badger Meter Project Management Fee		32	0	32	$ 23,451.80	$ 750,457.60	$ 750,457.60
55	Installation (TMD) Project Management Fee		28	0	28	$ 18,700.00	$ 523,600.00	$ 523,600.00
56	WOMS Set Up Fee		1	0	1	$ 11,000.00	$ 11,000.00	$ 11,000.00
57	WOMS Management & Integration		1	0	1	$ 11,000.00	$ 11,000.00	$ 11,000.00
58	Warehouse / Storage		28	0	28	$ 18,830.00	$ 527,240.00	$ 527,240.00
59	Mobilization / Demobilization		1	0	1	$ 66,000.00	$ 66,000.00	$ 66,000.00
60	Call Center		24	0	24	$ 13,726.00	$ 329,424.00	$ 329,424.00
61	Public Notification during Deployment (Mailers)		44,157	0	44,157	$ 2.53	$ 111,717.21	$ 111,717.21
62	Pre-Installation Survey		44,157	0	44,157	$ 13.20	$ 582,872.40	$ 582,872.40
63	Hazardous Material Handling		1	0	1	$ 15,000.00	$ 15,000.00	$ 15,000.00
64	Meter Installer - Fully-loaded Hourly Labor Rate for Out of Scope Work		0			$ 90.50	$ -	$ -
65	Expected Allowance Needed - Pit Vacuum & Infrastructure		0	0	0		$ -	$ -
66	Expected Allowance Needed - Boxes and Box Installation		0	0	0		$ -	$ -
	Service Units							
67	BEACON Managed Solution Service Unit Pricing - Year 1	68886-104	119,224	0	119,224	$ 0.600	$ 71,534.40	$ 71,534.40
68	BEACON Managed Solution Service Unit Pricing - Year 2	68886-104	529,884	0	529,884	$ 0.600	$ 317,930.40	$ 317,930.40
69	BEACON Managed Solution Service Unit Pricing - Year 3	68886-104	529,884	0	529,884	$ 0.600	$ 317,930.40	$ 317,930.40
70	BEACON Managed Solution Service Unit Pricing - Year 4	68886-104	529,884	0	529,884	$ 0.600	$ 317,930.40	$ 317,930.40
71	BEACON Managed Solution Service Unit Pricing - Year 5	68886-104	529,884	0	529,884	$ 0.600	$ 317,930.40	$ 317,930.40
72	BEACON Managed Solution Service Unit Pricing - Year 6	68886-104	529,884	0	529,884	$ 0.612	$ 324,289.01	$ 324,289.01
73	BEACON Managed Solution Service Unit Pricing - Year 7	68886-104	529,884	0	529,884	$ 0.624	$ 330,647.62	$ 330,647.62
74	BEACON Managed Solution Service Unit Pricing - Year 8	68886-104	529,884	0	529,884	$ 0.636	$ 337,006.22	$ 337,006.22
75	BEACON Managed Solution Service Unit Pricing - Year 9	68886-104	529,884	0	529,884	$ 0.649	$ 343,894.72	$ 343,894.72
76	BEACON Managed Solution Service Unit Pricing - Year 10	68886-104	529,884	0	529,884	$ 0.662	$ 350,783.21	$ 350,783.21
	Total					**Total Sell Price per Above**	**$ 23,090,522.06**	**$ 23,090,522.06**

	Total Sell Price per Contract - Original
	(23,090,522.06)

	Alternates/Optional Integrations							
A1	INTERFACE DESIGN WORKSHOPS FOR INTERVAL READS (to MDM or 3pCEP)	66220-253	1	0	1	$ 7,020.00	$ 7,020.00	$ 7,020.00
A2	SCHEDULED EXPORT FOR MDM/3PCEP	68886-953	12	0	12	$ 291.67	$ 3,500.04	$ 3,500.04

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ITEM	BMI Description	Badger Part Number	QUANTITY PER CONTRACT	QUANTITY PER CHANGE ORDERS	UPDATED QUANTITY (After Change Orders)	TOTAL UNIT PRICE IN CONTRACT - EXCL TAX	ORIGINAL TOTAL EXT PRICE IN CONTRACT EXCL TAX	TOTAL EXT PRICE IN CONTRACT EXCL TAX - w/ Change Orders
A3	SCALAR BILLING READS SCHEDULED EXPORT (Monthly - First Year Shown)	68886-951	12	0	12	$ 104.17	$ 1,250.04	$ 1,250.04
A4	INTERFACE DESIGN WORKSHOPS FOR BEACON ADAPTER	66220-267	1	0	1	$ 3,500.00	$ 3,500.00	$ 3,500.00
A5	BEACON ADAPTER - SFTP BILLING READS AUTOMATION (APPEND TO MRD) (Monthly - First Year Shown)	68886-925	12	0	12	$ 416.67	$ 5,000.04	$ 5,000.04
A6	SCHEDULED EXPORT FOR BEACON EVENTS AND/OR CWOMS (Monthly - First Year Shown)	68886-954	12	0	12	$ 791.67	$ 9,500.04	$ 9,500.04
A6	CUSTOM BRANDING - EYEONWATER UTILITY BRANDED w/PAY MY BILL LINK	68886-801	1	0	1	$ 5,000.00	$ 5,000.00	$ 5,000.00

Clarifications:

Software Service Fees: Total Ongoing O&M costs (Service Units) will be determined by the number of installed endpoints at the time of billing. Monthly Service Unit Fee includes the following: ORION® Network as a Service, BEACON® Software as a Service, BEACON® Utility Software, EyeOnWater® Consumer Portal, EyeOnWater® Smartphone App, 24/7 Technical Support, Local Field Support and Cellular Communication. Badger Meter reserves the right to increase Service Unit pricing limited to 2% annually beginning in Year 6 through 10.

Materials & Products

Term of Product Price: After the initial one-year term, Badger Meter reserves the right to increase pricing for our products at the time of renewal.

Freight & Taxes: If applicable, sales tax and freight will be calculated based on rates and tax status in effect at the time of invoicing.

AMI Project Scope

Project Administration Expenses: Any fees for professional services that are identified as a "Monthly" fee are based on the estimated schedule. Monthly fees will be levied over the length of the project. If the project is completed ahead of schedule or extends past the anticipated duration, the fees will be charged accordingly.

Meter Box Contingency (Recommended): Within RFP Appendix D2, Section 6.2, unit rates were provided to replace boxes based existing infrastucture conditions that the Utility may want to address as part of this project. Replacement of boxes would be completed the direction on the Utility. Based on historical practices, a contingency is recommended to facilitate this work and to manage against the overall budget. The rates and information provided in the D2 Appendix can be honored and applied against the line item. A line item has been provided to this document to initiate further discussion about this scope. If accepted, further conversations can be add about preferred contingency value.

Pit Cleaning Contingency (Recommended): There are conditions in which existing meter boxes may be inaccessible due to excessive dirt and debris that may have accumulated. It is common practice to carry a contingency allowance to manage such instances. A line item has been provided to this document to initiate further discussion about this scope.

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Badger Meter

BADGER METER BEACON SAAS MANAGED SOLUTION MASTER AGREEMENT

This BEACON SAAS MANAGED SOLUTION MASTER AGREEMENT ("**Agreement**") is entered into as of the _____ day of _____, 2026 (the "**Effective Date**") by and between Badger Meter, Inc. , a Wisconsin corporation with offices located at 4545 W. Brown Deer Road, Milwaukee, Wisconsin 53223 ("**Badger Meter**") , and The City of Denton, with offices located at 215 E McKinney Street, Denton, TX 76201 ("**Customer**").

(1) SERVICE. Badger Meter and its cellular service aggregator and data-hosting service providers ("**Suppliers**") have developed a hosted, on-demand, web-based service website ("**Portal**") accessible to its customers to provide metering and water usage service information, communicated through a cellular network, for its customers ("**Service**"), and documentation to assist customers in using the Portal and the Service ("**Documentation**").

(2) RIGHT TO ACCESS AND USE THE PORTAL AND SERVICE. In consideration of the payment of the Service Fees as set forth in Section (5), Badger Meter grants to Customer, its employees and contractors that Customer approves as users of the Service ("**Authorized User**") and Customer's approved end-user water customers ("**Authorized Consumer**") the right to remotely access and use the Service from the Portal (as currently configured) for Customer's internal business use and for the benefit of its Authorized Consumers in accordance with this Agreement. Any rights and obligations in this Agreement relative to Customer and its Authorized Consumers will only be in effect when Customer affirmatively enables the EyeOnWater Service.

(3) OWNERSHIP OF PORTAL AND SERVICE.

(a) Badger Meter Service. Badger Meter owns all rights, title and interest in the Portal, Service and Documentation, including all associated intellectual property rights. Neither Customer, nor its Authorized Users or Authorized Consumers will obtain any rights, title or interest in the Portal, Service, or Documentation or any associated intellectual property rights, other than the right to access and use the Portal, Service and Documentation, subject to the terms of this Agreement.

(b) Suggestions. If Customer provides Badger Meter any suggested improvements (**"Suggestions"**) to the Portal, Service or Documentation, Customer agrees that Badger Meter will own all rights, title and interest in and to the Suggestions, even if Customer has designated the Suggestions as confidential. Badger Meter will be entitled to use the Suggestions without restriction. By entering into this Agreement, Customer irrevocably assigns, conveys and transfers to Badger Meter all right, title and interest in and to the Suggestions and agrees to provide Badger Meter with commercially reasonable assistance to document, perfect and maintain Badger Meter's rights in the Suggestions.

(4) TERM. The contract term will be five (5) years, effective from date of award. The City and the Badger Meter shall have the option to renew this contract for an additional five (5) one-year periods.

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(5) FEES.

(a) Service Fees. In consideration for the right to access and use the Portal, Service and Documentation, Customer agrees to pay Badger Meter certain fees ("**Service Fees**") to obtain enterprise-wide access to the Portal, Service and Documentation, authorizing all of its Authorized Users and Authorized Consumers to use the Portal and Service and Documentation in accordance with the terms of this Agreement, pursuant to the pricing set forth in **Exhibit 1 - Fees**.

(b) Taxes All prices are exclusive of all sales, use, value added, customs and excise taxes, and any other taxes, duties, fees and charges of any kind imposed by any governmental authority in connection with this Agreement.

(c) Updated Schedule of Fees. Intentionally Omitted.

(6) RESTRICTIONS ON RIGHT TO USE. Customer agrees that Customer, its Authorized Users and Authorized Consumers will not use or permit or assist another to use the Portal, Service or Documentation in violation of this Agreement and will not:

(a) Sell, license, resell, sublicense, or otherwise permit any third parties other than Authorized Users or Authorized Consumers to access or use the Portal, Service, or Documentation.

(b) Remove patent, copyright, trademark or other intellectual property markings from the Portal, Service or Documentation.

(c) Modify, alter, tamper with, repair or otherwise create derivatives from the Portal, Service or Documentation.

(d) Copy, reverse engineer, disassemble or decompile the Portal, Service or Documentation or apply any other process or procedure to derive the source code from any software included in the Portal or Service.

(e) Use the Portal or Service in a manner that violates any applicable international, federal, state or local laws, rules or regulations.

(f) Assert or authorize, assist or encourage any third party to assert against Badger Meter, its affiliates, customers, vendors, business partners, Servicers or licensors any intellectual property infringement Claim regarding the Portal, Service or Documentation.

(g) Transmit content or messages that are illegal, fraudulent, threatening, abusive, defamatory, or obscene.

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(h) Make any unauthorized connection to Badger Meter's information technology architecture ("**Network**")

(i) Communicate any unsolicited commercial, voice, SMS, or other message.

(j) Upload or transmit any "virus," "worm," or malicious code or access, alter, or interfere with the communications of and/or information about another customer.

(k) Take actions that could cause damage to or adversely affect Badger Meter, the Service, Portal, Suppliers, Network or the property or reputation of Badger Meter or its Suppliers.

Customer and Badger Meter agree to make good faith efforts to minimize abuse or fraudulent use of the Portal and Service, to promptly report to each other any such abuse or fraudulent use of which they become aware, and to fully cooperate in any investigation or prosecution initiated by Badger Meter, its Suppliers or Customer related to abuse or fraudulent use of the Portal and Service.

(7) CUSTOMER SUPPORT. Badger Meter will provide Customer the support services described in **Exhibit 2 - Service Level Agreement.**

(8) CUSTOMER DATA.

(a) Customer Data Defined. Customer, its Authorized Users and Authorized Consumers may provide Badger Meter and its Suppliers certain, customer billing information, personally identifiable information or other content ("**Customer Data**").

(b) Ownership. The Parties agree that the Customer Data is and shall remain the sole and exclusive property of Customer and/or its licensors or Authorized Consumers, including but not limited to any intellectual rights in the Customer Data.

(c) Use of Customer Data by Badger Meter. Customer, its Authorized Users and Authorized Consumers consent to Badger Meter and its Suppliers' right to host, access, store, copy and use the Customer Data as reasonably necessary to provide, maintain, repair and enhance the Portal, Service and Documentation. Badger Meter may disclose certain Customer Data only to provide the Service to Customer, its Authorized Users and Authorized Consumers or to comply with the law or request of a governmental or regulatory body (including subpoenas or court orders as described in Section 9.) .

(d) Customer Responsibilities. Customer is solely responsible for the development, content, operation and maintenance of the Customer Data, including but not limited to the technical operation of the Customer Data, and ensuring that calls made to the Service from Customer's network are compatible with then-current API's for the Service. Customer is responsible to ensure that Customer, its Authorized Users and Authorized Consumers comply with the Badger

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Meter Terms of Use Policy, the Badger Meter Privacy Policy or any other policies referenced in this Agreement and the law.

(9) CONFIDENTIALITY.

(a) Confidential Information Defined. For purposes of this Agreement, Confidential Information means all nonpublic information disclosed by one party to the other that is clearly marked as confidential. Badger Meter acknowledges that Customer must strictly comply with the Public Information Act, Chapter 552, *Texas Government Code* in responding to any request for public information related to this Agreement. This obligation supersedes any conflicting provisions of this Agreement. All material submitted by Badger Meter to Customer that was created specifically for the Customer shall become property of Customer upon receipt. Any portions of such material claimed by Badger Meter 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*.

(b) Protection of Confidential Information. To the extent permitted by law, the parties agree to hold the other party's Confidential Information in strict confidence and will not copy, reproduce, give, sell, assign, license, market, transfer or otherwise dispose of the Confidential Information of the other party to any third parties or use the Confidential Information for any purposes whatsoever other than as contemplated by this Agreement. The Parties will take commercially reasonable steps to avoid disclosure, dissemination or unauthorized access to or use of the Confidential Information during the Term and for a period of five (5) years after the end of the Term, except that Confidential Information which is designated as a trade secret which shall continue to be subject to these confidentiality obligations in perpetuity. Customer agrees it will not misrepresent or embellish the relationship between the Parties (including by expressing or implying that Badger Meter supports, sponsors, endorses or contributes to Customer or its business endeavors) or express or imply any relationship or affiliation between Badger Meter and Customer or any other person or entity except as expressly permitted by this Agreement.

(c) Traffic Information. All de-identified data (generally, aggregated system data stripped of PII) generated or collected by Badger Meter through operation of the Portal and Service is referred to as the "**Traffic Data**." All Traffic Data shall be the Confidential Information of and owned exclusively by Badger Meter.

(d) Third Party Requests for Confidential Information. Neither party may disclose the other party's Confidential Information except to a Supplier subject to the restrictions in this Agreement or an Authorized User or Authorized Consumer except as otherwise required by law. If a party receives a request for access to the other party's Confidential Information from a third party, the receiving party agrees to inform the disclosing party in writing within three (3) business days of receipt of the request unless prohibited by law. Badger Meter acknowledges that Customer must strictly comply with the Public Information Act, Chapter 552, *Texas Government Code* in

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responding to any request for public information related to this Agreement. This obligation supersedes any conflicting provisions of this Agreement. All material submitted by Badger Meter to Customer that was created specifically for the Customer shall become property of Customer upon receipt. Any portions of such material claimed by Badger Meter 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*.

(e) Exclusions from Confidential Information. Confidential Information of a party shall not include information which: (i) is in or becomes part of the public domain through no fault of the receiving party; (ii) the receiving party can prove was known to it prior to its receipt from the disclosing party without reference to the Confidential Information; (iii) is independently developed by the receiving party outside of this Agreement without use of the disclosing party's Confidential Information; or (iv) is obtained by the receiving party from a third party which had no obligation of confidentiality to the disclosing party.

(10) CUSTOMER'S REPRESENTATIONS AND WARRANTIES. Customer represents and warrants to Badger Meter that:

(a) Authority. Customer has the right and authority to enter into this Agreement and to meet its financial and legal obligations under this Agreement.

(b) Ownership. Customer, its licensors or its Authorized Consumers, own all rights, title and interest in and to the Customer Data. Customer has all rights in the Customer Data necessary to grant the rights to Badger Meter contemplated under this Agreement.

(c) Compliance with Badger Meter Policies. None of the Customer Data or the use of the Customer Data, the Portal or Service by Customer, its Authorized Users or its Authorized Consumers will violate Badger Meter's BEACON Terms of Use https://beaconama.net/termsofuse.html or Privacy Policy https://beaconama.net/privacy/privacy.html.

(d)
Limitations. Customer is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on Customer property; disclaimers and limitations of warranties; disclaimers and limitation of liability for damages; waivers, disclaimers, and limitation on litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on Customer, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

(e) Compliance with the Law. Neither Customer, the Authorized Users nor the Authorized Consumers will access or use the Portal, Service or Documentation in any manner that violates

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any applicable international, federal, state or local laws and/or regulations, including but not limited to all applicable data protection, intellectual property and privacy laws.

(11) REPRESENTATIONS AND WARRANTIES OF BADGER METER.

(a) Authority. Badger Meter represents and warrants to Customer that it has the right and authority to enter into this Agreement and to perform its obligations under this Agreement.

(b) Service Warranty. Badger Meter represents and warrants to Customer that the Portal and Service will be provided pursuant to **Exhibit 2 – Service Level Agreement**. In providing the Portal and Service, Badger Meter will maintain sufficient data storage capacity to satisfy the technical requirements and required storage capacity to host the Portal and Service, in its reasonable discretion. If Customer allows unauthorized users to access the Portal, Service or Documentation, this express limited warranty will immediately become null and void.

(c) Remedy for Breach of the Express Limited Warranty. If the Portal, Service or Documentation fail to meet the terms of the express limited warranty set forth in Section 11(b), Customer is required to notify Badger Meter promptly as defined in **Exhibit 2 – Service Level Agreement**. Customer's exclusive remedy for a breach of the express limited warranty is a Service credit to be calculated in accordance with **Exhibit 2 – Service Level Agreement**.

(d) DISCLAIMER OF IMPLIED WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 11(b), BADGER METER MAKES NO OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE PORTAL, SERVICE OR DOCUMENTATION. BADGER METER EXPRESSLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE PORTAL, SERVICE OR DOCUMENTATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, OR IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING, INDUSTRY PRACTICE OR USAGE OF TRADE.

BADGER METER EXPRESSLY DISCLAIMS THAT THE PORTAL AND SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND EXPRESSLY DISCLAIMS ANY WARRANTIES AS TO THE RELIABILITY, QUALITY, SECURITY, CONDITION, DESIGN, SUITABILITY, INTER-OPERABILITY, AVAILABILITY, COMPLETENESS OF THE PORTAL OR SERVICE OR THAT ANY DATA, INCLUDING THE CUSTOMER DATA, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

(e) ESSENTIAL TERMS. THE ENFORCEABILITY OF THIS SECTION (11) IS ESSENTIAL TO BADGER METER'S WILLINGNESS TO ENTER INTO THIS AGREEMENT WITH CUSTOMER.

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(12) LIMITATION OF LIABILITY

(a) DIRECT DAMAGES. IF ANY PARTY DEFAULTS IN ITS OBLIGATIONS UNDER THIS AGREEMENT, :THE NON-BREACHING PARTY WILL BE ENTITLED TO RECOVER FROM THE BREACHING PARTY ONLY THE ACTUAL AND DIRECT DAMAGES THAT THE NON-BREACHING PARTY MAY INCUR AS A RESULT OF SUCH BREACH.

(b) CAP ON DAMAGES. NEITHER PARTY'S NOR ANY OF ITS RESPECTIVE AFFILIATES ANNUAL LIABILITY UNDER THIS AGREEMENT WILL EXCEED US $250,000. NOTHING IN THIS SECTION 12 WILL LIMIT CUSTOMER'S OBLIGATION TO PAY BADGER METER FOR USE OF THE SERVICES PURSUANT TO SECTION 5.

(c) LIMITS ON DAMAGES. EXCEPT FOR PAYMENT OBLIGATIONS ARISING UNDER SECTIONS (13) AND (14) (INDEMNIFICATION), NEITHER PARTY NOR ANY OF ITS RESPECTIVE AFFILIATES, SUPPLIERS OR LICENSORS WILL BE LIABLE TO THE OTHER PARTY, AN AUTHORIZED USER, AUTHORIZED CONSUMER OR ANY THIRD PARTY FOR ANY CLAIMS, DEMANDS, ACTIONS, LOSSES, DAMAGES, FINES, JUDGMENTS SETTLEMENTS, COSTS, EXPENSES, ATTORNEY'S FEES, AND COURT COSTS OR ANY OTHER LIABILITIES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE PORTAL, SERVICE, DOCUMENTATION, OR THE SUBJECT MATTER OF THIS AGREEMENT ("CLAIM").

FURTHER, NEITHER PARTY NOR ANY OF EITHER PARTY'S RESPECTIVE AFFILIATES, SUPPLIERS OR LICENSORS SHALL BE LIABLE TO THE OTHER PARTY, AN AUTHORIZED CONSUMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST REVENUE OR PROFITS OR DIMINUTION OF VALUE, OR OTHER ECONOMIC ADVERSITY, CLAIMS RESULTING FROM LOSS OF CUSTOMER DATA, OR BREACH OF CONFIDENTIALITY, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

NEITHER BADGER METER NOR ANY OF ITS AFFILIATES, SUPPLIERS OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE PORTAL OR SERVICE, INCLUDING AS A RESULT OF ANY: (i) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICE ; OR (ii) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENT, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICE FOR ANY REASON, INCLUDING BUT NOT LIMITED TO AS A RESULT OF A POWER OUTAGE, SYSTEM FAILURE OR OTHER INTERRUPTION; (B) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES; (C) ANY INVESTMENTS,

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EXPENDITURES OR COMMITMENTS MADE BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICE OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF CUSTOMER'S DATA.

(13) CUSTOMER'S INDEMNIFICATION OBLIGATIONS.

(a) Generally. To extent allowable by applicable law, and without waiving any applicable immunity, Customer agrees to defend, indemnify, and hold harmless Badger Meter as well as its parents, subsidiaries, affiliates, officers, employees, agents, licensors, Suppliers, representatives and customers and each of their respective employees, officers, directors, members and representatives (the "**Badger Meter Parties**"), against any and all Claims made against the Badger Meter Parties by any third party arising out of or related to: (i) Customers, Authorized Users or Authorized Consumers access and use of the Portal, Service, or Documentation; (ii) the subject matter of this Agreement ; (iii) violation of applicable law by Customer, its Authorized Users or Authorized Consumers; or (iv) a dispute between Customer and any Authorized User or Authorized Consumer.

(b) Procedure for Indemnification. Upon receipt of a Claim, Badger Meter will provide prompt written notice to Customer of the Claim for which the Badger Meter Parties seek indemnification. Badger Meter's failure to promptly notify Customer will only affect Customer's obligation to indemnify the Badger Meter Parties to the extent such failure causes actual prejudice to Customer's ability to defend the Claim. The notice must include a description of the Claim with reasonable detail of the facts giving rise to the Claim. Upon receipt of notice of a Claim, Customer shall be obligated to assume and control the defense of such Claim at its own expense. The Badger Meter Parties may retain their own counsel to cooperate in defending the Claim, at their own expense. The Badger Meter Parties agree to cooperate with Customer in defending the Claim and in making available to Customer all witnesses, records, materials and information in their possession or control to assist in the defense of the Claim, as is reasonably requested by Customer. Customer may not settle or compromise any Claim or consent to the entry of any judgment unless Badger Meter provides prior written consent and the Badger Meter Parties are given an unconditional written release from Customer with respect to the Claim. In the event Customer fails to defend, indemnify, and hold the Badger Meter Parties harmless, after notice of a request for indemnification, the Badger Meter Parties shall be entitled to assume the defense and seek reimbursement from Customer for all losses with regard to the Claim and all attorneys' fees and litigation costs expended by the Badger Meter Parties in defending the Claim.

(14) BADGER METER'S INDEMNIFICATION OBLIGATIONS.

(a) Generally. Subject to the limitations of liability provisions set forth in Section (12) of this Agreement, Badger Meter agrees to indemnify, defend and hold harmless Customer, and as applicable its officers, directors, members, board members, governing members, trustees,

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commissioners, elected and appointed officials, employees, agents, consultants and other representatives ("**Customer Parties**") from and against any legal proceedings filed against the Customer Parties by a third party based upon the allegations that the Portal, Service or Documentation infringes or violates a third party's patent, copyright or other intellectual property rights ("**Intellectual Property Dispute**").

(b) Mitigation. If the Portal, Service or Documentation becomes the subject of an Intellectual Property Dispute and is enjoined, Badger Meter will have the right to (i) procure for Customer the right to continue using the Portal and Service; (ii) modify the Portal and Service to avoid allegations of infringement, provided the modification does not materially change the functionality of the Portal and Service; (iii) replace the Portal and Service with an equally suitable, functionally equivalent, non-infringing Portal and Service; or (iv) immediately terminate this Agreement and provide Customer with a refund of any unused pre-paid portion of the Service Fees.

(c) Exclusions. Badger Meter assumes no liability for and Customer will not be entitled to receive indemnification from Badger Meter for any Intellectual Property Dispute which results directly and solely from (i) Customer's failure to use the Portal or Service in conformity with the Documentation; (ii) Customer's actions in combining the Service with any third party software, technology, hardware or data; or (iii) Customer's violation of access granted in Section (2).

(d) Procedure for Indemnification. Upon receipt of an Intellectual Property Dispute, Customer will provide prompt written notice to Badger Meter of the Intellectual Property Dispute for which the Customer Parties seek indemnification. Customer's failure to promptly notify Badger Meter will only affect Badger Meter's obligation to indemnify the Customer Parties to the extent such failure causes actual prejudice to Badger Meter's ability to defend the Claim. The notice must include a description of the Intellectual Property Dispute with reasonable detail of the facts giving rise to the Intellectual Property Dispute. Upon receipt of notice of an Intellectual Property Dispute, Badger Meter shall be obligated to assume and control the defense of such Intellectual Property Dispute at its own expense. Customer may retain its own counsel to cooperate in defending the Intellectual Property Dispute, at its own expense. Customer agrees to cooperate with Badger Meter in defending the Intellectual Property Dispute and in making available to Badger Meter all witnesses, records, materials and information in Customer's possession or control to assist in the defense of the Intellectual Property Dispute as is reasonably requested by Badger Meter. Badger Meter may not settle or compromise any Intellectual Property Dispute or consent to the entry of any judgment unless Customer provides prior written consent and the Customer is given an unconditional written release from Badger Meter with respect to the Intellectual Property Dispute. In the event Badger Meter fails to defend, indemnify, and hold the Customer Parties harmless, after notice of a request for indemnification, Customer shall be entitled to assume the defense and seek reimbursement from Badger Meter for all losses with regard to the Intellectual Property Dispute and all attorneys' fees and litigation costs expended by Customer in defending the Intellectual Property Dispute.

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(15) TERMINATION. Intentionally Omitted.

(16) SUSPENSION OF SERVICES.

(a) Nonpayment. Badger Meter may suspend the Service and access to the Portal and shall not be obligated to provide access to the Portal and Service to Customer, its Authorized Users or Authorized Consumers until all outstanding undisputed invoices for the Service have been paid in full, including any fees associated with suspension of the Service.

(b) Network Protection. Customer acknowledges that Badger Meter (and any of its Suppliers) may restrict, or suspend all or a portion of the Service or limit the Service as may be reasonably necessary to prevent or limit suspected fraud or any problem that materially and adversely affects the performance of the Service and/or is likely to do substantial damage to Badger Meter, Badger Meter's customers or Suppliers. Some of these actions may interrupt or prevent legitimate communications and usage. Such situations may arise: (a) if a device deployed on the Service is materially out of compliance with the technical requirements; (b) in case of actual or suspected fraudulent use; or (c) in case of disruptive or damaging operation.

(c) Notification. In the event that Badger Meter or one of its Suppliers restricts, suspends or cancels any portion of the Service or limits the operation of the Service, Badger Meter shall use reasonable efforts to (i) promptly notify Customer in advance; (ii) provide reasonable information regarding its identification of the issue that resulted in the actions taken; and (iii) reinstate Service upon resolution of the issue as soon as practicable and in any case within a reasonable timeframe.

(d) Immediate Suspension. Badger Meter may suspend Customer's or an Authorized Users or Authorized Consumers right to access or use the Service immediately upon notice to Customer if Badger Meter determines:

(i) Use of the Service poses a security risk to the Service, the Network or any third party, adversely impacts the Service, the Network or data of any other Badger Meter customer, or subjects Badger Meter or any third party to liability or fraud.

(ii) Customer or one of its Authorized Users or Authorized Customers is in breach of this Agreement or is delinquent on its payments for more than fifteen (15) days beyond the NET 30 days allowed for payments.

(iii) Badger Meter ceases to operate in the ordinary course, has an assignment for the benefit of creditors or similar disposition of its assets or becomes the subject of any bankruptcy, reorganization, liquidation dissolution or similar proceeding.

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(e) Reinstatement. Badger Meter will use commercially reasonable efforts to restore Customer's rights to use and access those portions of the Service or accounts that gave rise to the suspension promptly after Customer has resolved the problem giving rise to the suspension.

(f) Effect of Suspension. If Badger Meter suspends Customer's right to access or use all or any portion of the Service or the Portal:

(i) Customer remains responsible for all Service Fees and undisputed charges incurred through the date of suspension.

(ii) Customer remains responsible for any applicable Service Fees and charges for any Services to which Customer has continued access as well as applicable fees and charges.

(iii) Customer will not be entitled to any service credits under the Service Level Agreement for any period of suspension.

(iv) Badger Meter's right to suspend the Services is in addition to Badger Meter's right to terminate this Agreement.

(17) COMPLIANCE WITH REGULATIONS; DATA PRIVACY. Each party is responsible for complying with industry standards and such applicable laws and regulations, including, but not limited to, the generally accepted practices in the information technology service management industry for providing secure data handling and management, including meeting or exceeding Information Technology Infrastructure Library (ITIL) standards for logical and physical security and all requirements regarding the protection of data in its possession or under its control. A party will not be liable for any failure of the other party to comply with this requirement.

(18) DATA SECURITY AND RECOVERY.

(a) Data Security. In order to protect the Customer Data and prevent unauthorized access to or use of the Customer Data, Portal or Service, Badger Meter has implemented commercially reasonable internal procedures and systems designed to protect the privacy and security according to the requirements set forth in **Exhibit 3 – BEACON SaaS Managed Solution Security Policy** ("**Security Standards**"), consistent with applicable international, federal, state and local laws**.** The purpose of the security policy is to identify reasonably foreseeable and internal risks to security and unauthorized access to Badger Meter's Network and minimize security risks, including through risk assessment and regular testing. Badger Meter will designate one or more employees to coordinate and be accountable for the security program.

(b) Protection of Customer Data. Badger Meter will implement reasonable and appropriate measures for the Badger Meter Network designed to help Customer secure the Customer Data against accidental or unlawful loss, access or disclosure in accordance with Badger Meter's Security Standards. Badger Meter may modify its Security Standards from time to time but will

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continue to provide at least the same level of security as described in the Security Standards as of the Effective Date. The security and data privacy provisions in this Section contain Badger Meter, and its Suppliers entire obligation regarding the security, privacy and confidentiality of the Customer Data.

(c) Data Storage. Badger Meter will employ commercially reasonable storage (including backup, archive and redundant data storage) and commercially reasonable precautions to prevent the loss of or alteration of Customer Data, but does not guarantee against any such loss or alteration. Badger Meter will not serve as Customer's official record keeper. Customer will maintain source documents of the Confidential Information (such as billing information) hosted by Badger Meter under this Agreement.

(d) Customer Responsibilities. Customer is responsible for properly configuring and using the Service and taking steps to maintain appropriate security, protection and backup of the Customer Data, including but not limited to the use of encryption technology to protect Customer Data from unauthorized access and will perform routine archiving of the Customer Data. Further, Customer is responsible for regularly auditing its Authorized Users, and will enact internal procedures to remove Authorized Users from the Service if their job duties change and access is no longer appropriate, or if an Authorized User separates from Customer.

(e) Data Transmission Risks.

(i) Cellular Transmissions. Communication between the endpoint and cell tower is 128 bit encrypted. Customer acknowledges that neither Badger Meter nor its Suppliers can guarantee the privacy or security of any cellular transmissions as part of the Service. Customer acknowledges that cellular transmissions are capable of being intercepted by third parties without the knowledge or permission of Badger Meter or its Suppliers. Badger Meter and its Suppliers shall not be liable to Customer, the Authorized Users, the Authorized Consumers or any third party for interception or unauthorized use of any data transmitted through the cellular network, as part of the Service.

(ii) Internet Transmissions. Customer acknowledges that security of transmissions over the Internet cannot be guaranteed. Badger Meter is not responsible for: (i) Customer's access to the Internet; (ii) interception, unauthorized use or interruptions of communications through the Internet; or (iii) changes or losses of data through the Internet, in each case other than to the extent caused solely by Badger Meter. In order to protect Customer Data, Badger Meter may suspend Customer, Customer's Authorized Users or Authorized Consumers access to or use of the Badger Meter Portal or Service via the Internet immediately, without prior notice, pending an investigation of any potential security breach.

(f) Coverage Availability. The Service is provided using a wireless network. Actual signal availability in the Service Area will depend on the device used to access the Service as well as

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coverage for the applicable wireless network provided in specific geographic regions. Coverage may be refused, interrupted or limited by environmental factors such as signal strength, buildings, weather, geography, topography, or by factors affecting the Suppliers, such as usage concentration or by facilities changes, modifications, updates, relocations, repairs, maintenance or other similar activities necessary for the proper or improved operation of the Supplier's facilities. Any such factors may result in dropped and blocked connections or slower data speeds. Neither Badger Meter nor any of its Suppliers will be responsible to Customer or any of Customer's Authorized Users or Authorized Consumers for any such lapses in or obstructions to coverage. The Service Area is subject to change from time to time. Should Badger Meter receive notice from its Supplier that such Supplier intends to discontinue its support for the Badger Meter Service in all or part of the Service Area, Badger Meter will provide Customer with as much advance notice as practicable under the circumstances.

(g) Password Protection. Customer, its Authorized Users and Authorized Consumers will be required to select and use certain user names, passwords or codes to access and use the Service and Portal. Customer assumes sole responsibility for the selection, management and use of any codes or passwords as may be permitted or required for the access to and use of the Portal and Service by Customer, its Authorized Users and its Authorized Consumers. Customer agrees to maintain the privacy of usernames and passwords associated with the Badger Meter Portal and Service. Customer shall remain responsible for all activities that occur under Customer's password or Internet account. Customer will immediately notify Badger Meter of any unauthorized use of Customer's password or Internet account or any other breach of security, and ensure that Customer exits from Customer's Internet account at the end of each session. Badger Meter shall not be liable for any damages incurred by Customer or any third party arising from Customer's failure to comply with this Section.

(h) Third Party Access. To the extent that Customer requests that Badger Meter provide any Customer Data to Authorized Users, Authorized Consumers or third parties or any non-U.S. location, Customer represents that it has acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable international, federal, state or local laws and/or regulations.

(i) Security Breach. If Badger Meter becomes aware of a security breach or that compromises the security, confidentiality or integrity of the Customer Data ("Breach"), Badger Meter will promptly notify Customer in writing and take appropriate actions to resolve the Breach. Badger Meter will reasonably cooperate with Customer to investigate the nature and scope of any Breach. In its initial notification to Customer, Badger Meter will provide Customer with: (i) a description of the Breach; (ii) the estimated impact of the Breach on Customer's Data; (iii) the name and contact information of the person at Badger Meter who will be primarily responsible for resolving the issues for Customer; and (iv) the investigation taken and the suggested corrective action. Badger Meter will provide commercially reasonable cooperation to Customer in investigating, assisting with notification of the Breach and taking corrective action as requested by Customer.

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(j) Notification of Breach. In the event that applicable law requires notification to individuals of an Breach or if requested by Customer, Badger Meter will take additional mitigation steps for the benefit of Customer, including, but not limited to, providing reasonable assistance with drafting and sending of required notifications.

(19) CHANGES.

(a) Right to Make Changes. Badger Meter may from time to time make changes, without Customer's approval, to the Terms of Use, the Privacy policies, the Portal, Service or Documentation, provided that such changes: (i) do not increase Customer's total costs of accessing and using the Portal and Service during the Term of this Agreement ; (ii) do not require Customer to make any material changes to its systems, software, equipment, policies or procedures ; (iii) do not have a material adverse impact on the functionality, interoperability, performance, reliability, security or resource efficiency of the Portal and Service ; (iv) do not materially reduce the scope of the Portal and Service; (v) are otherwise consistent with this Agreement; and (vi) does not conflict with any negotiated terms herein, Badger Meter will publicize any changes by a notice given to Customer or by a prominent announcement on the Portal. Any such changes will not take effect until thirty (30) days after posting of notice on the Portal. By continuing to use the Service after the effective date of the modification to a policy, Customer agrees to be bound by the modified policies. It is Customer's responsibility to check the Badger Meter site regularly for modifications to the policies;

(b) Emergency Changes; System Improvement. Notwithstanding the foregoing, Badger Meter and its Suppliers may make temporary changes to the Portal and Service required by an emergency or threat to the security or integrity of the Portal or Service, to respond to Claims, litigation or loss of license rights related to third party intellectual property rights or to comply with the law or requests of a government entity, as well as take actions deemed reasonably necessary to protect or optimize the Service. Some of these actions may interrupt or prevent legitimate communications and usage, including, for example, use of message filtering/blocking software to prevent SPAM or viruses, limitations on throughput, and scheduled maintenance. Badger Meter will provide notice by sending a message to the email address then associated with Customer's account and by posting it on Badger Meter's Portal. Badger Meter will provide Customer with: (i) at least thirty (30) days' advance notice of planned maintenance by Badger Meter; and (ii) as much advance notice as reasonably possible of emergency changes or maintenance by Badger Meter or its Suppliers. Any actions resulting in permanent changes shall only be made in compliance with Section (19) (a).

(20) RIGHT TO SUBCONTRACT. Badger Meter may subcontract the performance of any of its cellular or web-services duties or obligations under this Agreement, and will use commercially reasonable efforts to subcontract only with subcontractors that have the requisite skills to perform any subcontracted obligations in accordance with the terms of this Agreement.

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(21) GENERAL.

(a) Binding Agreement. This Agreement is binding upon and will inure to the benefit of the parties and their respective successors and assigns.

(b) Affiliates. This Agreement covers only the employees and agents of Customer. To the extent applicable, if Customer wishes to have any entity that directly or indirectly controls, is controlled by or is in common control with Customer to access the Portal and use the Service, Customer's Affiliate must execute a separate agreement with Badger Meter.

(c) Assignment. Either party may assign its rights and obligations under this Agreement with the express written consent of the other party, which consent will not be unreasonably withheld or delayed. Any purported assignment or transfer in violation of this Section will be null and void. Notwithstanding the foregoing, Badger Meter may assign its rights and obligations under this Agreement without the consent of Customer: (i) upon a sale of a majority of its outstanding capital stock to an affiliate or third party; (ii) if it sells all or substantially all of its assets; (iii) in the event of a merger; or (iv) in the event of a similar change of control. Badger Meter shall provide prompt written notice of Assignment to the City.

(d) No Waiver. The waiver or failure of either party to exercise any right or remedy provided under this Agreement will not be deemed a waiver of any further right or remedy. All waivers must be in writing to be effective.

(e) Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions of this Agreement will be interpreted to effectuate the intent of the original Agreement. If such construction is not possible, the invalid or unenforceable portion of the Agreement will be severed from this Agreement, and the remainder of the Agreement will remain in full force and effect.

(f) Independent Contractors. The Parties agree that they are independent contractors and that neither party nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other.

(g) Savings Clause. The invalidity of any provision of this Agreement shall not affect the validity and binding effect of the remaining provisions.

(h) No Third Party Beneficiaries. Nothing express or implied in this Agreement shall confer any rights, remedies, obligations or liabilities whatsoever to third parties which are not signatories to this Agreement.

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(i) Governing Law. To the extent permitted by law, the terms of this Agreement are governed by the laws of the State of Texas, without reference to its conflict of laws principles. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

(j) No Claims Against or Liability of Badger Meter Suppliers. Customer acknowledges that the Service utilizes services that are furnished to Badger Meter and one or more Suppliers pursuant to agreements between Badger Meter and its Suppliers. Neither Customer nor any Authorized Users or Authorized Consumers has a contractual relationship with Badger Meter's Suppliers and neither Customer nor its Authorized Users or Authorized Consumers is a third party beneficiary of or will have any claim against Badger Meter's Suppliers in the event any such agreement expires or is terminated. Customer further acknowledges that the Suppliers disclaim all liability of any nature, whether legal or equitable, to Customer, its Authorized Users or Authorized Consumers, whether direct, indirect, incidental or consequential, arising out of the use of Badger Meter Portal or Service by Customer, its Authorized Users or Authorized Consumers, including any liability for personal injury or death, failure to be able to use the Service or otherwise. Customer agrees that neither it nor any Authorized Users or Authorized Consumers shall have any Claim against the Supplier of any kind with respect thereto, whether arising out of breach of contract, warranty, negligence, and tort or otherwise.

(k) Dispute Resolution. Intentionally Omitted.

(22) INJUNCTIVE RELIEF: Notwithstanding the provisions of Section 21, to the extent permitted by law, Badger Meter shall have the right to pursue injunctive, declaratory or other relief by the state and federal courts sitting in Milwaukee, Wisconsin and waive any objection that they would otherwise have to venue in such courts.

(23) NOTICES. All notices shall be in writing and delivered to the other party by means of: (a) personal delivery set forth below; (b) courier (signature required upon delivery); (c) recognized overnight courier, at the following address; (d) fax with proof of delivery; or (e) via electronic mail with proof of delivery: Notices sent by email will be effective when sent and notices posted on Badger Meter's Portal will be effective upon posting. All notices must be provided in the English language.

If to Badger Meter:
Legal Department, Attn: Assistant General Counsel
4545 W. Brown Deer Road
Milwaukee, WI 53223

If to Customer:
Office of the Purchasing Manager
901 Texas St #B
Denton, TX 76209

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(24) SURVIVABILITY. Any provision of this Agreement which by its nature should survive termination or expiration of this Agreement shall survive its expiration or termination.

(25) LIMITATION OF CLAIMS. No action arising under or in connection with this Agreement, regardless of the form, may be brought by Customer more than two (2) year after Customer becomes aware of or should reasonably have become aware of the occurrence of events giving rise to the Claim.

(26) FORCE MAJEURE. Neither party shall be liable to the other or any third party by reason of any failure or delay of its obligations under this Agreement where the delay or failure results from any cause beyond its reasonable control, including, but not limited to, acts of God, fires, storms, floods or other acts of nature, explosions, systemic electrical telecommunications or other utility failures, earthquakes, hurricanes, tornados, natural disasters, strikes, shortage of materials, work stoppage or other labor dispute, embargoes, riots, insurrections, acts of war or terrorism, or any action or restraint by court order or public or governmental authority ("**Force Majeure Event**"). The party subject to the Force Majeure Event agrees to use commercially reasonable efforts to minimize the impact of the Force Majeure Event on the other party. Badger Meter shall immediately notify Customer 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.

(27) AMENDMENT. This Agreement may only be amended by a written document signed by both parties. Badger Meter will not be bound by and specifically objects to any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by Customer in any receipt, acceptance, confirmation, agreement, purchase order, correspondence or other documentation. If the terms of this Agreement are not consistent with the terms contained in any policy, the terms contained in this Agreement will control, except that the Service Terms will control over this Agreement.

(28) ENTIRE AGREEMENT. Intentionally Omitted.

(29) ORIGINALS, COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together will be deemed to constitute one and the same document. This Agreement may be executed and delivered by facsimile signature or portable document format (.pdf) by electronic mail.

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IN WITNESS WHEREOF, the authorized representatives of the parties hereby bind the parties to this BEACON SaaS Managed Solution Master Agreement by signing below:

BADGER METER, INC

Signed by:
Shauna Griffin
2EDE5464418AB474...

Signature	Signature
Shauna Griffin	
Printed Name	Printed Name
Senior Director, Sales	
Title	Title
3/18/2026	
Date	Date

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EXHIBIT 1

FEES

1. **Service Fees.** Customer agrees to pay the following Service Fees, as consideration for the right to access and use the Portal, Service and Documentation during the Term, as well as applicable Taxes.

2. **Invoicing.** Invoicing will require a minimum $100 value and can result in smaller users pre-purchasing for future consumption. Undisputed payments are due within thirty (30) days of the receipt of the invoice.

3. **Interest and Costs**. Customer agrees that it will be responsible to pay Badger Meter for any collection expenses incurred by Badger Meter, including interest at the highest interest rate permitted by law, and reasonable attorneys' fees and court costs incurred by Badger Meter in enforcing its rights under this Agreement.

BEACON Monthly Endpoint Subscription Fee

Hourly Data, Once Daily Call-in: $0.60 per endpoint per month. Service Unit Price will be held through 9/22/2029 and will increase by the percentage dictated by the Consumer Pricing Index for All Urban Consumers (not seasonally adjusted) as reported by the US Department of Labor using August 2024 as a base index of 314.796.

Invoicing for monthly endpoint subscription fee starts at time of endpoint activation or 6 months from date of shipment, whichever comes first.

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EXHIBIT 2

SERVICE LEVEL AGREEMENT

This Service Level Agreement ("SLA") will go into effect upon completion of Endpoint Provisioning, which is the point during meter installation when the endpoint is installed and verified to provide data to the BEACON SaaS Managed Solution.

1. CUSTOMER SUPPORT.

Service Levels. Within one (1) hour after a request for Customer Support Services from Customer, Badger Meter will respond to such request in accordance with the procedures set forth below. Customer may report the problem by phone, email or website provided by Badger Meter to Customer. Badger Meter will use commercially reasonable efforts to meet the response and resolution times set forth below:

Severity Level	Response Time	Resolution Time
Level 1 – Service is unavailable	one (1) hour	six (6) hours
Level 2 – certain interruptions but service is still available	twenty-four (24) hours	twenty-four (24) hours
Level 3 – minor intermittent malfunction	twenty-four (24) hours	three (3) days
Level 4 – suggestions for new features or enhancements to BEACON Portal and Service	twenty-four (24) hours	Evaluated, scheduled and prioritized for potential inclusion in upcoming releases.

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2. BEACON PORTAL AND SERVICE AVAILABILITY PROMISE.

Badger Meter will use commercially reasonable efforts to fulfill the following Service Promise:

- BEACON Portal and Service Availability of 99% within each calendar month, excluding any Emergency Downtime, Scheduled Downtime, any unavailability of the Portal and Service due to any Force Majeure Event and any unavailability of the Portal and Service less than fifteen (15) minutes in duration following written notice thereof.

Definitions

"**Availability**" is the monthly uptime percentage with normal functionality of the Portal and the Service, calculated as described below.

"**Emergency Downtime**" means any unavailability of the Portal or Service due to a temporary suspension by Badger Meter to perform maintenance to address any, urgent and unexpected issue with the Portal or Service.

"**Scheduled Downtime**" means any unavailability of the Portal or Service due to scheduled maintenance. Scheduled maintenance may occur between 10:00 p.m. on Saturday to 4:00 a.m. on Sunday (Pacific Time) every week. Badger Meter shall have the right to change the scheduled maintenance times upon notice to Customer posted on the BEACON Portal.

CALCULATION of BEACON Portal and Service Availability:

Availability is measured by Badger Meter through standard monitoring software that tests the application availability at least every five (5) minutes and logs unavailability incidents (date and UTC time) for each monitored component.

Availability is calculated as the percentage of uptime in the applicable calendar month, excluding scheduled downtime:

$$1 - \frac{Total\ Unavailability\ Minutes}{Total\ Minutes\ of\ Service\ Month - Total\ Minutes\ of\ Approved\ Downtime}$$

Where:

"**Total Unavailability Minutes**" is the cumulative unavailability time in minutes in the applicable month where the Portal and Service are not available due to unplanned outages or from systematic errors on the part of Badger Meter,

"**Total Minutes of Service Month**" is the cumulative time in minutes in the month in question, calculated by taking the number of days in month x 24 hours/day x 60 minutes/hour, and

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"**Total Minutes of Approved Downtime**" is the cumulative time in minutes in the applicable month where the Supplier applications are not available due to scheduled downtime ; other planned scheduled outages, or approved exclusion conditions as defined in this Agreement.

In order to be included within the Total Unavailability Minutes: (a) Customer shall notify Badger Meter, in writing, via email(techsupport@badgermeter.com) of the unavailability of the Portal or the Service; (b) such unavailability shall be greater than fifteen (15) minutes in duration following Badger Meter's receipt of such notice; and (c) Customer shall notify Badger Meter, in writing, via email within twenty-four (24) hours of such unavailability that it should be included within the Total Unavailability Minutes unless such unavailability is due to any Emergency Downtime, Scheduled Downtime, or any unavailability of the Services due to any Force Majeure Event.

Service Credits

If Badger Meter fails to meet the BEACON Portal and Service Availability Promise, the following Service Credits will be calculated as follows:

Service Credit = Endpoint Service Units Consumed in the Month * (1 - Availability) rounded to the next whole number

For example;

Availability	**Service Credit** (Service Units per 1,000 Service Units consumed in the month)
95%	50
90%	100
80%	200
70%	300
60%	400
50%	500

Service Credit will be added to Customer's account in the form of pre-paid Service Units for the same endpoint type(s).

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3. **MONTHLY BILLING DATA SERVICE PROMISE.**

Badger Meter will use commercially reasonable efforts to fulfill the following Service Promise:

- The BEACON SaaS Managed Solution will successfully provide Monthly Billing Data for at least 98.5% of provisioned accounts at the time of billing request to the BEACON SaaS Managed Solution.

Definitions

"**Managed Solution**" is a system that consists of a network deployment using fixed network and/or cellular endpoints, where Badger Meter maintains the responsibility for managing the reading hardware and software for system operation over the Term of the Agreement.

"**Provisioned Accounts**" are accounts with cellular or fixed network endpoints that are discovered by the network, fully able to communicate with the network, and completely entered correctly in the BEACON SaaS Managed Solution.

"**Monthly Billing Data**" is a valid meter reading obtained within three (3) days of the billing as performed through the BEACON SaaS Managed Solution to provisioned accounts.

CALCULATION of Monthly Billing Data Service Promise for Provisioned Accounts:

Monthly Billing Data success rate is calculated by the count of accounts in the billing cycle with meter read data within three (3) days ("**Count of Billing Reads**") divided by the number of active and Provisioned Accounts in the billing cycle ("**Count of Total Billing Cycle**").

$$\frac{\textit{Count of Billing Reads}}{\textit{Count of Total Billing Cycle}}$$

Where:

"Count of Billing Reads" is the total number of accounts in the billing file with valid data that a billing quality reading is supplied for managed solution endpoints.

"Count of Total Billing Cycle" is the total number of accounts with valid data in the billing file being processed for managed solution endpoints.

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If Customer suspects that the Monthly Billing Data Service Promise has not been met for a particular Billing Cycle, (a) Customer shall notify Badger Meter, in writing, within twenty-four (24) hours of the occurrence, via email (techsupport@badgermeter.com) of the Count of Billing Reads and Count of Total Billing Cycle of managed solution endpoints; (b) the specific time and date when the billing read file was generated.

Service Credits
If Badger Meter fails to meet the Monthly Billing Data Service Promise, Service Credits will be calculated as follows:

Service Credit = Managed Solution Endpoint Service Units Consumed in the Month * (1 - Monthly Billing Data Success Rate) rounded to the next whole number

For example;

Monthly Billing Data Success Rate	**Service Credit** (Service Units per 1,000 Service Units consumed in the month)
95%	50
90%	100
80%	200
70%	300
60%	400
50%	500

Service Credit will be added to Customer's account in the form of pre-paid Service Units for the same endpoint type(s).

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4. **MISCELLANEOUS.**

Exclusions
The BEACON Portal and Service Availability Promise and Monthly Billing Data Service Promise do not apply to any of the following performance issues, in addition to other exclusions herein:

(i) Resulting from any actions or inactions of Customer, its Authorized Users or Authorized Consumers in accordance with the restrictions and requirements of this Agreement;
(ii) Resulting from Customer or its suppliers equipment, software, or other technology and/or Customer's third party equipment, software, or other technology outside of Badger Meter's control;
(iii) Caused by failures, including, but not limited to, internet connectivity, port availability, firewall configuration, or cellular networks at Customer's location;
(iv) Resulting from Customer's breach of any term or condition under the Agreement;
(v) Caused by unexpected or unintentional RF interference or signal obstruction caused by sources not present or not in use during endpoint installation;
(vi) Caused by intentional RF interference or signal obstruction not present during endpoint installation, caused by third parties;
(vii) Caused by Customer, an Authorized User's or an Authorized Consumer's misuse or abuse of the Portal or Service;
(viii) During an event triggering a disaster recovery and for a twenty-four (24) hour period after the resumption of the Service following such an event to allow for the system to return to normal operating ranges;
(ix) Arising from Badger Meter's suspension or termination of Customer's right to use the BEACON Managed Solution in accordance with the Agreement;
(x) Arising from failure of Customer to follow Badger Meter's published installation, operation and maintenance instructions and Clarifications from Badger Meter's Preliminary Network Design;
(xi) When outdoor temperatures either exceed or are below the endpoint operating temperature range as described in the applicable product data sheet.
(xii) Accounts read using manual, touch read, handheld and mobile technology are not included as part of the Monthly Billing Data Service Promise, as these reading technologies are outside of Badger Meter's control.

In the event Badger Meter does not meet a Service Promise hereunder, Badger Meter will conduct a commercially reasonable root cause analysis of the Service promise failure. If Badger Meter's analysis is inconclusive, or if Badger Meter concludes that circumstances outside of Badger Meter's control caused the Service promise failure, or if Badger Meter concludes that a failure falls under any other exclusions described hereunder, Customer will not be entitled to a Service Credit. If Badger Meter's analysis is conclusive and that circumstances within Badger Meter's control caused the Service failure, Customer will be eligible to receive a Service Credit as described above.

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EXCEPT AS EXPRESSLY PROVIDED IN THIS SLA, THE SERVICE CREDITS SPECIFIED IN THIS SLA WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BADGER METER'S FAILURE TO MEET THE SERVICE PROMISE SPECIFIED IN THIS SLA.

Badger Meter will report Service Promises and applicable Service Credits upon request and upon a commercially reasonable frequency. Following each report, upon Customer request, the parties will discuss such performance and the extent to which any Service Credits either are appropriate or should be modified due to circumstances not captured by the reporting methodology.

Upon agreement concerning the Service Credits due, such Service Credits will be applied against Badger Meter's charges in the months following the month in which the credits were incurred.
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EXHIBIT 3

BEACON SaaS MANAGED SOLUTION SECURITY POLICY

1. **BEACON SaaS Portal and Service Information Security Program.** Badger Meter maintains an information security program (including the adoption and enforcement of internal policies and procedures) designed to (a) support the BEACON SaaS Managed Solution, (b) identify reasonably foreseeable and internal risks to the BEACON Portal and Service security and unauthorized access to the Badger Meter Network, and (c) minimize security risks. The BEACON Portal and Service information security program includes the following measures:

   1.1 Network Security. The Badger Meter Network is electronically accessible to employees, and contractors necessary to provide the Portal and Service. Badger Meter maintains access controls and policies to manage what access is allowed to the Badger Meter Network from each network connection and user, including the use of firewalls or functionally equivalent technology and authentication controls. Badger Meter maintains corrective action and incident response plans to respond to potential security threats.

   1.2 Physical Security.

   1.2.1 Physical Access Controls. Physical components of the Badger Meter Network are housed in nondescript facilities (the "**Facilities**"). Physical barrier controls are used to prevent unauthorized entrance to the Facilities both at the perimeter and at building access points. Passage through the physical barriers at the Facilities requires either electronic access control validation (e.g., card access systems, etc.) or validation by human security personnel (e.g., contract or in-house security guard service, receptionist, etc.). Employees and contractors are assigned photo-ID badges that must be worn while the employees and contractors are at any of the Facilities. Visitors are required to sign in with designated personnel, must show appropriate identification, and are assigned a visitor ID badge that must be worn while the visitor is at any of the Facilities, and are continually escorted by authorized employees or contractors while visiting the Facilities.

   1.2.2 Limited Employee and Contractor Access. Badger Meter provides access to the Facilities to those employees and contractors who have a legitimate business need for such access privileges. When an employee or contractor no longer has a business need for access privileges, the access privileges are promptly revoked, even if the employee or contractor continues to be an employee of Badger Meter or its affiliates.

   1.2.3 Physical Security Protections. All major access points (other than main entry doors) are maintained in a secured (locked) state. Access points to the Facilities are monitored by video surveillance cameras designed to record all individuals accessing the Facilities. All physical access to the Facilities by employees and contractors is logged and routinely audited.

   1.2.4 Pre-Employment Screening. Badger Meter conducts criminal background checks, as permitted by applicable law, as part of pre-employment screening practices for

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employees commensurate with the employee's position and level of access to the Facilities. Badger Meter will not permit an employee to have access to the non-public Customer Data or perform material aspects of the Service if such employee has failed to pass such background check.

2. **Continued Evaluation.** Badger Meter will conduct periodic reviews of the security of its Badger Meter Network and adequacy of its information security program as measured against industry security standards and its policies and procedures. Badger Meter will continually evaluate the security of its Badger Meter Network and associated Service to determine whether additional or different security measures are required to respond to new security risks or findings generated by the periodic reviews.

3. **Customer Responsibilities.** System security is a shared responsibility between Badger Meter and Customer. Customer shall assign a systems service administrator to be responsible for establishing access and usage policies. Customer shall develop commercially reasonable policies and procedures to insure physical security, establishing account access approvals and procedures, conduct regular reviews of access rights, and provide security awareness training for staff using the Service. The administrator shall also be responsible for policies and procedures related to Authorized Consumers access to their individual data resident on the Network.

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Exhibit J

BADGER METER STANDARD SALES TERMS AND CONDITIONS

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Badger Meter Terms and Conditions of Sale

1. **Definitions.** “Buyer” means the party purchasing goods or services pursuant to these Terms and Conditions of Sale (“Terms and Conditions”). “Badger Meter” means Badger Meter, Inc., a Wisconsin corporation and all its subsidiaries. “Goods” means the Badger Meter goods, software, services, and advisory services sold or otherwise provided pursuant to these Terms and Conditions.

2. **Controlling Provisions.**

Generally. This negotiated document, along with the negotiated terms included in the associated documents, including the provisions in Badger Meter's quotation, proposal, price list, acknowledgment and invoice, and Badger Meter's Limited Warranties described in Section 12 (the "Agreement") constitutes an offer by Badger Meter to provide the Goods to Buyer. If this document is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained in this Agreement. Buyer's acceptance of this offer is limited to the terms, covenants and conditions contained in this offer. Badger Meter hereby objects to and rejects any additional, different or varying terms proposed by Buyer, regardless of whether or when Buyer submitted its purchase order or such terms. Such proposal of additional, different or varying terms by Buyer shall not operate as a rejection of Badger Meter's offer, and Badger Meter's offer shall be deemed accepted without such additional, different or varying terms. Fulfillment of Buyer's order does not constitute acceptance of Buyer's terms and conditions and does not serve to modify this Agreement. **THIS AGREEMENT AND ANY ASSOCIATED DOCUMENTS CONSTITUTES THE FINAL EXPRESSION OF THE AGREEMENT BETWEEN BADGER METER AND BUYER REGARDING THE GOODS AND IT IS A COMPLETE AND EXCLUSIVE STATEMENT OF THAT AGREEMENT. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THIS AGREEMENT SHALL HAVE NO FORCE OF EFFECT UNLESS MADE IN WRITING AND SIGNED BY BUYER AND AN AUTHORIZED OFFICER OF BADGER METER.** Badger Meter's sales representatives do not have authority to change this Agreement. Badger Meter reserves the right to correct clerical errors in its documents. It is the express wish of the parties that this document and any related documents be drafted in English.

Acceptance. Buyer shall be deemed to have made an unqualified acceptance of this offer and the Agreement on the earliest of the following to occur: (a) Badger Meter's receipt of a copy of this Agreement (or any document incorporating this Agreement) signed by Buyer, (b) Buyer's order of Goods after receiving notice of this Agreement, (c) Buyer's payment of any amounts due under this Agreement, (d) Buyer's delivery to Badger Meter of any material to be furnished by Buyer, (e) Badger Meter's delivery of the Goods following Buyer's order, (f) Buyer's failure to notify Badger Meter to the contrary within twenty business (20) days of receipt of this Agreement, or (g) any other event constituting acceptance under applicable law.

3. **Storage.** If the Goods are not shipped within fifteen (15) days after notification to Buyer that they are ready for shipping, for any reason beyond Badger Meter’s reasonable control, including without limitation Buyer’s failure to give shipping instructions, Badger Meter may store such Goods, at Buyer’s risk, in a warehouse or yard located on Badger Meter’s premises.

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4. **Prices.** Intentionally Omitted.

5. **Taxes.** All prices are exclusive of all sales, use, value added, customs and excise taxes, and any other taxes, duties, fees and charges of any kind imposed by any governmental authority in connection with this Agreement.

6. **Title and Risk of Loss.** Intentionally Omitted.

7. **Payment Terms.** Intentionally Omitted.

8. **Packaging.** Badger Meter reserves the right to select the manner in which Goods are packaged. Special requirements for packing will be subject to extra charges.

9. **Delivery.** Intentionally Omitted.

10. **Force Majeure.** Badger Meter shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Badger Meter including, without limitation, acts of God, terrorism, pandemic, global supply chain disruptions, acts of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slow-down, war, riot, delay in transportation, delayed delivery by suppliers, or inability to obtain necessary labor and materials. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. Badger Meter 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.

11. **Orders; Changes and Cancellations.** Buyer's orders or mutually agreed change orders shall be subject to all provisions of this Agreement, whether or not the order or change order so states. No order shall be binding upon Badger Meter until received and accepted by Badger Meter in its sole discretion. Minimum order value is $200 U.S.D. or EUR 200. Orders submitted to Badger Meter may not be cancelled or amended, or deliveries deferred, by Buyer except with Badger Meter's prior written consent, and then only upon such terms as shall be acceptable to Badger Meter on a product by product basis. In the event of cancellation of an order by Buyer, Buyer shall pay Badger Meter's reasonable costs and expenses, plus Badger Meter's usual rate of profit for similar work, and all cancellation charges imposed by Badger Meter's suppliers. Neither Buyer’s acceptance of this offer nor any conduct by Badger Meter (including but not limited to shipment of Goods) will oblige Badger Meter to sell to Buyer any quantity of Goods in excess of the quantity that Buyer has committed to purchase from Badger Meter at the time of such acceptance or conduct. Due to continuous efforts to improve and redesign of our products and technology solutions, Badger Meter reserves the right to provide our newest product solutions as an alternative to the quoted or ordered Goods, provided they are in conformance with the requirements of any agreed specifications and do not exceed the prices quoted.

12. **Limited Warranties.**

Generally. Unless otherwise agreed in a writing signed by an authorized officer of Badger Meter, provided by Badger Meter in a written product-specific warranty or online at http://www.badgermeter.com/Company/Legal/Warranty-Policy.htm, or passed through by Badger

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Meter from the original equipment manufacturer, Badger Meter warrants the Goods (excluding services) supplied hereunder to be free from significant defects in material and workmanship under normal use and service for a period of 18 months from the date of shipment or 12 months from the date of installation, whichever period shall be shorter ("the Warranty Period"). This warranty applies only to the original purchaser of the Goods and does not apply to Goods that are the subject of negligence, accident, or damage by circumstances beyond Badger Meter's control, or any improper operation, maintenance, storage, installation or use. This warranty does not apply to Goods or component parts that were not manufactured by Badger Meter and not covered by a Badger Meter or original equipment manufacturers written warranty, all of which are sold **"AS IS"** and without warranty by Badger Meter. This warranty applies only to covered defects that are discovered during the Warranty Period. Buyer's failure to provide Badger Meter with written notice of any alleged defect within ten (10) days after its discovery constitutes a waiver of the remedies specified herein. If Badger Meter receives timely notice, and if the Goods are proved to Badger Meter's satisfaction to have a warranted defect, Badger Meter will, at its own discretion, expense and within a reasonable period of time, either (1) repair, correct or cure the warranted defect(s), or (2) replace the specific Goods at issue, or (3) give Buyer a refund of the price it paid for the Goods, prorated where appropriate to adjust for the value of any conforming Goods or services accepted and retained by Buyer. Any parts of Goods repaired or replaced under warranty are warranted only for the balance of the Warranty Period on the original part that was repaired or replaced. These remedies shall be Buyer's exclusive remedies (and the sole and exclusive liability of Badger Meter) for any defects or deficiencies relating to or arising out of Goods sold or services performed. All repairs are made on a C.P.T. factory basis (pursuant to Incoterms). **THE WARRANTIES IN THIS SECTION ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO GOODS SOLD OR OTHERWISE PROVIDED BY BADGER METER. BADGER METER EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON- INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

Where Badger Meter provides recommendations to Buyer to address or mitigate issues identified by the Buyer, Buyer acknowledges that Badger Meter will not have access to the full operational aspects and attributes of the Buyer's network. Badger Meter is not a certified consultant and does not provide consulting services unless specifically contracted. All Goods are selected by the Customer and Badger Meter's recommendations do not constitute a requirement for purchase. Badger Meter does not warrant that its product recommendations are an adequate solution for any identified or unidentified Customer issues.

Please note that Badger Meter's warranties for Syrinix branded products do not cover failures, interruptions, and damages resulting directly or indirectly from Acts of God, war, terrorism, civil, disobedience, theft, extreme weather, floods, storms, lightning, tornado, hurricane, fire, combustion, explosion, landslip, volcano and earthquake, extreme temperature, external electrical irregularity including surge and failure, acoustic interference, and third party service provider interruptions.

Buyer's Obligations. Buyer must satisfy the following obligations in order to be eligible for coverage by the applicable warranty. Prior to using or permitting use of the Goods, Buyer shall determine the suitability of the Goods for the intended use and Buyer assumes all risk and liability whatsoever in connection therewith. Buyer agrees that Badger Meter has no post–sale duty to warn Buyer or any other party about any matter or, if such duty exists, Badger Meter satisfies that duty by providing any required warnings only to Buyer. Buyer assumes all post–sale duty to warn its customers Buyer agrees to test and

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evaluate Goods as soon as reasonably practical to ensure compliance with all specifications, quality requirements and other requirements of Buyer's application. Badger Meter does not guaranty the accuracy of information given and recommendations made as to suitability of Goods for Buyer's application or operating conditions. Nothing shall be construed to imply the nonexistence of any relevant patents or to constitute a permission, inducement or recommendation to practice any invention covered by any patent without authority from the patent owner

13. **Intellectual Property.** No Intellectual Property (as defined below) is assigned to Buyer hereunder. Badger Meter shall own or continue to own all Intellectual Property used or created in the course of performing this Agreement. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Badger Meter, and instead vests in Buyer, Buyer agrees to grant and assign and hereby does grant and assign to Badger Meter all right, title and interest that Buyer may have in and to such Intellectual Property. Buyer agrees not to reverse engineer any Goods purchased or provided hereunder. This includes the reverse engineering of software, source code, or other proprietary elements that Badger Meter provides to Buyer. "**Intellectual Property**" means patents and patent applications, inventions, developments and discoveries, whether or not patentable or copyrightable, trademarks, service marks, trade dress, copyrights, trade secrets, designs, drawings, specifications, database rights, rights in and to confidential information and know-how, and any rights analogous to the same anywhere in the world and existing at any time in the Goods or arising out of or relative to the design or manufacture of the Goods or the provision of services, and all other Intellectual Property and proprietary rights.

Any use of Badger Meter's or its affiliates' or suppliers' trademarks in advertisements or promotion must be preapproved in writing by Badger Meter. Buyer agrees to take all steps which Badger Meter may from time to time consider to be necessary to perfect or protect Badger Meter's or its affiliates' or suppliers' rights in Badger Meter's Intellectual Property including, without limitation, executing all necessary assignments, declarations, and other documents requested by Badger Meter from time to time. Upon expiration or termination of this Agreement for any reason, Buyer shall take such steps and execute such documents as Badger Meter requests to cause Badger Meter or its affiliates or suppliers to own all rights in the Intellectual Property and to terminate any rights Buyer or its affiliates may have to use the Intellectual Property. Buyer shall inform Badger Meter promptly of any potential or actual infringement of any of Badger Meter's or its affiliates' or suppliers' Intellectual Property and shall provide all assistance and information required by Badger Meter, at Badger Meter's expense, in connection with any such infringement.

For Syrinix branded products that require transmission of data, the Buyer agrees to the transmission of information relating to the product and product data during the installation, commissioning and operation of the product and to the analysis and provision of product data, including web-based, server based and bespoke communication and analytical methodologies, nationally and internationally. The Buyer shall own all product data provided from the product. Each and every Buyer and its consumers and/or employees hereby grants to Badger Meter a non-exclusive, irrevocable, transferable, royalty free license to store, analyze, copy, edit, record and otherwise use all product data for such purposes, including, without limitation, research, administration and commercial, as Syrinix, in its sole discretion, considers appropriate. This license shall survive the termination of this agreement, however arising, including, without limitation, termination due to Badger Meter’s default. To the extent applicable, any use of product data is also subject to the Google Maps/Google Earth Additional Terms of Service (including the Google Privacy Policy) (see https://maps.google.com/help/terms_maps.html).

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14. **Compliance with Laws**. Buyer agrees to familiarize itself with and comply with all laws and regulations now or hereafter in effect and applicable to the purchase, transport, use, supply, storage, sale, offer for sale, lease and/or disposal of the Goods ("Laws") including, without limitation, to the extent applicable, the U.S. Foreign Corrupt Practices Act and all other anti-bribery laws, all U.S. anti-boycott laws, and the U.S. Export Administration Act and all regulations thereunder.

If Buyer or its affiliates, agents or representatives engages a freight forwarder or similar service provider, Buyer shall provide Badger Meter with copies of freight forwarder (or similar) records regarding Goods exports promptly upon request.

Buyer shall promptly notify Badger Meter in writing if Buyer receives notice of or otherwise has reason to believe that a violation of any applicable trade laws has occurred or is likely to occur. Buyer assumes all risk with respect to compliance of Goods with applicable Laws (including without limitation all environmental laws in any jurisdiction).

Buyer acknowledges that certain Goods may have restrictions on who can purchase, transport, use, supply, store, sell, offer for sale, lease and/or dispose of ("Actions") the Goods and on how and where such Actions may take place. Buyer agrees to be responsible for determining who may take such Actions and how and where such Actions may take place after Badger Meter's delivery hereunder, and further agrees to ensure that its customers comply with such requirements.

By accepting this Agreement, Buyer confirms that:

- Buyer understands that Goods provided by Badger Meter are subject to U.S. export control laws and regulations, including, without limitation, the International Traffic in Arms Regulation (ITAR) or the Export Administration Regulations;
- Buyer will comply with all applicable U.S., EU, and UN laws and regulations and any other laws, regulations, or orders of similar effect enforced any other applicable jurisdiction whenever we export, re-export, or transfer Product(s) acquired from Badger Meter, insofar as it does not infringe any applicable anti-boycott rule, and acknowledges that the controlling laws and regulations may be amended from time to time;
- Buyer acknowledges that U.S. law prohibits the sale, transfer, export, re-export, or participation in any export transaction involving Badger Meter’s Goods with individuals or companies listed in the United Nations Financial Sanctions List, Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions, U.S. Department of Commerce’s Denied Persons List, Entity List, or Unverified List; the U.S. Department of State Nonproliferation Sanctions, AECA Debarred List; U.S. Department of Treasury’s Specially Designated Nationals, Foreign Sanctions Evaders List, Sectoral Sanctions Identifications (SSI) List, Palestinian Legislative Council (PLC) List, The List of Foreign Financial Institutions Subject to Part 561 List, and Blocked Persons Lists; and any additional lists added by the U.S. Government. Buyer will not transfer, export, or re-export, directly or indirectly to any party identified on a restricted party list published by the U.S. government, European Union, or any other government, or to any party otherwise prohibited under any applicable law from receiving Badger Meter Goods;
- Buyer will not use, sell, transfer, export or re-export Badger Meter Goods for use in any activity related to the development, production, use, stockpiling, maintenance, or proliferation of weapons of mass destruction, including, without limitation, uses related to nuclear, chemical or biological weapons (i.e. the nuclear, chemical or biological materials/substances themselves could be used in weapons and/or the weapon delivery systems for those materials/substances) (“Weapons”), and that Buyer will not transfer, divert, export, or re-export, directly or indirectly,

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Goods, including any products developed or manufactured using Badger Meter's Goods, to any party engaged in any such activity. nor use such Goods in any facilities that are engaged in activities related to such Weapons. This restriction also includes, but is not limited to:
    - nuclear explosive activities, safeguarded and unsafeguarded nuclear activities
    - rocket systems or unmanned air vehicles
    - maritime nuclear propulsion;
- If Buyer is subsequently engaged in the use, development, production, transfer, export or re-export of any Badger Meter Goods, Buyer acknowledges that it may be subject to and responsible for the export licensing requirements of the U.S. government or any other government;
- Buyer acknowledges that it may receive Goods from Badger Meter exported under a written authorization from the U.S. government or any other government and acknowledge that it may be subject to and responsible for conditions subject to this written authorization and/or be subject to and responsible for the re-export licensing requirements applicable to the U.S. government's or any other government's written authorization;
- Buyer will comply with all applicable laws and regulations whenever Buyer transfers, exports, or re- export Goods obtained from Badger Meter, and Buyer acknowledges that the controlling laws and regulations may be amended from time to time; and
- Buyer will provide Badger Meter with information regarding end-user, end-use, and country of ultimate destination if purchasing Badger Meter Goods for anything other than stock inventory.

Buyer acknowledges that Badger Meter shall file all export formalities related to all export sales from the U.S. including exports where Buyer designates the freight forwarder, unless Buyer is otherwise instructed or notified by Badger Meter in writing from the Global Logistics Department. Export formalities include, but are not limited to, preparing and filing the electronic export information ("EEI"), and obtaining any necessary export licenses. Badger Meter shall ensure the goods are properly documented, cleared for export, and meet all requirements for lawful exportation. Buyer, or their freight forwarder, shall provide any necessary information or documentation requested by Badger Meter to facilitate the export process, including, but not limited to, supplying the export EEI information, the onboard billing of lading/airway bill and notification of any split shipments, destination, consignee or ultimate consignee changes.

Buyer acknowledges the export transactions from the U.S. that are routed export transactions (RET) as defined in the U.S. Export Administration Regulations, 15 C.F.R. § 772.1 and the Federal Trade Regulations, 15 C.F.R. § 30.1(c) will only be transacted under EXW Badger Meter's Facility U.S. (Incoterms 2020). Buyer, as the foreign party, shall be considered the Foreign Principal Party in Interest ("FPPI") for these transactions, and as the FPPI authorizes their U.S. agent to facilitate the export of items from the U.S. on the Buyer's behalf and prepare and file the EEI. Buyer shall comply with 15 C.F.R. § 30.3(e)(2) and 758.1(h)(1)(i) by supplying their U.S. agent with a power of attorney or other form of written authorization and shall provide a copy to Badger Meter at time the order is placed. Buyer shall also instruct their U.S. agent to provide Badger Meter a copy of the EEI transaction and the onboard bill of lading/airwaybill. Badger Meter will provide all EEI data elements to Buyer's U.S. agent as required under 15 C.F.R. § 30.3(e)(1) to complete the EEI filing.

15. **Customer Validation.** Badger Meter reserves the right to determine OEM qualifications of any and all buyers to request end customer invoicing in situations where project pricing may have been granted by the factory. Badger Meter reserves the right to determine market definition of any and all

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buyers and to employ third-party sources, including SIC codes, and/or information about the application or products purchased to determine market definition.

16. **Nuclear Disclaimer.** The Goods are not intended for use in connection with any nuclear facility or activity unless covered by a specific quotation where the conditions of such usage will be detailed. If the Goods are used in a nuclear facility or activity without a supporting quotation, Badger Meter disclaims all liability for any damage, injury or contamination The foregoing shall not be deemed to imply or impose liability on Badger Meter where the Goods are used in a nuclear facility or activity with a supporting quotation; all limitations and exclusions in this Agreement and in Badger Meter's Limited Warranty shall apply.

17. **Limitation of Liability.**

This limitation applies only to the Goods.

Cap on Liability. Badger Meter's aggregate liability in any and all claims and causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the total amount paid by Buyer to Badger Meter under this Agreement, whether the Causes of Action are in tort including, without limitation, negligence or strict liability, in contract, under statute or otherwise.

Limitation and Exclusion of Damages. **AS A SEPARATE AND INDEPENDENT LIMITATION ON LIABILITY, BADGER METER'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES. BADGER METER SHALL NOT BE LIABLE FOR: (I) ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, DIRECT OR INDIRECT LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, SHUTDOWN OR SLOWDOWN COSTS, OR LOSSES RELATING TO COLLATERAL CONTRACTS, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE; (II) ANY IN/OUT COSTS; (III) ANY MANUAL METER READING COSTS AND EXPENSES NOR (IV) ANY COSTS AND EXPENSES TO REMOVE PRODUCT FOR WARRANTY ANALYSIS, OR RE-INSTALLATION COSTS AND EXPENSES; "IN/OUT COSTS" MEANS ANY COSTS OR EXPENSES INCURRED BY BUYER IN TRANSPORTING GOOD BETWEEN ITS WAREHOUSE AND ITS END USER'S PREMISES. "END USER" MEANS ANY END USER OF THE WATER OR GAS THAT PAYS BUYER FOR THE CONSUMPTION OF WATER OR GAS, AS APPLICABLE.**

Limitations Unconditional. The limitations on liability set forth in this Agreement are fundamental inducements to Badger Meter entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Badger Meter the maximum protection permitted under law.

Limit on Actions. To the maximum extent permitted by law, no Cause of Action may be instituted by Buyer against Badger Meter more than twenty four (24) months after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than twenty four (24) months prior to the filing of the Cause of Action shall be recoverable.

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18. Indemnification. To the extent allowed by applicable law and without waiving any applicable immunity, Buyer releases and agrees to defend, indemnify and hold harmless Badger Meter its shareholders, directors, officers, employees, agents, affiliates, successors, assigns and customers from and against all claims, liabilities, actions, causes of action, fines, penalties, judgments, demands, damages, losses, costs and expenses, including without limitation attorneys' fees and costs, and including damages arising from personal injury or death, in law or in equity, of every kind and nature whatsoever (collectively, "Losses"), arising out of (a) Buyer's or its End User's use of the Goods, (b) breach of this Agreement by Buyer, (c) Buyer's or its End User's products, materials, performance, designs, approvals or instructions, (d) infringement of third party proprietary rights, except to the extent such Losses arise out of a breach of this Agreement by Badger Meter, (e) any violation of Buyer of any law, rule or regulation, (f) any gross negligence or willful misconduct of Buyer, or (g) any modifications or changes made to the Goods by or on behalf of any person at the direction of Buyer other than Seller or its Representatives, if the infringement would have been avoided without such modification or change. Prior to settling any claims, Buyer will give Badger Meter an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without Badger Meter's written consent. In the event of any recall affecting Goods, Badger Meter shall have the right to control the recall process and Buyer shall fully cooperate with Badger Meter in connection with the recall.

19. Confidentiality.

Generally. Buyer acknowledges that all Badger Meter Confidential Information (as defined below) which may be disclosed to it by Badger Meter or its affiliates or suppliers shall at all times, during and after expiration or termination of this Agreement for any reason, remain Badger Meter's exclusive property, and Buyer shall not acquire any proprietary interest whatsoever therein. Buyer shall (and shall cause its employees and contractors to) keep all Badger Meter Confidential Information strictly confidential and shall not disclose it to any third party or use it, except to the extent reasonably required to perform this Agreement or as required under applicable law, court order or regulation. As used herein "Badger Meter Confidential Information" means any and all non-public information of Badger Meter, including without limitation the terms of this Agreement, and all non-public data, specifications, equipment and product information, prototypes, drawings, technical information, engineering drawings, forecasts, sales data, "know-how", designs, computer programs, processes, inventions, current and future (unreleased) products and technology, and confidential business information such as cost data, profit margins, sales strategies, supplier information, procurement requirements, employee information, customer preference or needs, customer data and employee capabilities which are not available to the public, unpublished U.S. and foreign patent applications, invention disclosure forms, all technical information about products or services, pricing information, marketing and marketing plans, Goods performance, Goods architecture and design, other business and financial information, software, third party information Badger Meter is required to keep confidential, any materials derived from or based upon Badger Meter Confidential Information, and all trade secrets. Badger Meter Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by Buyer. Notwithstanding the foregoing, "Badger Meter Confidential Information" shall not include: (i) any information that is in the public domain other than due to Buyer's breach of this Agreement; or (ii) any information Buyer can demonstrate by documentary evidence was in the possession of the Buyer without restriction prior to disclosure by Badger Meter. Upon expiration or termination of this Agreement for any reason, and otherwise upon Badger Meter's request, Buyer shall, within fifteen (15) days surrender to Badger Meter all plans, drawings, specifications, sketches, literature, samples, documents and other tangible objects and copies thereof relating to Badger Meter Confidential Information and all of Badger Meter's or its affiliates' or suppliers' property. Nothing in this Agreement

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shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Badger Meter, its affiliates or suppliers with broader protection than that provided herein. Badger Meter acknowledges that the City of Denton must strictly comply with the Public Information Act, Chapter 552, *Texas Government Code* in responding to any request for public information related to this Agreement. This obligation supersedes any conflicting provisions of this Agreement. All material submitted by Badger Meter to the City of Denton shall become property of the City upon receipt. Any portions of such material claimed by Badger Meter 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*.

Engineering Data. All engineering data, design information and engineering and shop drawings used in the completion of Buyer's order are and shall remain Badger Meter's property. Buyer shall not copy, distribute or communicate to any third party such data without Badger Meter's prior written permission. However, Buyer shall distribute appropriate product data regarding operation, safety and maintenance to the end user.

Personal Information Safeguards This Section will apply unless superseded by a prior agreement. Under this Agreement, Badger Meter will not receive, or have access to, use or store Personal Information (as defined below), unless otherwise notified by Buyer with written notice that such information is pertinent to the transaction. If however, Badger Meter receives, or has access to, uses or stores Personal Information under this Agreement, then this will apply (in addition to Section 18 [Confidentiality]).

"Data Protection Law" means: (a) the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 (as updated); (b) any other applicable data privacy legislation or regulation; and (c) Badger Meter's privacy policy (available here.)

"Personal Information" means any information relating to an identified natural person or a directly or indirectly identifiable natural person.

To the extent Badger Meter receives, or has access to, uses or stores Personal Information under this Agreement, Badger Meter will:

immediately notify Buyer;

implement and maintain administrative, physical, and technical safeguards ("Safeguards") that meet or exceed relevant industry standards and that protect the security and privacy of Personal Information. Badger Meter will not permit access to Personal Information except to those who need to know it in order to perform under this Agreement, and will ensure that any third party accessing Personal Information protect it with Safeguards at least as strong as Badger Meter's Safeguards;

upon Buyer's instruction and in accordance with Badger Meter's electric record retention policy, delete such Personal Information immediately or return it to Buyer in a secure manner and delete all remaining copies of Personal Information after such return and provide documentation of the deletion to Buyer;

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not use the Personal Information for any other purpose than compliance with its' obligations under this Agreement; and

if Badger Meter has reason to believe that Personal Information is reasonably likely to have been accessed for an unauthorized purpose or by unauthorized persons (a "Breach"): (a) promptly notify Buyer (b) reasonably assist Buyer in investigating and remedying any Incident and any related inquiry or claim; and (c) provide Buyer with reasonable assurance that Badger Meter has corrected all circumstances under Badger Meter's control that led to the Incident.

20. **Returns.** No Goods may be returned for credit or repair without a Returned Material Authorization (RMA) issued by Badger Meter. Badger Meter reserves the right to reject return if Buyer does not get prior authorization and RMA. Authorized return shipments must be returned in good condition to Badger Meter's designated receiving point, must be accompanied by a packing slip, including Badger Meter's RMA number NO RETURNS ACCEPTED WITHOUT PRIOR BADGER METER AUTHORIZATION EVIDENCED BY A VISIBLE RMA NUMBER ON THE OUTSIDE OF THE PACKAGE. If returned Goods are severely damaged in shipping, based on poor packing, they may not be eligible for credit. Correspondence concerning all returned Goods must be addressed to the appropriate Badger Meter office and party. Only in the event of issues caused solely by the Buyer, Badger Meter reserves the right to deduct an adequate service charge to cover all inspection, testing and handling from any credit, plus freight, insurance, packing, import and export costs. Unused or uninstalled product returns received prior to 90 days after invoice date are eligible to be credited back to the customer with Badger Meter approval. Only current versions of other products are eligible to be credited back to the customer. Badger Meter reserves the right to charge a restocking fee.

21. **Assignment**. This Agreement may not be assigned by either party without the written consent of the other (which consent shall not be unreasonably withheld). However, consent will not be required for internal transfers and assignments of Badger Meter, its subsidiaries or affiliates as part of a consolidation, merger or any other form of corporate reorganization. Badger Meter shall promptly notify Buyer in writing of any assignment.

22. **Governing Law and Dispute Resolution.** Intentionally Omitted.

23. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. **Non-Waiver.** Failure or delay of Badger Meter to exercise a right or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.

25. **Government Contracts.** If the provision of Goods by Badger Meter under accepted orders is subject to mandatory provisions of U.S. law concerning contracts or subcontracts with or for the benefit of the U.S. or any state or other national government, Buyer shall so notify Badger Meter in advance of order acceptance specifying the mandatory provisions of U.S, state or other national government law which apply.

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26. **Cumulative Remedies.** Badger Meter's rights and remedies under the Agreement subject to any associated documents are cumulative and in addition to all other rights and remedies available to Badger Meter at law or in equity.

27. **Relationship of Parties.** Buyer and Badger Meter are independent contractors, and nothing herein shall be construed to create a partnership, joint venture, agency or employment relationship Neither party has nor will have any power to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party.

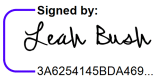
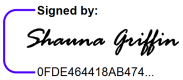
Certificate Of Completion

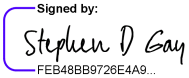
Envelope Id: A2B9D753-13BE-47EC-8E8C-E250BD8A0539
Status: Sent
Subject: Please DocuSign: City Council Contract 8623 Water AMI Program
Source Envelope:
Document Pages: 74
Signatures: 5
Certificate Pages: 6
Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Gabby Leeper
901B Texas Street
Denton, TX 76209
Gabby.Leeper@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
3/13/2026 12:54:23 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: 198.49.140.104	Sent: 3/13/2026 1:08:40 PM Viewed: 3/13/2026 1:10:03 PM Signed: 3/13/2026 1:12:03 PM
Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/13/2026 1:12:06 PM Viewed: 3/13/2026 2:04:57 PM Signed: 3/13/2026 2:06:59 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: 198.49.140.104	Sent: 3/13/2026 2:07:02 PM Viewed: 3/17/2026 5:01:18 PM Signed: 3/17/2026 5:51:03 PM
Shauna Griffin SGriffin@badgermeter.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/18/2026 10:56:44 AM ID: d13fa909-5301-44e3-8003-46c3f137c485	 Signature Adoption: Pre-selected Style Using IP Address: 207.190.19.199 Signed using mobile	Sent: 3/17/2026 5:51:06 PM Viewed: 3/18/2026 10:56:44 AM Signed: 3/18/2026 11:43:54 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: 3/23/2026 10:36:29 AM ID: 8c2b03d6-411b-43cb-9930-5654e76d11ee	Signed by:  FEB48BB9726E4A9... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/18/2026 11:43:59 AM Resent: 3/23/2026 10:34:23 AM Viewed: 3/23/2026 10:36:29 AM Signed: 3/23/2026 10:37:45 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: 3/23/2026 10:37:49 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: 3/13/2026 1:12:06 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 3/23/2026 10:37:48 AM Viewed: 3/23/2026 10:39:25 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		
Tiffany Sherraine tiffany.sherraine@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
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Envelope Updated	Security Checked	3/16/2026 11:28:44 AM
Envelope Updated	Security Checked	3/16/2026 11:28:44 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

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

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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 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: April 13, 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 Xylem Vue Inc. through the Sourcewell Cooperative Purchasing Network Contract No. 091724, for the Water Utility Monitoring and Analytics Project for the Water Utilities Department; authorizing the expenditure of funds therefor; and providing an effective date (File 8931 – awarded to Xylem Vue Inc., in the five (5) year not-to-exceed amount of $6,496,090.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The proposed cooperative purchasing agreement with Xylem Vue, Inc., represents a significant advancement in managing the City of Denton's water and wastewater systems by implementing advanced real-time monitoring and data analytics. Xylem uses flow monitors, rain gauges, and other devices to deliver real-time data, enabling engineers and operators to view data on customizable screens. This data is crucial for confirming the water and wastewater model. The technology provides critical insights needed to monitor system performance and ensure regulatory compliance. By detecting issues like inflow and infiltration (I&I), evaluating system capacity, and identifying peak flows and blockages, the real-time system greatly enhances operational efficiency. These capabilities allow utilities to promptly address existing problems and anticipate future challenges, resulting in smoother, more efficient operations.

This project is essential for supporting the City's Capital Improvement Plan (CIP) by providing vital data for infrastructure development and long-term planning. With accurate, continuous monitoring of metrics such as flow rates and capacity utilization, the city can better identify infrastructure needs and prioritize repairs or upgrades. This data-driven approach ensures decisions are based on precise assessments, optimizing resource allocation for maximum efficiency. Additionally, the precise data aids in compliance reporting, improves emergency response through real-time detection of sudden changes, and supports modeling and simulations for development and emergency preparedness—all contributing to strategic municipal management.

Xylem Vue's real-time monitoring delivers crucial data that enhances decision-making and maintains the effectiveness of water and wastewater infrastructure. By embracing this data-centric approach, the project

promotes sustainable community growth and efficient utility management. Importantly, real-time monitoring ensures safe and reliable wastewater services for the expanding community, strengthening resilience and sustainability for the future.

Fiscal Year 2026	$1,756,906
Fiscal Year 2027	1,678,555
Fiscal Year 2028	1,306,096
Fiscal Year 2029	705,259
Fiscal Year 2030	705,259
Additional Year 2031	344,015
Five (5) Year Total	**$6,496,090**

Pricing obtained through Sourcewell Cooperative Purchasing Network has been competitively bid and meets the statutory requirements of Texas Local Government Code 271.102.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On January 28, 2020, City Council approved the interlocal agreement with Sourcewell (Ordinance 20-197).

RECOMMENDATION

Award a contract with Xylem Vue Inc., for the Water Utility Monitoring and Analytics Project for the Water Utilities Department, in a five (5) year not-to-exceed amount of $6,496,090.00.

PRINCIPAL PLACE OF BUSINESS

Xylem Vue, Inc.
Frisco, TX

SUSTAINABILITY MEASURES

This agreement supports the implementation of a data analytics system with real-time monitoring to enhance system performance and facilitate ongoing growth in the water and wastewater utility system. Data will identify trends, forecast demand, and guide infrastructure investments for future development. Real-time data will also detect issues such as blockages or failures, enabling quick responses and reducing health and environmental risks.

ESTIMATED SCHEDULE OF PROJECT

This is a five (5) year contract.

FISCAL INFORMATION

The year one (1) initial equipment and platform of this project will be funded from allocated bonds from the Capital Improvement Program, account 640531545. Requisition #173216 has been entered into the Purchasing software system for $2,043,390. The remaining funding for fiscal years 2027-2031 will be allocated within the Wastewater Operations and Maintenance budget.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Presentation
Exhibit 3: Ordinance and Contract

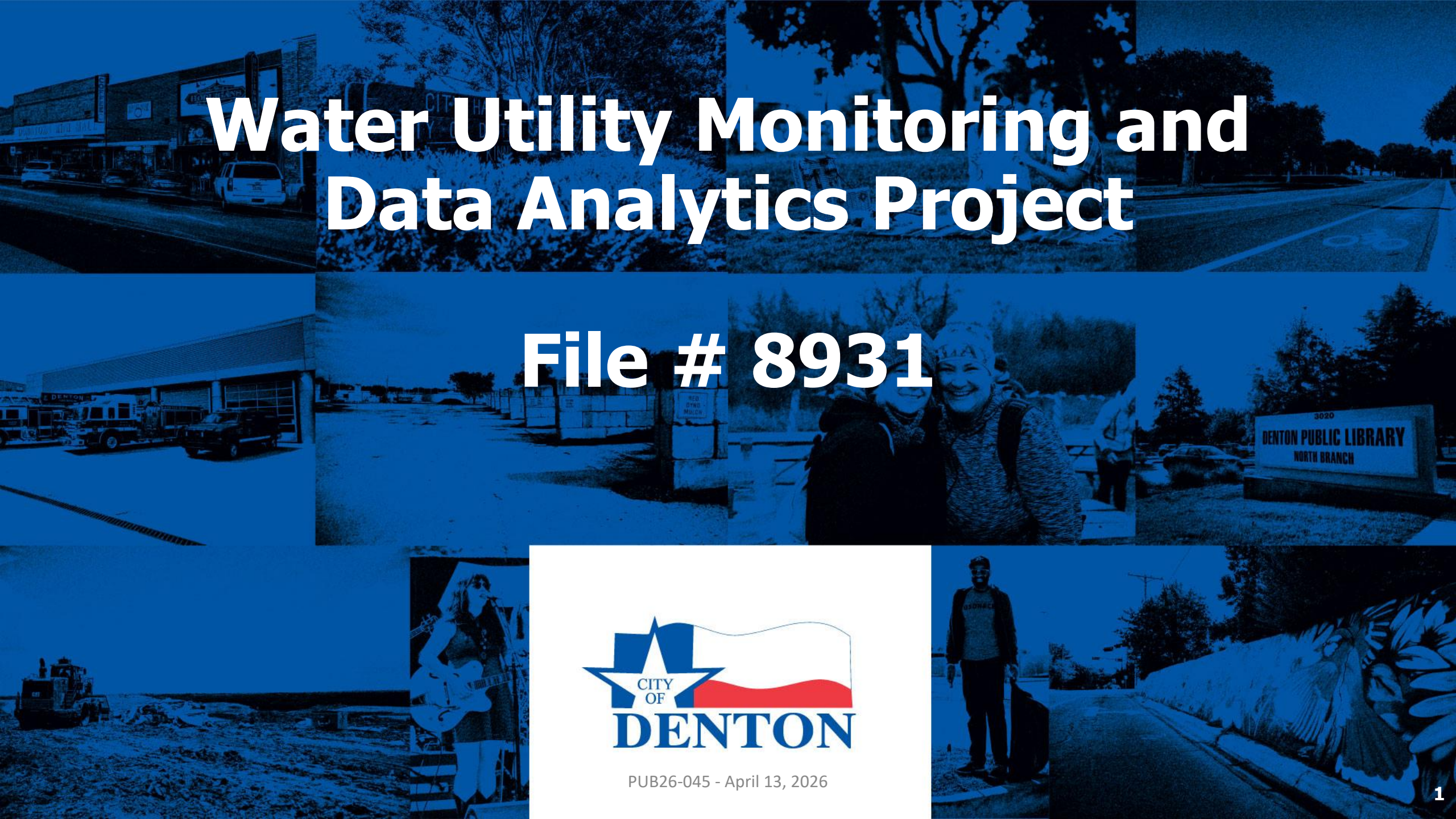
Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: David Brown, 940-349-8030.

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

Water Utility Monitoring and Data Analytics Project

File # 8931



CITY OF DENTON

PUB26-045 - April 13, 2026

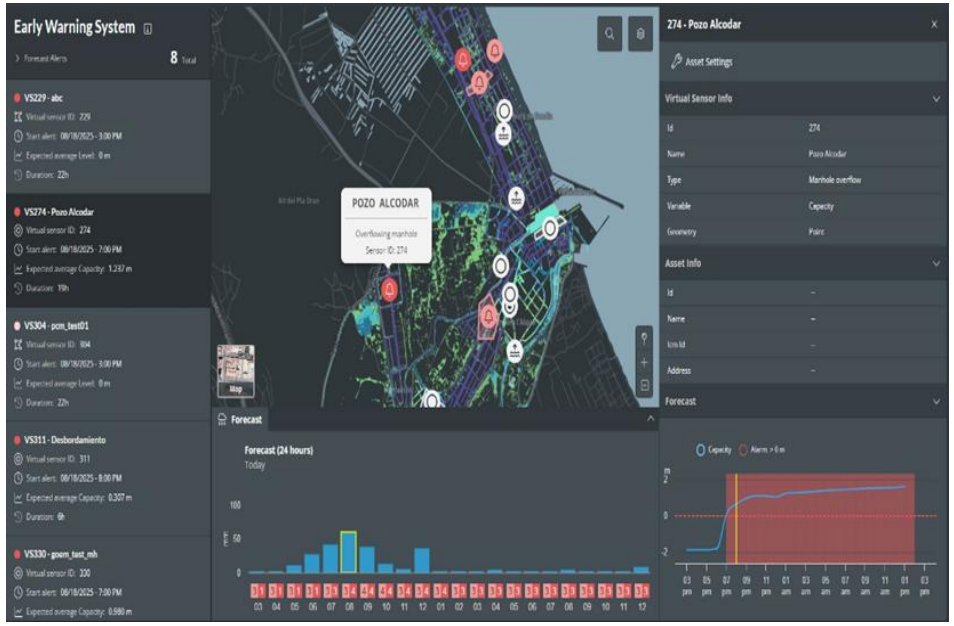
Water Utility Monitoring and Data Analytics Project

Wastewater System Monitoring

- Helps identify where stormwater or groundwater is entering the sanitary system, which can overload treatment plants.
- Early detection of surges in flow can trigger operational responses to prevent sanitary sewer overflows (SSOs).
- Identifies underperforming or over-capacity segments of the system.
- Provides real-world data to prioritize pipe upsizing, rehabilitation, or replacement.

Water Utility Monitoring and Data Analytics Project

Real-Time Data



- Interactive map views displaying the collection network and sensor locations
- Live visualization of current sensor data and flow conditions
- Prioritization of alarms based on severity and operational impact
- Automated notifications to alert staff of critical events in real time

Water Utility Monitoring and Data Analytics Project

Planning Data

- Real-time flow and pressure data calibrate hydraulic models with current system behavior, enhancing reliability.
- Continuous monitoring reveals bottlenecks and peak flow conditions that inform where upgrades are needed.
- Live system data helps prioritize projects based on actual performance, not assumptions.
- Post-project monitoring confirms whether CIP investments (e.g., pipe upsizing or I&I reduction) achieved intended outcomes.

Cooperative Purchasing Services Agreement

Staff recommends a five-year contract with Xylem Vue Inc. using a Cooperative Purchasing Service agreement.

File # 8931
Not to exceed amount: $ 6,496,090

Questions?

CITY OF DENTON

PUB26-045 - April 13, 2026

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH XYLEM VUE INC. THROUGH THE SOURCEWELL COOPERATIVE PURCHASING NETWORK CONTRACT NO. 091724, FOR THE WATER UTILITY MONITORING AND ANALYTICS PROJECT FOR THE WATER UTILITIES DEPARTMENT; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8931 – AWARDED TO XYLEM VUE INC., IN THE FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF $6,496,090.00).

WHEREAS, pursuant to Ordinance 20-197, Sourcewell has solicited, received, and tabulated competitive bids for the purchase of necessary materials, equipment, supplies, or services in accordance with the procedures of state law on behalf of the City of Denton; and

WHEREAS, the City Manager, or a designated employee, has reviewed and recommended that the herein described materials, equipment, supplies, or services can be purchased by the City through the Sourcewell program at less cost than the City would expend if bidding these items individually; 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 shown in the "File Number" referenced herein and on file in the office of the Purchasing Agent, are hereby accepted and approved as being the lowest responsible bids for such items:

FILE NUMBER	VENDOR	AMOUNT
8931	Xylem Vue Inc.	$6,496,090.00

SECTION 2. By the acceptance and approval of the items set forth in the referenced file number, the City accepts the offer of the persons submitting the bids to Sourcewell for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, conditions, specifications, standards, quantities, and for the specified sums contained in the bid documents and related documents filed with Sourcewell and the purchase orders issued by the City.

SECTION 3. Should the City and persons submitting approved and accepted items set forth in the referenced file number wish to enter into a formal written agreement as a result of the City's ratification of bids awarded by Sourcewell, 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, and standards contained in the Proposal submitted to Sourcewell, and the quantities and specified sums contained in the City's purchase orders and related documents referenced herein are 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 items set forth in the referenced file number, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approval purchase orders or pursuant to a written contract made pursuant thereto as authorized herein.

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

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

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

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

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush

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Docusign City Council Transmittal Coversheet

FILE	8931
File Name	Water Utility Monitoring & Data Analytics Project
Purchasing Contact	Gabby Leeper
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 XYLEM VUE INC.
(the "Contract")
(File # 8931)

THIS CONTRACT is made and entered into this date _____, 2026, by and between **Xylem Vue Inc.** a Deleware Corporation, whose address is 10 Bank Street, Suite 1201, White Plains, New York, 10606 hereinafter referred to as "Supplier," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or 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

Supplier shall provide products in accordance with the Supplier's quote, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "C"**. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) Sourcewell Cooperative Purchasing Contract #091724 with Xylem Vue Inc. **(Exhibit "B" on file at the office of the Purchasing Agent**);
(c) Xylem Vue Inc. quote **(Exhibit "C");**
(d) Certificate of Interested Parties Electronic Filing **(Exhibit "D");**
(e) Insurance Requirements **(Exhibit "E");**
(f) Form CIQ – Conflict of Interest Questionnaire **(Exhibit "F")**

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

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

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

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signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization***. Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

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

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

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SUPPLIER

BY: Signed by: Rocio Echeverria 3410D9079BEA446...
AUTHORIZED SIGNATURE

Printed Name: Rocio Echeverria

Title: SVP & GM - MCS Water

617-852-2363
PHONE NUMBER

Rocio.Echeverria@xylem.com
EMAIL ADDRESS

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

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

Signed by: Stephen D. Gay FEB4BAB9726ED4E...
SIGNATURE

Stephen D. Gay
PRINTED NAME

General Manager
TITLE

Water Utilities and Street Operations
DEPARTMENT

File 8931

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Exhibit A
Special Terms and Conditions

1. Contract Term

The contract term will be five (5) years, effective from date of award.

The contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. At the sole option of the City of Denton, the contract may be further extended as needed, not to exceed a total of twelve (12) months.

2. Total Contract Amount

The contract total shall not exceed **$6,496,090**. Pricing shall be per Exhibit C attached.

3. The Quantities

The quantities indicated on Exhibit C (in this contract) 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.

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xylem
Let's Solve Water

Exhibit C
Contractors Proposal

City of Denton

Xylem Vue Monitoring and Prediction Services

xylem vue

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October 6, 2025

Sohil Manjiyani
City of Denton
601 East Hickory Street
Denton, TX 76205

Dear Sohil:

Xylem Vue Inc. (Xylem) is pleased to submit this proposal for monitoring and prediction services to the City of Denton. Xylem is a leading water and wastewater technology company committed to "solving water" by creating innovative and smart technology solutions to meet the world's water, wastewater, energy, and environmental justice needs by uniting best-in-class digital insights, technology, and water expertise. Xylem helps utility clients achieve transformative outcomes no matter where they are on their digital journey.

We bring you ***'Xylem Vue'*** – a comprehensive software and analytics platform that makes Xylem's and other solutions interoperable, easier to implement, and simpler to use. The platform provides operators and other stakeholders with real-time and historical data to operate more efficiently and make better decisions regarding their networks.

Please do not hesitate to contact me to further discuss your needs or with any questions about our proposal. I can be reached at 269.286.1226 or via email at brian.vu@xylem.com.

Thank you for your time and consideration.

Brian Vu

Brian Vu
Director of Sales North America West
Xylem Vue Inc.

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This proposal made available to you by Xylem Inc. ("Xylem") is the sole and exclusive property of Xylem. You agree to keep this proposal strictly confidential and shall not disclose it to any third party without Xylem's written consent, except as required under applicable law, court order, or regulation. No third-party will acquire any proprietary rights in Xylem's equipment, systems, trade-secrets, software, technology, inventions (whether or not patentable), patents, patent applications, documentation, specifications, designs, data, databases, methods, processes or know-how ("Xylem Proprietary Technology") as provided or discussed herein. Any modifications or improvements to Xylem Proprietary Technology resulting herefrom will be the sole and exclusive property of Xylem.

The Leaders in Digital Water

Xylem has designed, implemented, and commissioned the largest number of decision support systems globally, including the use of data analytics, machine learning, real-time forecasting, operations support, and control. Our decision intelligence solutions have helped utilities extract more value from their existing assets and significantly reduce future asset costs.

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INTRODUCTION TO XYLEM

Xylem is a global water technology leader committed to helping our clients "solve water" through the power of technology and expertise to meet the world's water, wastewater, and energy needs.

In a world of ever-growing challenges, Xylem delivers innovative technology solutions that empower clients to illuminate data insights that drive more informed decisions, optimize systems and workflow efficiency, and ensure resilient and continuous asset performance.

Xylem is a publicly-traded (NYSE: XYL) 23,000-employee, $8.1 billion company operating in more than 150 countries around the world. Since 1848, our brands have been transforming how the world gains access to clean water. Recently, that work has included leading utilities through digital transformations as they look to better support their customers with the power of data analytics.

For many years, Xylem has been successfully serving utilities with proven software applications and decision intelligence solutions. Xylem's digital arm includes approximately 150 employees dedicated solely to providing digital solutions to optimize operations of water and wastewater utilities. Our multidisciplinary staff includes civil and environmental engineers as well as control theory engineers and software engineers.

Joining the Xylem team will be HESCO, one of the premier environmental technology, flow services, and facilities maintenance providers in the Midwest. HESCO provides field services to inspect existing equipment installations or instrumentation / control systems, troubleshooting, calibration, and repair, develop designs for system upgrades and verify code compliance. On this project, HESCO will provide installations of necessary sensors and maintenance. Their maintenance programs are a cost-effective means for keeping equipment in reliable running order. Their skilled service engineers are routinely called upon as a valuable resource for troubleshooting problems with existing equipment and instrumentation. HESCO will also offer training to the City of Denton's staff for maintaining the sensor network, if so desired.

Combining Xylem's collaborative and consultative global team of technical and water industry experts with our proven software and analytics platform, we present Xylem Vue.

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UNDERSTANDING OF PROJECT REQUIREMENTS

The Xylem Team understands that the City is requesting equipment and services for a sewer monitoring, rainfall, and control system to monitor flows and levels, maintain and update a sewer model, provide Sanitary Sewer Overflow Analysis and Planning (SSOAP), and comply with Capacity, Management, Operations, and Maintenance (CMOM) guidance in the sanitary sewer collection. The City desires real-time monitoring sensors to be purchased and installed HESCO in 35 locations, with rainfall monitoring in eight locations throughout the different sewer basins. The monitored data will be used to calibrate the sanitary system hydraulic model, to estimate the contributions of smaller basins, and to determine areas requiring additional study and analysis. The Xylem team will install monitors; collect flow, level and rain data; and maintain their function for up to five years. The data will be collected during wet weather flow, stored electronically, and displayed upon upload in real-time on a web-based interface. Data sampling and upload intervals can be adjusted depending on weather conditions to maximize battery life.

Xylem will provide wastewater network optimization and oversight through our knowledge of the City and team's strategy for meeting these goals.

While our approach is expanded upon in the next section, the general steps that will be taken in this project are outlined below:

- Deploy sensors
- Calibrate model
- Perform capacity analysis
- Quantify I&I
- Build a CIP from capacity analysis
- Deploy monitoring system
- Deploy dashboards for sewer main cleaning
- Develop further dashboards, to include:
    - Two Detention Tanks
    - Five Interceptor Profiles
    - 31 Lift Stations, including:
        - General LS overview screen
        - LS map overview over GIS
        - General LS insight screen
        - LS pump stats
        - LS plans and documents
        - LS alarms

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PROJECT APPROACH

TASK 1 – PROJECT MANAGEMENT

Effective project management is essential to the successful execution of this initiative. Xylem will provide comprehensive administrative oversight, including detailed invoicing and regular progress meetings to ensure transparency and alignment with project goals. Each meeting will be supported by structured agendas and documented minutes to facilitate clear communication and accountability. Additionally, Xylem will maintain and regularly update a project schedule that outlines all tasks, tracks completed milestones, and forecasts estimated completion dates based on current progress. This proactive approach ensures that all stakeholders remain informed and that the project stays on track throughout its lifecycle.

TASK 2 – SOFTWARE INSTALLATION

Xylem's advanced digital infrastructure for the City of Denton will be anchored by the Xylem Vue platform, which enables comprehensive monitoring, analysis, and decision support across the entire wastewater network. Through Unified Network Management, the platform will integrate real-time data from newly installed collection system sensors and existing facility sensors within the City's SCADA system, alongside GIS data layers. This integration will support a suite of interactive dashboards, including a citywide sensor map, individual sensor time-series views, and detailed facility screens for critical assets such as storage tanks and lift stations. A schematic dashboard will visualize 31 lift stations, while up to five interceptor profilers will provide profile views of major sewer interceptors, highlighting key connections and overflow points. Additional dashboards will support infiltration and inflow (I&I) analysis, scheduled and reactive maintenance tracking, and predictive alerts for sanitary sewer overflows (SSOs).

Data Source Connectivity:

At the heart of the Xylem Vue platform is the Smart Water Engine, which provides users across the utility with a single holistic environment from which they can not only manage operational data, assets, and IoT devices, but also create customized views within the platform to meet unique system needs. All of which results in a unique source of information for modular applications, which provide operational intelligence in the form of real-time monitoring, alerts, and suggested actions to ensure optimal system-wide efficiency.

The following data sources will be connected via:

- ABB SCADA-OPC-UA
- Esri API/shapefiles (based on direction from city and may be subject to difference in price)
- AMI/AMR metering data-API
- LIMS/WIMS
- Plant SCADA data - TBD

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TASK 2 IMPLEMENTATION DELIVERABLES:

- Deployment of cloud environment of Smart Water Engine (SWE) and Unified Network Management Wastewater
- Initial Domain Master Data (DMD) configuration and necessary master data upload
- Integration of GIS layers into the Xylem Vue platform (pipes, valves, connections, etc.) and rest API layers
- Integration of key real-time data sources that have standard communication protocols (SCADAs with OPC UA/DA, IoT sensors or solutions with API endpoints, IoT sensors via SFTP, historians, etc.)
- Initial review and classification of data dictionary with client and/or vendor(s)
- Initial batch import of existing alerts on key variables/ tags
- Initial configuration of front end interface, permissions, hierarchies, and alerts
- Configuration of a dashboard with all alerts (active, past, inactive, etc.)
- The assumed number of signals to process is up to 50,000
- Initial customization / configuration of up to 100 screens and simple dashboards defined during in-person requirements gathering. The number of screens change by deployment size, and they include combination real-time variables or derived variables for KPI monitoring.
- One week of remote training
- Maximum of one version upgrade per year for Cloud deployments

NOT INCLUDED IN TASK 2 SCOPE:

- Integration of legacy systems without relatively standard communication protocols (more than 20 years old)
- Integration (in/out) with existing work order system in utility to generate service orders automatically
- Integration (in/out) with existing work order system or CIS system in utility to generate service orders automatically
- Customization of alerts and dashboards based on customer consumption and/or usage data beyond the standard alerts provided.
- New vendors' data parsers
- Implementation of customized advanced algorithms and/or machine learning for decision-support. (e.g., Optimization of pumping scheduling to minimize energy consumption)
- Advanced algorithms predicting equipment failure (pumps, wells, etc.) based on a pumping curve and external factors (temperature, vibration, etc.)
- Automated data cleansing/filtering algorithms to cure data input in real-time based on rules and statistics
- In general, any customized advanced algorithm that can support the operations in near real-time
- Any third-party fees needed for the development of APIs, or data availability to Xylem

All additional services will be charged separately at a fee to be agreed upon with the City.

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TASK 3 – DEPLOY ONLINE SENSORS

Task 3.1 – Metering Plan & Installation

Xylem will develop a plan for a distributed sensor network to support the use cases described in this approach. Sensor selection and configuration will be tailored to the unique conditions identified for each monitoring location. Prior to installation, the Xylem team will conduct thorough site investigations to ensure proper placement and functionality.

A total of 43 monitoring locations is proposed to provide sufficient coverage of Denton's collection system for the hydraulic model development and system capacity analysis. Some alternative installation kits are included below to provide flexibility in planning the sensor deployment. The Xylem team will work with Denton to minimize deployment costs while ensuring consistent data quality with the most appropriate equipment for each monitoring location.

Installation Kit	Components	Quantity
Flow Monitoring Option 1	ISCO 2150 Area Velocity Meter, Mounting Hardware, RTU, and In-Road Antenna	25
Flow Monitoring Option 2	ISCO Duratracker, Mounting Hardware, RTU, and In-Road Antenna	N/A
Flow Monitoring Option 3	Flow-Tronic Beluga Area Velocity Meter, Mounting Hardware, RTU, and In-Road Antenna	N/A
Level Monitoring	APG MNU-IS Ultrasonic Level Sensor, RTU, and In-Road Antenna	10
Rainfall Monitoring	Global Water Rain Gauge, RTU, antenna, and installation hardware	8

After site inspections are complete and the final locations are confirmed with Denton, HESCO will install remote terminal units (RTUs), flow meters, level sensors, and rain gauges that are procured directly by Xylem and owned by the City of Denton. HESCO's technicians have experience with installation and maintenance of a variety of brands and types of sensors. HESCO, as a key part of the Xylem Team, employs experienced and competent professionals who have a track record of excellent performance in this field. All installation activities – including work orders, site documentation, and sensor commissioning – will be recorded in a centralized work order management system to support transparency and future maintenance planning.

Following initial installation, it is anticipated that any areas of interest, such as those displaying high infiltration or surcharging receive further coverage either from moving of existing devices or new equipment. Meter re-location services and the procurement, installation, and maintenance for equipment beyond the initial 43 locations are outlined under optional

tasks in the pricing section.

Task 3.2 – Maintenance

As part of Xylem's commitment to ensuring the long-term reliability and performance of the City of Denton's sewer monitoring infrastructure during the modeling calibration period, this proposal includes one year of scheduled maintenance with visits once per month provided by HESCO.

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Additionally, HESCO will provide optional, in-depth training sessions for City personnel on the maintenance of sensors and RTUs. While the training is designed to establish a strong foundation for future performance and continuing education, it does not guarantee the operational proficiency of individual trainees. However, it equips City staff with the essential knowledge and skills needed to support ongoing system management and lays the groundwork for a sustainable, City-led maintenance program.

Task 3.3 – Ongoing Monitoring and Maintenance

Following the initial data collection period (1 year) to support model calibration, the need for a long-term flow monitoring program will be evaluated in partnership with the City. This could include continued maintenance and monitoring at the locations already installed or monitoring at new locations within the network. Objectives for a long-term monitoring program may include:

- Additional data collection for further model refinement
- Increasing operators' understanding of system dynamics and wet weather response
- Monitoring of "problem areas" within the network to provide early warning and inform the City's maintenance activities
- Monitoring to inform operation of existing controls
- Monitoring to inform proposed real-time control strategies recommended on this project
- Monitoring to support regulatory reporting requirements

Continued monitoring would make use of the metering equipment already purchased and the data collection and visualization platform already in place (Xylem Vue). Once an approach is approved by the City, Xylem will develop a plan for relocating any meters as necessary (relocation costs outlined under optional tasks) and any metering equipment not reused will be provided to the City for storage. Under the proposed budget, the Xylem team will provide telemetry service, data QAQC, and meter service for up to 43 meters for up to 4 years after the initial data collection period.

TASK 4 – HYDRAULIC MODEL DEVELOPMENT & SYSTEM CAPACITY ANALYSIS/PLANNING

Task 4.1 – Develop and Calibrate the Hydraulic Model

Xylem will conduct a comprehensive evaluation and enhancement of the City of Denton's hydraulic model to support both current system understanding and future planning. This effort will begin with exporting the current hydraulic model from the Bentley SewerGems software to EPA SWMM. EPA SWMM is an open hydraulic model that supports dynamic simulation of both open channel and pressurized flow in collection systems. The existing hydraulic model uses the unit hydrograph method for simulating infiltration and inflow, which is fully supported by SWMM. Following export to EPA SWMM, the model will be thoroughly reviewed for completeness and compared against historical metering data to confirm an accuracy that is consistent with what was presented in the 2023 Wastewater Master Plan. Xylem will use flow data collected in Task 3 (Sensor Deployment) to validate or re-calibrate the following for each metered sewershed:

1. Base sewer flow and accompanying dry-weather flow patterns
2. Seasonal groundwater infiltration rates due to fluctuations in the groundwater elevations
3. Monthly RTK values that approximate rainfall derived inflow and infiltration (RDII) rates

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The model will be calibrated to at least one dry weather period and at least four principal storms, each with the strongest observed RDII response in each metered season. Calibration performance will be evaluated both qualitatively and quantitatively according to guidance from the Charted Institution of Waste and Environmental Management (CIWEM).

Following calibration, future dry weather flows will be projected based on anticipated population growth and will be used to construct a future conditions model that enables build-out scenario analysis. The build-out scenarios will not consider impacts to hydrology from changes in land use since the unit hydrograph method (RTK values) leveraged by the model do not support that kind of analysis. However, increases in dry weather flow will consider peaking factors in line with local design criteria to approximate future I&I from larger contributing areas and an increased number of service connections.

After the calibration effort is completed, the calibrated SWMM model and an accompanying technical memo describing the calibration approach and validation results will be delivered.

Task 4.2 – Perform Capacity Analysis

The model will be used to evaluate system capacity in existing and future dry weather conditions in various wet weather events. Simulations will be run of historically large rainfall events measured at Denton Municipal Airport and Dallas Fort Worth International Airport, as well as the 1- 5- 10-, and 25-year design storms using the SCS Type III 24-hour rainfall distribution. Optionally, Xylem may also develop future synthetic rainfall distributions considering anticipated changes in climate patterns within The City's planning horizon. Following the simulations, thematic maps will be delivered that illustrate the magnitude of simulated surcharging and flooding in each simulation to drive discussions of which areas of the system might be capacity limited under mild to extreme wet weather conditions.

Task 4.3 – Quantify and Visualize I&I Across the Sewer System

Xylem leverages historical flow information at lift stations and online sensors in the collection system, as well as past precipitation, to perform an I&I analysis. This includes estimating dry-weather flow components, such as base infiltration, groundwater infiltration, and base wastewater flow. Then the team will compare total meter flow to the estimated dry weather flow patterns to understand rainfall derived inflow and infiltration (RDII). Outcomes of this I&I analysis will enable quantification of I&I across the sewer system, improved understanding of potential I&I sources, and estimation of I&I for future events. These insights will be delivered via an I&I dashboard to visualize areas of the sewer system that experience a high degree of I&I and inform prioritization for remediation efforts.

If AMI data by sewer basin becomes accessible in the Xylem Vue platform during a later project phase (Optional Task 4.3.2), I&I quantification will be refined for greater accuracy via hourly water usage data to estimate mass balances by area. This will allow the City to quantify current I&I levels, estimate current I&I in near real-time (e.g., during rain episodes and dry weather), and quantify the effect of I&I remediation actions. This refinement of the I&I analysis with additional data is included as an optional task in the pricing section.

Task 4.4 – Alternatives Analysis

Xylem will perform up to five (5) engineering alternatives analyses to evaluate potential improvements such as coordinated control across existing sewer assets, additional storage (off-line and/or in-line), conveyance upgrades, or pipe rehabilitation. The focus and scope of each alternative analysis will be jointly decided between the City and Xylem, covering the region of interest in the sewer system, existing or new infrastructure to be considered, storm events to evaluate, and objectives to be assessed. Xylem

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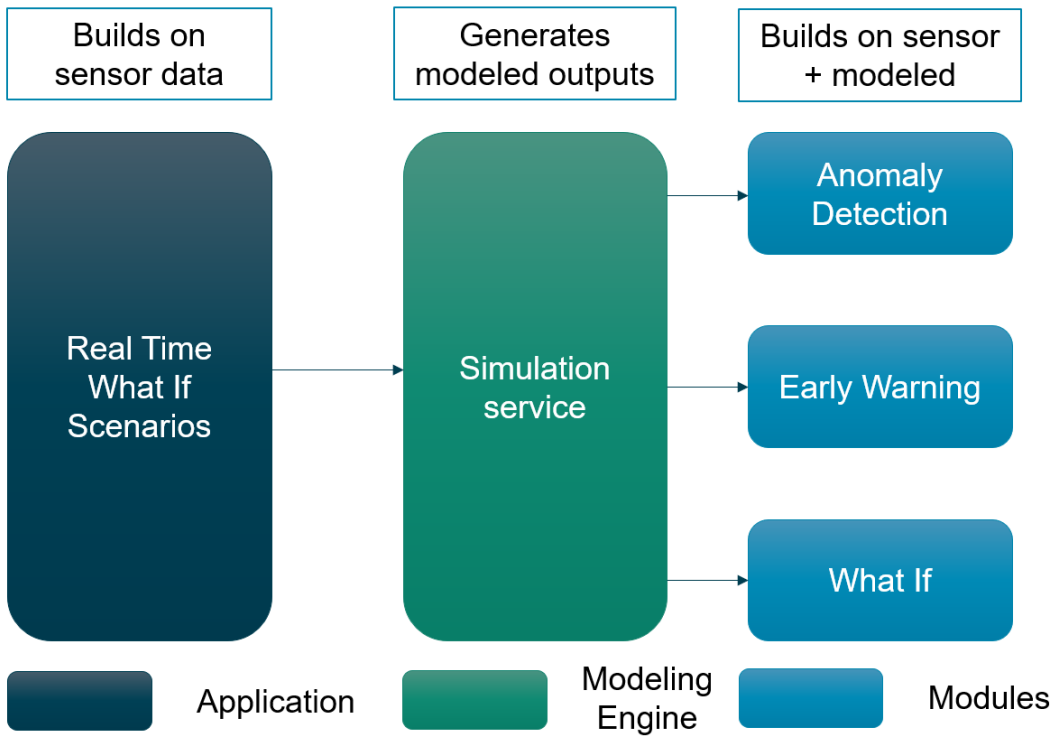
will perform computational optimization analysis for up to three (3) alternatives. An optimization analysis would include hydraulic model simulations with different combinations of decision variables and evaluation of objectives. An example of this could include testing combinations of off-line storage volumes for five tanks simultaneously, while evaluating hydraulic impact on the sewer system and capital costs.

Each alternative will be assessed for hydraulic performance, regulatory compliance, and cost-effectiveness, with planning-level cost estimates provided to support comparison with the City's current capital improvement planning efforts. The model scenarios developed for Task 4.2 will be used to evaluate the performance of various alternative solutions under increasingly stressful hydrologic conditions, and a cost-benefit analysis will facilitate the City in prioritizing spending in their capital improvement plan.

The team will deliver a summary technical memo to document the outcomes of the model calibration and alternatives analysis. Alternatives will be presented as conceptual designs that will need to be refined during the detailed engineering design phase.

TASK 5 – SEWER MONITORING & PLANNING SYSTEM

To combine the results of the modeling analysis and real-time data for a more sophisticated sewer monitoring and planning, the Real Time What If Scenarios (RTWIS) application will be installed on the city of Denton's instance of Xylem Vue. Real Time What if Scenarios is central to sewer management in Xylem Vue, with modules available to expand beyond core monitoring and response needs into early warning and anomaly detection. The diagram below has been included to show the progression through these functions as more complex needs are addressed.



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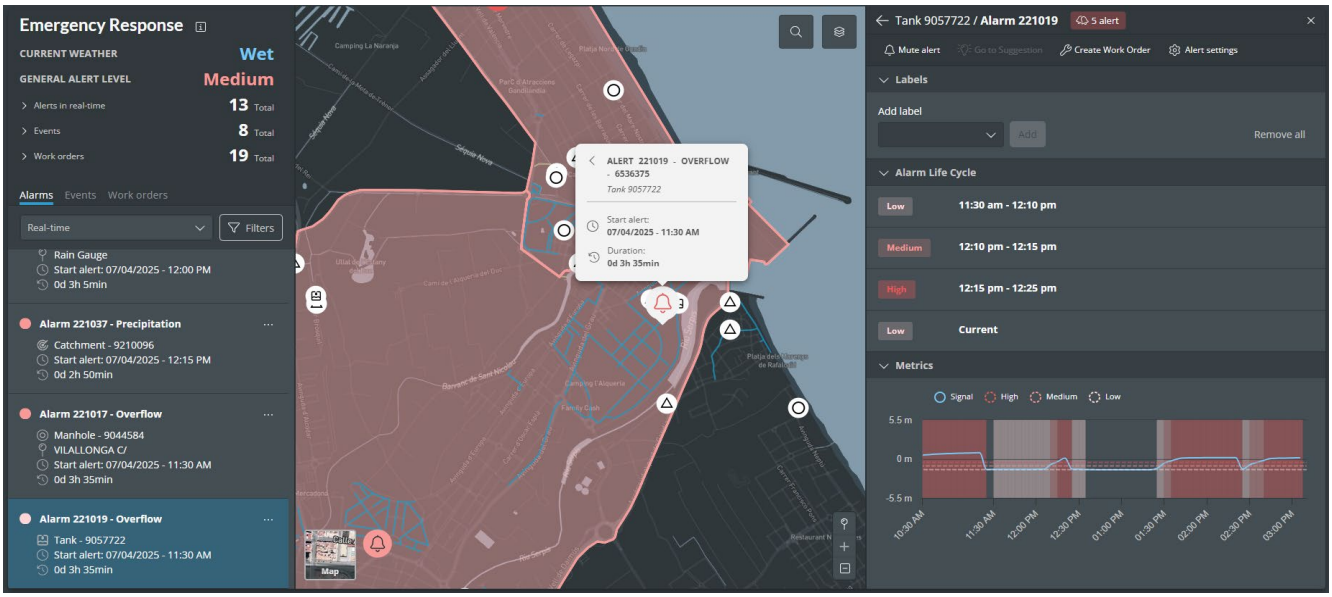
Core functionality includes the following:

- Map views showing network layout and sensor locations
- Visualization of current sensor readings
- Setup of threshold alarms
- Alarm prioritization
- Alarm notifications

The initial deployment of this application may begin once the SWE installation is complete in Task 2.



Task 5.1 – Anomaly Detection Module

With expected sewer levels and flows from hydraulic models, automated alerts can be configured and triggered based on deviations between expected (modeled) behavior and observed (sensor) data in the Anomaly Detection module. Potential reasons for such deviations might include blockages, collapses, pump failures, infiltration, misconnections etc.

Users in the module can manually configure the different comparison alarms to be triggered, or have this done by Xylem as part of the project. The key here is that these can also be updated directly as more data becomes available and comparisons are refined.

Functionality in the Anomaly Detection module includes:

- Comparison alarm configuration
- Automated comparisons between two timeseries of choice
- Automated alert notifications when deviations trigger for a minimum period
- Commenting functionality to provide overview of actions taken
- Alarm state management
- Map indicator of anomaly locations
- Graphing of comparisons with alarm periods and severity shown

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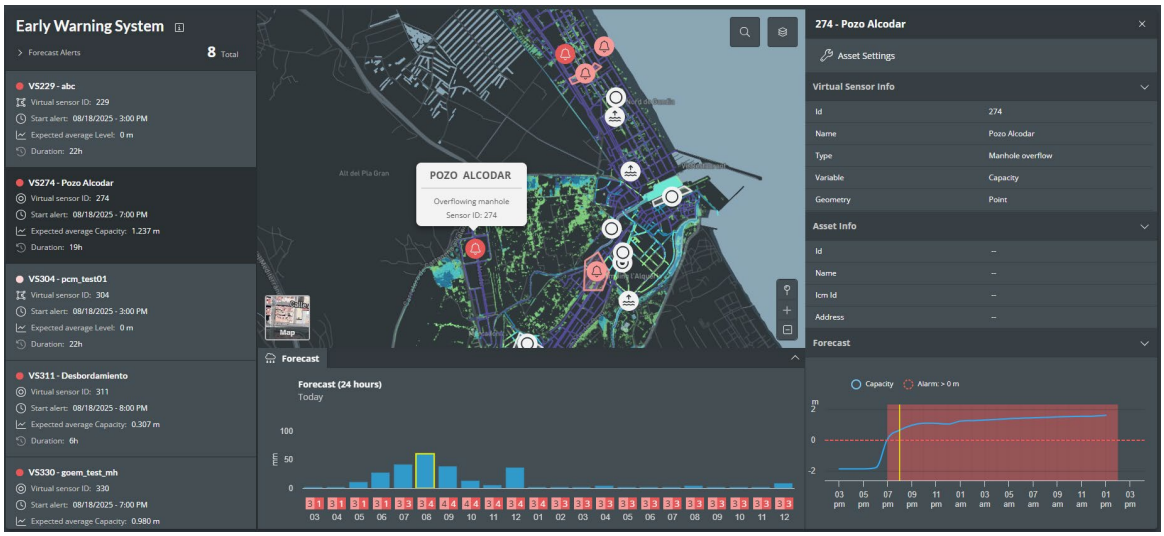
Task 5.2 - Early Warning Module

Once the hydraulic model has been calibrated, this could also be run in near real time using the Early Warning module, expanding out from the core Real Time What If functionality. When enabled, this module allows for the integration of sensor, SCADA, and rainfall data with the hydraulic model. Once set up, regular simulations are enabled with rainfall forecasts to predict likely points of overflow or surcharge, giving operations advance warning of areas likely to suffer overflows (including the expected time of overflow based on latest rainfall forecasts).

Functionality in the Early Warning module includes:

- Direct integration of rainfall observations, forecasts, levels and the hydraulic model
- Regularly scheduled early warning simulations
- Simulation outputs which give expected levels and flows throughout the network
- Alerts of expected overflow locations, or those exceeding utility alarm thresholds as a result of forecasted conditions



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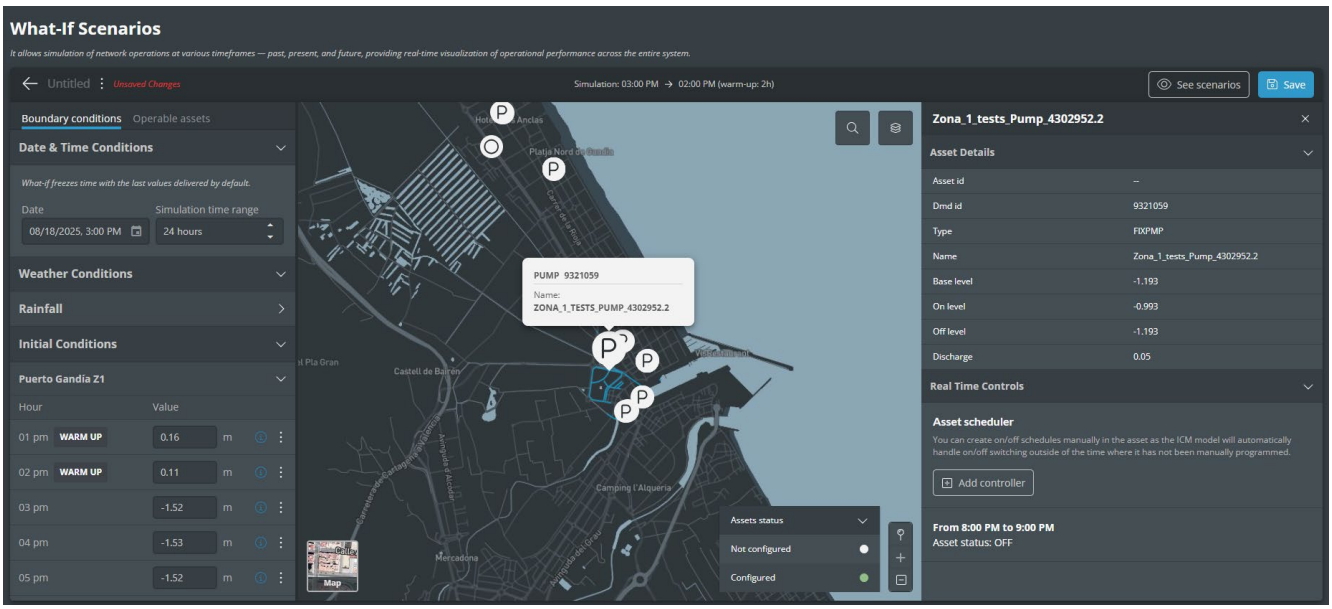
Task 5.3 – What If Module

The What If module is an enabler for the scenario testing. It allows users such as network operators to change controls for "what if" testing. This might include changes in pump station behavior, weir height changes, or valve/sluice changes in operation. Using the amended settings provides outputs to indicate their impact. Specifically in relation to capacity, it is also possible to add point inflows, with the potential to represent new developments or other inflow sources in such assessments.

Functionality in the What If module includes:

- Scenarios creation from any base model scenario (could include design storms)
- Rainfall modification to scenarios
- Control modifications for control structures
- Views of the results generated under new scenarios
- List of previously run scenarios for viewing – this is described in more detail in Task 5.4.



Task 5.4 Dashboard for CIP Map and Capacity Analysis

Building from the model calibration effort and capacity analysis, this process will provide base scenarios that users can run tests on using the Real Time What If Scenario (RTWIS) application. Within the application, users will be able to provide flow profiles for new connection points on demand and evaluate their impact compared to the base scenario. Should it be desired, design storm scenarios can also be provided in the base case, allowing evaluation of point inflows (which might be the expected flow profile from a new development connecting to the existing system) against these.

Use of the CIP map dashboard will allow users to evaluate the impact of increased flows on the system and guide in decision-making. Xylem will perform model calibration, capacity analysis, and new uploads to the RTWIS application once each year to use updated system monitoring data and ensure the model is up-to-date with system conditions. Reports on the capacity analysis will be delivered each year.

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TASK 6 – PLANT MANAGEMENT

Task 6.1 Professional Services for Designing the Plant Management Application

Under this task, Xylem will design the implementation of the Plant Management application for the City of Denton's new Wastewater Treatment Plant (WWTP). Xylem will define how the Plant Management application will be built to support and optimize plant operations through visualizations, alarms, reports, and intelligent operational recommendations. Xylem will also provide recommendations for the facility design to support implementation and enhance the effectiveness of the Plant Management application. This will be informed by a thorough review of the Basis of Design (BOD) documentation and coordination with the plant's design consultant.

This phase will begin with a detailed review of the BOD documentation and a collaborative workshop with the City of Denton. The workshop will focus on understanding the City's operational goals, key performance metrics (KPIs), and expectations for the Plant Management application. The insights gathered will guide the development of a tailored implementation strategy.

Xylem will then develop the implementation plan. This will include several components:

- Proposed System Architecture
  This will outline how the application will interface with plant systems and data sources
- Proposed Screen Mock-ups
  This will show how the standard Plant Management screens could be configured for the City of Denton (see details in **Task 6.2**). Under the alerts section, Xylem will identify alerts that could be configured for the WWTP to support process monitoring. Under the reports section, Xylem will identify reports that could be configured to streamline the City's workflows. Xylem will also include up to three custom screens to be specifically designed for the plant's unique needs.
- Schedule
  A proposed schedule for implementation will be developed considering the City's timelines
- Identification of Optimization Opportunities
  The Plant Management application can be configured to include optimization modules. These are powerful tools that leverage the available data and various algorithms to generate operational recommendations that maximize performance with respect to the City's KPIs. Xylem will identify opportunities to develop such operational recommendations for up to two plant processes. Xylem anticipates use of their "Sense Control" algorithms, which do not require process modeling.

Throughout the process, Xylem will seek feedback from City stakeholders to ensure that the proposed implementation meets the City's needs.

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Concurrently, Xylem will develop recommendations for the City of Denton and the design engineer to consider incorporating into the plant design. These recommendations will be focused on sensing and data acquisition, and may serve several purposes, including:

- Identifying hardware and IT needs to support data acquisition
- Identifying additional monitoring needs to collect data to be used by the platform for visualizations, alerts, and reporting (examples include process monitoring and energy monitoring equipment)
- Identification of additional monitoring needs to collect data to be used by the platform for optimization modules

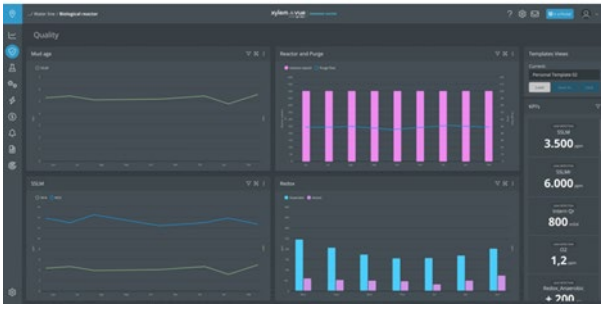
The implementation plan and the design recommendations will be delivered in a technical report and presented to the City and the design engineer for review and input. Subsequently, Xylem anticipates one round of additional review of BOD documentation. Updates to the report will then be made to ensure alignment with the final design. This final deliverable will provide an actionable path forward for deploying the Plant Management application to optimize operations at the new WWTP. This scope ensures that the City of Denton receives a comprehensive, customized plan for leveraging Xylem Vue's Plant Management capabilities to enhance operational efficiency, situational awareness, and decision-making at their new wastewater facility.

Task 6.2 Plant Management Deployment

Dashboard Overview: The Overview Dashboard is a central feature of the Plant Management solution designed to provide operators with a comprehensive, real-time view of the plant's key performance indicators (KPIs). This interface consolidates critical data—such as inflow and effluent volumes, water quality, energy consumption, and sludge production—into a single, easy-to-read screen. By bringing all essential metrics together, the dashboard empowers teams to detect issues early, make proactive decisions, and maintain efficient, compliant operations across all systems. This holistic visibility significantly enhances situational awareness and supports smarter, data-driven plant management.

Overview Dashboard

Quality Section: Another feature of Plant Management is the real-time monitoring of water quality performance. This allows operators to visualize the evolution of key quality parameters such as effluent quality, sludge age, reactor performance, redox conditions, and nutrient concentrations. The dashboard combines time-series charts with clearly defined KPIs for each process, enabling fast and informed decision-making. Users can also customize



Quality Section

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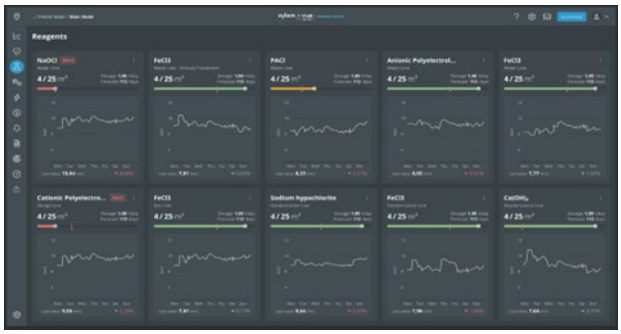
templates based on their operational roles, and the system automatically generates graphs and real-time values for each monitored indicator. This functionality ensures continuous tracking of plant performance and supports proactive management of treatment efficiency and compliance.



Reagent Section

Reagent Section: Another functionality of Plant Management is the real-time monitoring of chemical reagent consumption. This module provides a clear and centralized view of all reagents used in different stages of the treatment process—such as disinfection, coagulation, flocculation, and sludge treatment. Each reagent is tracked individually, with information on current dosage, daily usage trends, and forecasted stock duration. Alerts are generated automatically in case of anomalies, such as overconsumption or unexpected drops in usage, helping operators react quickly to avoid inefficiencies or supply shortages. It also includes intuitive visualizations that show both historical usage patterns and forecasted consumption, allowing teams to quickly detect deviations and adjust strategies accordingly. By offering this level of insight, the module supports better inventory management, helps avoid shortages or overuse, and contributes to cost optimization and process stability across the treatment plant. By enabling proactive chemical management, this feature supports better cost control, ensures process stability, and contributes to more sustainable plant operations.

Energy Section

Energy Management: Plant Management includes an Energy Monitoring feature that offers a clear and comprehensive view of the plant's real-time energy consumption and production. It tracks key metrics such as daily energy usage, specific consumption per cubic meter of treated water, and overall energy efficiency. With intuitive graphs displaying trends over the past seven days, operators can easily identify fluctuations, detect inefficiencies, and make informed decisions to optimize performance.

The system also breaks down energy consumption by process and production by energy source, offering deeper insights into where and how energy is used or recovered within the plant. By providing this level of detail, the module enables operators to optimize energy performance, reduce costs, and move toward more sustainable operations—all while ensuring the plant continues to meet its performance and regulatory targets.

Alarm Management: Plant Management includes an Alarm Management feature which provides operators with a clear and structured overview of all active and historical alarms within the plant. Alarms

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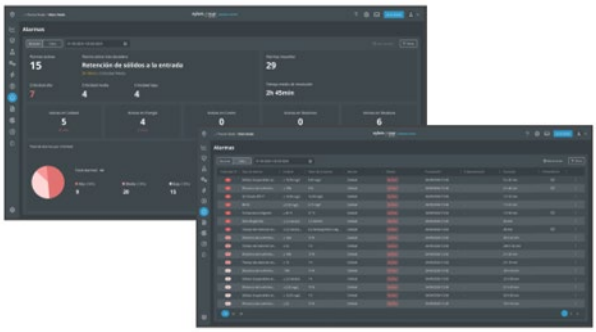
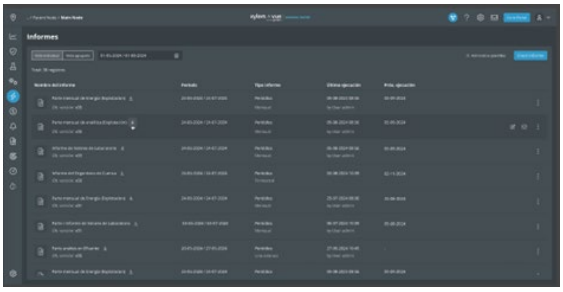
are automatically categorized by criticality level (high, medium, low) and process section (quality, energy, reagents, waste, etc.), helping teams quickly identify where attention is needed most. The interface displays key information such as alarm duration, resolution time, and the most frequent or longest-running issues, enabling better prioritization and faster response times.



Alarm Section

Through real-time monitoring and visual indicators including graphs and statistics, this module supports efficient troubleshooting and risk mitigation. By consolidating all alarm-related data in one place, it enhances situational awareness, helps ensure regulatory compliance, and supports continuous improvement of plant operations.

Report Section: Finally, Plant Management offers the possibility of automating the generation of reports related to any system process and exporting them in a predefined format adapted to the user's needs.
Reports are automatically generated in standardized formats, ensuring consistency and saving valuable time for plant staff. Users can access, review, and export reports directly from the interface, making it easy to share insights across teams or with external stakeholders. This feature supports transparent performance monitoring, helps with regulatory compliance, and facilitates data-driven decision-making.



Report Section

Task 6.3 Optimization Implementation

Plant Management provides process optimization through targeted applications. Xylem Vue provides a suite of specialized micro-solutions designed for advanced process automation and resource management in wastewater treatment plants (WWTPs). These micro-solutions can be tailored to the user profile, whether operator, area manager, or manager, displaying the most relevant KPIs for each role.

Under this task, Xylem will build operational recommendations for the WWTP. Our wastewater treatment and data science experts have experience with implementing a variety of approaches for process control optimization at treatment facilities. This scope anticipates using an optimization approach we call “Sense-Control”. This approach does not require a traditional process control model and can be applied to optimize various treatment processes with respect to key objectives identified by the City. Under Task 6.1, Xylem will have identified optimization opportunities within the plant and conceptualized a proposed approach for optimizing two plant processes. Under this task, Xylem will develop and implement the optimizations. This scope may be reevaluated following the investigation done in Task 6.1, based on the processes and approach(es) identified. The outcome of this task will be fully deployed micro-solutions providing measurable improvements in efficiency and performance. Xylem will provide City staff with training in the use of the modules.

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TASK 6.2.2 IMPLEMENTATION DELIVERABLES:

- Project management activities – A project manager will be assigned for project coordination with the City of Denton, Xylem's team, and the internal implementation taskforce.
- Initial review and classification of data dictionary with client and/or vendor(s) – An initial data assessment will be conducted to validate all available data sources and refine the proposed integration mechanisms.
- Customize and put into production up to 50 Real-time dashboards and operational analytics screens coming from different sources of real-time information in the plant
- Up to 50,000 tags will be integrated
- Historical Data upload
- Access to the system for unlimited users and technical support
- Five days of in-person training

NOT INCLUDED IN TASK 6 SCOPE:

- Third-party fees needed for the development of APIs, or data availability to Xylem Vue
- Configuration of PLC Control Logic
- New vendors data parsers
- BIM Model integration
- Integration of legacy systems without relatively standard communication protocols (20+ years old)
- Implementation of customized advanced algorithms and/or machine learning for decision-support.
- Water demand/flow projections based on time series and external data (rain, temperature, etc.)
- Optimization of operations to minimize water quality emergencies
- Advanced algorithms to predict equipment failure (pumps, lift stations, etc.) based on a pumping curve and external factors (temperature, vibration, etc.)

All additional services will be charged separately at a fee to be agreed upon with the City.

TASK 7 – DEPLOY DRINKING WATER APPLICATIONS

Task 7.1: Leak Detection and Unified Network Management Water

Leak Detection is a functional application that helps hundreds of utilities monitor, report, and optimize non-revenue water, real water losses and system leaks, aggregated water usage, and water distribution pressures. It integrates aggregated analytics from the entire water distribution system and provides granular analytics by district metered areas (DMAs) or pressure zones (PZ).

Leak Detection applies AI and machine learning algorithms to estimate non-revenue water levels in real-time and for historical data. The module generates alarms for potential system leaks and water main breaks, projects water demand and productions by DMA, and generates notifications when minimum night flows, pressures, or other key indicators suggest a potential leak.

While DMAs are currently undefined for Denton, the Leak Detection application may be deployed with an overall water mass balance for the city. As the program progresses, Xylem will work with Denton to design vDMAs and recommend meter deployments to fill data gaps. For a system with approximately 634 miles of water distribution pipe, Xylem estimates up to 15 vDMAs. The exact number of vDMAs will

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be determined after a further evaluation of Denton's hydraulic model. The vDMA design approach and locations will be delivered in a technical memo.

During this task, the Unified Network Management application will also be updated with overview dashboards for the drinking water system.

Task 7.2: Meter Data Analytics

Meter Data Analytics is a near real-time analytical module that leverages advanced meter infrastructure (AMI) and automatic meter reading (AMR) information from any metering technology or platform provider. The module makes it easy to access all AMI information at any point in time, independently of what metering technology it is using, and also provides advanced artificial intelligence (AI) and machine learning (ML) analytics to detect deviations from historical patterns, anomalies, and leaks, and also to segment your customers according to different types of behavior (irrigation, swimming pool filling, seasonal behavior, etc.).

The Meter Data Analytics module automatically collects information from smart meters, performs comprehensive data cleansing through AI algorithms, and analyzes each customer's consumption history. It also utilizes data from other systems such as the CIS, CMMS, and others through the Smart Water Engine to allow for more comprehensive analysis and event detection.

The software installation in Task 7 builds on the previous deployment of SWE and Unified Network Management.

TASK 7 IMPLEMENTATION DELIVERABLES:

- Deployment of cloud environment of Meter Data Analytics and Leak Detection
- Integration of water GIS layers into the Xylem Vue platform (pipes, valves, connections, etc.) and rest API layers
- Integration of key real-time data sources that have standard communication protocols (SCADAs with OPC UA/DA, IoT sensors or solutions with API endpoints, IoT sensors via SFTP, historians, etc.)
- Initial review and classification of data dictionary with client and/or vendor(s)
- Initial batch import of existing alerts on key variables/ tags
- Initial configuration of front interface, permissions, hierarchies, and alerts
- Provide an integrated dashboard with all alerts (active, past, inactive, etc.)
- Integration of up to 60,000 metered connections for drinking water
- Import of DMA/ vDMA geometry into solution as an additional layer
- Integration of real-time data from flow meters, SCADAs (tank level changes, water production, inflow, etc.) to calculate net inflow into DMAs
- Integration of real-time data from pressure meters within DMAs/vDMAs
- Integration of smart metering meter readings for water consumption calculation. Integration of supported acoustic sensor alerts to predict leaks' location
- Configuration and validation of DMAs main KPIs with real-time variables (net inflow calculations, aggregated consumptions, pressure, non-revenue water, estimated water loss, etc.)
- Configuration of alerts and smart bands on minimum night flows, non-revenue water, customer leaks, pressure deviations, etc.
- Configuration of standard analytics and alerts calculated by Meter Data Analytics based on historical consumption and other parameters.

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  - Customer satisfaction: flow rate leak, large customer leak, normalized leak
  - Smart Metering Performance: meter communication issues, low meter performance for x days
  - Reading issues: impossible reads, exceeded time delay, stopped reading insertion.
  - Consumption-related: Excessive consumption, unexpected consumption, Insufficient consumption
  - Conflict on asset installation.
  - Configuration of hardware-related alarms coming from supported meter manufacturers
- Integration of key CIS information for characterization of alerts
- One week of remote training
- Project management activities
- Maximum of one version upgrade per year for Cloud deployments

NOT INCLUDED IN TASK 7 SCOPE:

- Integration of legacy systems without relatively standard communication protocols (more than 20 years old)
- Integration (in/out) with existing work order system in utility to generate service orders automatically
- Integration (in/out) with existing work order system or CIS system in utility to generate service orders automatically
- Customization of alerts and dashboards based on customer consumption and/or usage data beyond the standard alerts provided.
- New vendors data parsers
- Implementation of customized advanced algorithms and/or machine learning for decision-support. (e.g., Optimization of pumping scheduling to minimize energy consumption
- Water demand/flow projections based on time series and external data (rain, temperature, etc.)
- Optimization of pressure to minimize water loss and improve customer experience
- Optimization of operations to minimize water quality emergencies
- Advanced algorithms predicting equipment failure (pumps, wells, etc.) based on a pumping curve and external factors (temperature, vibration, etc.)
- Automated data cleansing/filtering algorithms to cure data input in real-time based on rules and statistics
- In general, any advanced algorithm that can support the operations in near real-time
- Any third-party fees needed for the development of APIs, or data availability to Xylem

All additional services will be charged separately at a fee to be agreed upon with the City.

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SCHEDULE

The schedule below assumes that work can begin immediately after the contract is awarded, and that all data sources are readily available to be integrated. The project start date is assumed to be April 1, 2026 for fiscal year budgeting. Schedules may shift if additional data review and coordination with the city are required. Milestones are noted for significant dependencies or training sessions that mark the beginning of additional Software-as-a-Service fees. Annual activities (Tasks 1, 2.3.3,3.3, and 5.4) will continue in Years 4 and 5.

Outline number	Activity Name	Contract Year 1												Contract Year 2												Contract Year 3											
	Fiscal Year	FY 2026						FY 2027												FY 2028												FY2029					
	Contract Month	1	2	3	4	5	6	7	8	9	10	11	12	13	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
1	**Project Management**																																				
1.1	**General Project Management & Administration**																																				
2	**Software Installation**																																				
2.1	**Smart Water Engine (SWE)**																																				
2.1.1	Cloud and Analytical Environment Deployment																																				
2.1.2	Data Integration																																				
2.1.3	SWE Configuration																																				
2.2	**Unified Network Management Wastewater**																																				
2.2.1	System Visualizations																																				
2.2.2	I&I Dashboard																																				
2.3	**Software Training & Support**																																				
2.3.1	Milestone: Initial UNM Training Delivered, UNM WW SaaS begins																																				
2.3.2	I&I Analytics Training																																				
2.3.3	Ongoing Training & Support																																				
3	**Deploy Online Sensors**																																				
3.1	**Installation**																																				
3.1.1	Existing Data Review/Monitoring Plan Development																																				
3.1.2	Inspections & Installation																																				
3.2	**Maintenance**																																				
3.2.1	Monthly Maintenance																																				
3.2.2	Milestone: Minimum 8 Months of Monitoring for Model Calibration																																				
3.3	**Ongoing Maintenance**																																				
4	**Hydraulic Model Development & System Capacity Analysis/Planning**																																				
4.1	**Develop and Calibrate the Hydraulic Model**																																				
4.1.1	Model Export from Bentley SewerGems software to EPA SWMM																																				
4.1.2	Model Review																																				
4.1.3	Model Calibration with New Data																																				
4.1.4	Future DWF Projection																																				
4.1.5	Prepare Model for Real-Time Simulations																																				
4.2	**Perform Capacity Analysis**																																				
4.2.1	Scenario Simulations																																				

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City of Denton

Xylem Vue Monitoring and Prediction Services

Outline number	Activity Name	Contract Year 1	Contract Year 2	Contract Year 3
4.2.2	Capacity Maps			
4.3	**Quantify I&I Across the Sewer System**			
4.3.1	Collection System I & I Analysis			
4.3.2	OPTIONAL Refine I &I Analysis with AMI data			
4.4	**Alternatives Analysis**			
4.4.1	Alternatives Review and Development			
4.4.2	Testing and Development for up to 5 Alternatives			
4.4.3	Optimization for up to 3 Alternatives			
4.4.4	Alternative Refinement			
4.4.5	Planning Level Cost Estimates			
4.4.6	Summary Tech Memo			
5	**Sewer Monitoring and Planning System**			
5.1	**Anomaly Detection Module**			
5.1.1	Real Time What If Application Configuration			
5.1.2	Alarm Configuration for Real-Time Data			
5.1.3	Alarm Configuration for Observed vs. Modeled Data			
5.1.4	Milestone: Anomaly Detection Training, RTWIS SaaS begins			
5.2	**Early Warning Module**			
5.2.1	Simulation Service			
5.2.3	Forecast alarm configuration			
5.3	**What If Module**			
5.3.1	What If Scenario configuration			
5.3.2	Milestone: Early Warning & What If Scenario Training			
5.4	**CIP Map & Capacity Analysis**			
5.4.1	CIP Map Dashboard Configuration			
5.4.2	Capacity and CIP Scenario Configuration			
5.4.3	Year 1 Model Update			
5.4.4	Year 1 Capacity Analysis Report			
5.4.5	Year 2 Model Update			
5.4.6	Year 2 Capacity Analysis Report			
7	**Drinking Water**			
7.1	**Leak Detection**			
7.1.1	**Leak Detection Data Integration**			
7.1.2	**DMA Design and Configuration**			
7.1.3	**Leak Detection Deployment**			
7.1.3.6	*Milestone: Leak Detection Training, Leak Detection SaaS begins*			
7.2	**Meter Data Analytics**			
7.2.1	**Meter Data Analytics Deployment**			
7.2.1.5	*Milestone: MDA Training, MDA SaaS begins*			

**Drinking water applications can be deployed without AMI data within the first year but will require expansion of data connectivity once the new AMI system is deployed. Please note that the schedule surrounding Task 6 (Plant Management) is TBD.*

★ = *Key milestone*

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PRICING

One-Time Fees

SEWER NETWORK SCOPE OF WORK (ONE-TIME FEES)	BASE PRICE	DISCOUNTED PRICE FOR 5 YEAR CONTRACT
Task 1 – Project Management	$90,577	$87,860
Task 2 – Software Installation	See subtasks	See subtasks
Task 2.1: Professional Services/Data Connections for Smart Water Engine	$253,732	$246,120
Task 2.2: Unified Network Management – Wastewater	$127,557	$123,730
Task 2.3: Software Training and Support	$28,041	$27,200
Unified Network Management SaaS Year 1	$32,546	$31,570
Unified Network Management SaaS Year 2	$32,546	$31,570
Unified Network Management SaaS Year 3	$32,546	$31,570
Unified Network Management SaaS Year 4	$32,546	$31,570
Unified Network Management SaaS Year 5	$32,546	$31,570
Task 3 – Deploy Online Sensors	See subtasks	See subtasks
Task 3.1: Installation	$237,608	$230,480
Task 3.2: Maintenance Year 1 for up to 43 sites	$595,361	$577,500
Task 3.3: Optional Ongoing Maintenance Years 2-5 for up to 43 sites	$1,851,649	$1,796,100
Task 4 – Hydraulic Model Development & System Capacity Analysis/Planning	See subtasks	See subtasks
Task 4.1: Develop and Calibrate the Hydraulic Model	$41,196	$39,960
Task 4.2: Perform Capacity Analysis	$16,546	$16,050
Task 4.3: Quantify I&I Across the Sewer System	$28,216	$27,370
Task 4.4: Alternatives Analysis	$143,598	$139,290
Task 5 – Sewer Monitoring & Planning System	See subtasks	See subtasks
Task 5.1: Anomaly Detection	$20,309	$19,700
Task 5.2: Early Warning System	$10,155	$9,850
Task 5.3: What If Scenarios	$38,660	$37,500
Task 5.4: CIP Map & Capacity Analysis	$80,732	$78,310
RTWIS-WW SaaS Year 1	$44,165	$42,840
RTWIS-WW SaaS Year 2	$44,165	$42,840
RTWIS-WW SaaS Year 3	$44,165	$42,840
RTWIS-WW SaaS Year 4	$44,165	$42,840
RTWIS-WW SaaS Year 5	$44,165	$42,840
Task 6 – Plant Management	See subtasks	See subtasks
Task 6.1: Professional services for sensor data and recommendations for Plant Management	$146,753	$142,350
ONE-TIME FEES SUBTOTAL:	**$4,094,247**	**$3,971,420**
Cumulative Five-Year Contract Total:	**N/A**	**$3,971,420**

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ADDITIONAL SERVICES AS AUTHORIZED BY CITY (ONE-TIME FEES)	BASE UNIT PRICE	DISCOUNTED UNIT PRICE FOR 5 YEAR CONTRACT	QUANTITY[1]	TOTAL PRICE
TASK 3 - Deploy Online Sensors				See subtasks
Re-locate sensors	$1,361	$1,320	20	**$26,400**
Equipment, Installation, and Service for Additional Sites[2]	**N/A**			**$974,140**
Provide and install additional Flow Monitoring Option 1	$17,154	$16,639	15	$249,590
Provide and install additional Flow Monitoring Option 2	$15,918	$15,440	2	$30,880
Provide and install additional Flow Monitoring Option 3	$9,052	$8,780	3	$26,340
Provide and install additional Level Monitoring	$5,057	$4,905	20	$98,100
Provide and install additional Rainfall Monitoring	$4,542	$4,406	5	$22,030
Monthly maintenance for additional 20 flow meters for up to 24 months	$680	$660	20*24=480	$316,800
Monthly maintenance for additional 20 level meters for up to 24 months	$433	$420	20*24=480	$201,600
Monthly maintenance for additional 5 rain gauges for up to 24 months	$247	$240	5*24=120	$28,800
Replacement Equipment Budget	**N/A**			**$182,340**
Replacement RTU batteries	$365	$354	40	$14,160
Replacement RTUs	$2,010	$1,950	20	$39,000
Replacement in-ground antennas	$132	$129	20	$2,570
Replacement ISCO 2150 flow meters	$13,052	$12,660	10	$126,600
Task 4 – Hydraulic Model Development & System Capacity Analysis/Planning	**N/A**			**$11,840**
Task 4.3.2 Refine I&I Analysis with AMI data	$12,206	$11,840	1	$11,840
ADDITIONAL SERVICES SUBTOTAL:				**$1,194,720**
Cumulative Five-Year Contract Total:				**$5,166,140**

1. Preliminary quantity estimates are provided for budgeting additional services under each task. The actual breakdown of equipment and services will depend on what is authorized by the city.
2. See **Unit Pricing** for more information on individual components.

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Optional Additional Services Authorized by the City	BASE PRICE	DISCOUNTED PRICE FOR 5 YEAR CONTRACT
Task 6 – Plant Management	See subtasks	See subtasks
Task 6.2: Deployment of Plant Management	$150,784	$146,260
Plant Management SaaS Year 1	$33,897	$32,880
Plant Management SaaS Year 2	$33,897	$32,880
Plant Management SaaS Year 3	$33,897	$32,880
Plant Management SaaS Year 4	$33,897	$32,880
Plant Management SaaS Year 5	$33,897	$32,880
Task 6.3: Optimization Implementation	$211,794	$205,440
Plant Management Optimization SaaS Year 1	$52,577	$51,000
Plant Management Optimization SaaS Year 2	$52,577	$51,000
Plant Management Optimization SaaS Year 3	$52,577	$51,000
Plant Management Optimization SaaS Year 4	$52,577	$51,000
Plant Management Optimization SaaS Year 5	$52,577	$51,000
Task 7 – DEPLOY DRINKING WATER APPLICATIONS	See subtasks	See subtasks
Task 7.1: Leak Detection Implementation	$158,474	$153,720
Task 7.1.2 DMA Design and Configuration (assumes 15 DMAs)	$36,619	$35,520
Leak Detection SaaS Year 1	$36,835	$35,730
Leak Detection SaaS Year 2	$36,835	$35,730
Leak Detection SaaS Year 3	$36,835	$35,730
Leak Detection SaaS Year 4	$36,835	$35,730
Leak Detection SaaS Year 5	$36,835	$35,730
Task 7.2: Meter Data Analytics Implementation	$104,804	$101,660
Meter Data Analytics SaaS Year 1	$18,412	$17,860
Meter Data Analytics SaaS Year 2	$18,412	$17,860
Meter Data Analytics SaaS Year 3	$18,412	$17,860
Meter Data Analytics SaaS Year 4	$18,412	$17,860
Meter Data Analytics SaaS Year 5	$18,412	$17,860
OPTIONAL ADDITIONAL SERVICES SUBTOTAL:	**$1,371,082**	**$1,329,950**
Cumulative Five-Year Contract Total:	**N/A**	**$6,496,090**

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Unit Pricing

Unit pricing for the additional services and equipment as authorized by the city is provided in the tables below.

UNIT PRICING FOR ADDITIONAL SERVICES	BASE PRICE	DISCOUNTED PRICE FOR 5 YEAR CONTRACT
Meter Re-Location	$1,361	$1,320
Meter Installation	$1,856	$1,800
Flow Meter Service (1 site visit)	$680	$660
Level Sensor Service (1 site visit)	$433	$420
Rain Gauge Service (1 site visit)	$247	$240

*Pricing for refurbished equipment may vary

UNIT PRICING FOR ADDITIONAL EQUIPMENT			
EQUIPMENT KIT	**COMPONENTS**	**BASE UNIT PRICE**	**DISCOUNTED UNIT PRICE FOR 5 YEAR CONTRACT**
Flow Monitoring Option 1	ISCO 2150 Area Velocity Meter, Mounting Hardware, RTU, and In-Road Antenna	$15,299	$14,840
Flow Monitoring Option 2	ISCO Duratracker, Mounting Hardware, RTU, and In-Road Antenna	$14,062	$13,640
Flow Monitoring Option 3	Flow-Tronic Beluga Area Velocity Meter, Mounting Hardware, RTU, and In-Road Antenna	$7,196	$6,980
Level Monitoring	APG MNU-IS Ultrasonic Level Sensor, RTU, and In-Road Antenna	$3,196	$3,100
Rainfall Monitoring	Global Water Rain Gauge, RTU, antenna, and installation hardware	$2,688	$2,607
Individual Parts for Replacements*	In-Road Antennas	$133	$129
	Rain Gauge Antennas	$18	$17
	RTU (batteries included)	$2,010	$1,950
	RTU Batteries (1 pack includes 3 batteries)	$365	$354
	RTU Mounting Hardware	$104	$101
	ISCO 2150 Area Velocity Meter	$13,052	$12,660
	ISCO Duratracker	$11,814	$11,460
	Flow-Tronic Beluga Area Velocity Meter	$4,948	$4,800
	APG MNU-IS Ultrasonic Level Sensor	$701	$680
	Global Water Rain Gauge	$421	$408

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Sourcewell and SaaS Clarifications

Based on the length and amount of the contract, all pricing reflects a 3% discount for Sourcewell utilization for a five-year agreement (Sourcewell Contract #091724-XYLE). Invoicing will occur monthly on a percent complete basis on a five-year agreed pricing.

This project assumes a five-year contract. The annual Software-as-a-Service and maintenance include:

- Project management
- Licensing and hosting fees for continual use of the software
- Maximum of one software update per year (if applicable)
- Customer service access

The Software-as-a-Service annual billing for each application will begin after training has been delivered for that application. The total annual fee may vary depending on how many applications are implemented that year.

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APPENDIX A

Please see the following section for an overview of the Xylem Vue platform and the proposed applications for this project.

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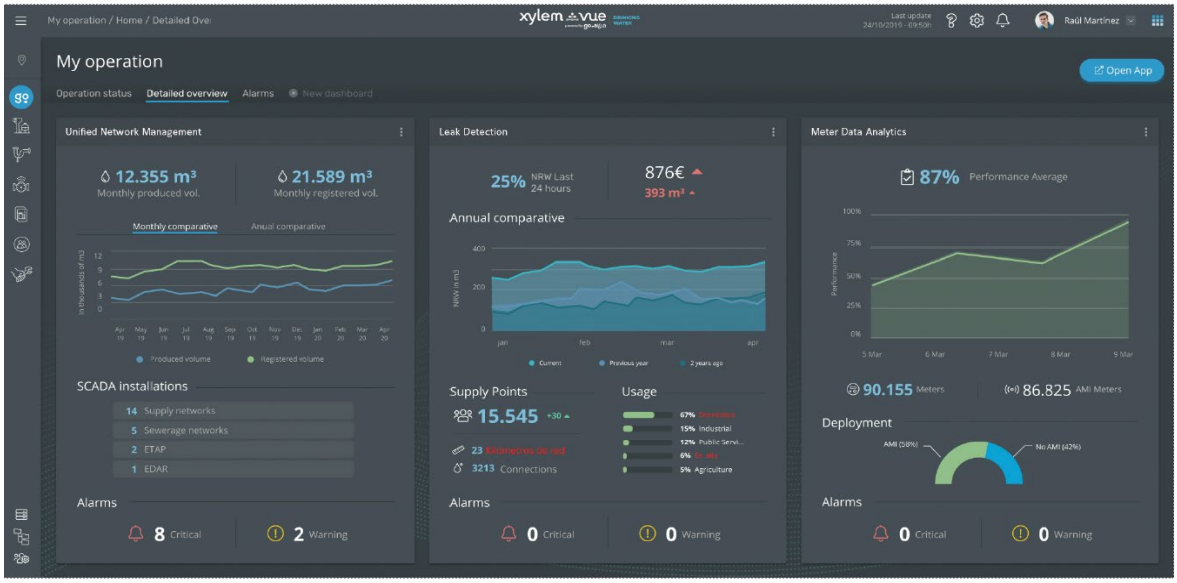
THE XYLEM VUE PLATFORM

Many utilities struggle to see a complete picture of their operational status and network efficiency. Their operators and managers are often flooded with hundreds of separate data streams coming in from multiple sources, making it difficult to get an accurate reflection of the interconnected nature of their network, let alone make holistic improvements, react to challenges quickly, test potential scenarios, and predict problems.

Xylem Vue is a single, integrated software and analytics platform that enables utilities to maximize existing investments, operate more efficiently, and provide affordable and reliable service to their communities.

Xylem Vue is a **unique, vendor-agnostic platform that can capture data from any source,** regardless of manufacturer. This allows utilities to **maximize investments already made in existing technologies** while breaking down data silos to provide a holistic, 360-degree view of the status for all processes and infrastructure across the entire water cycle.



The platform allows utilities to break down data silos and have a holistic view of the entire water cycle at their fingertips with a single, easy-to-use interface

By providing intelligence and smart analytics at the network and asset level—as well as customized views to fit any unique demands the utility requires—Xylem Vue supports both utility operators and enterprise managers in addressing the system-wide challenges, from non-revenue water to flooding to treatment, that they face on a daily basis. At the heart of it all is the **Smart Water Engine**.

As the foundation of the Xylem Vue platform, Smart Water Engine eliminates silos and unifies all utility data into a single platform regardless of its origin (sensors, SCADA, assets, business systems, etc.). It integrates and standardizes that data to create a single, holistic model which, when coupled with proprietary advanced algorithms, allows the Smart Water Engine to look out across the entirety of a utility's network. **This single source of data within Smart Water Engine is then accessed through modular water and wastewater applications within the Xylem Vue platform to address targeted needs.** These applications, accessed through a common portal, combine data from the

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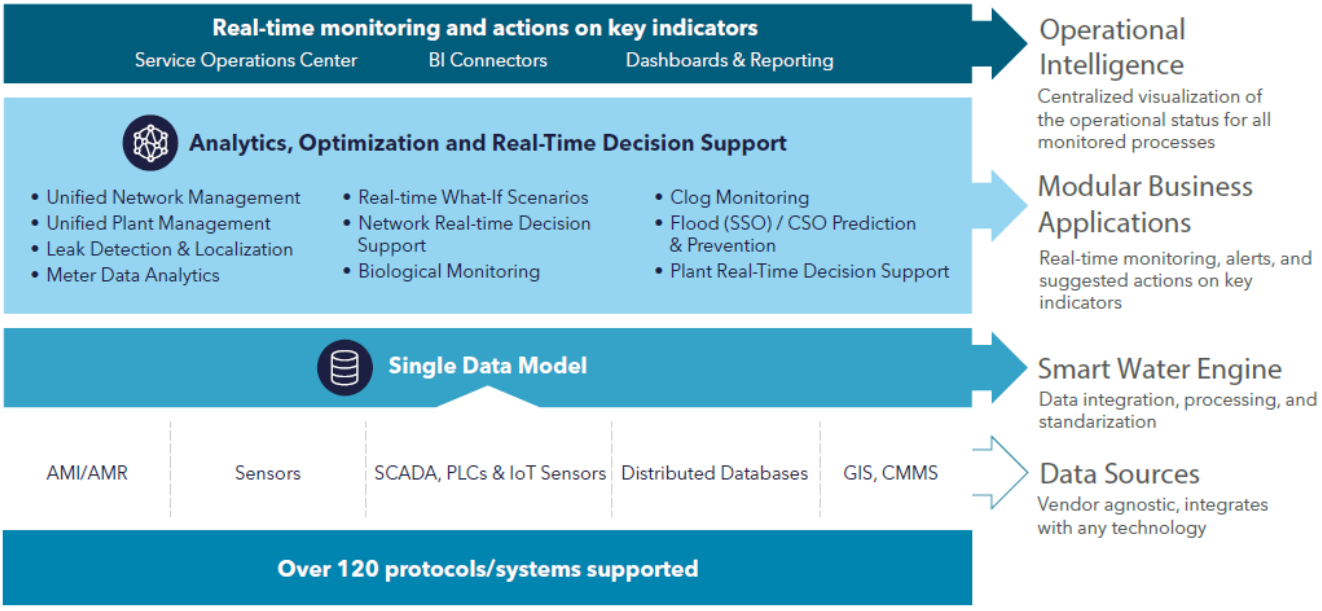
Smart Water Engine with advanced data analytics, artificial intelligence, and machine learning to streamline data visualization and solve complex utility problems.

Smart Water Engine provides a single holistic environment from which utilities can not only manage operational data, assets, and IoT devices, but also create customized views within the platform to meet unique system needs. The Smart Water Engine has several functions, including a unified IoT platform to connect sensor data and smart meters data stored in a unique repository. It contains intelligent algorithms to leverage data from databases using machine learning techniques. It also offers a tool for data cleaning and maintenance of the mathematical model for a Digital Twin.



Xylem Vue architecture

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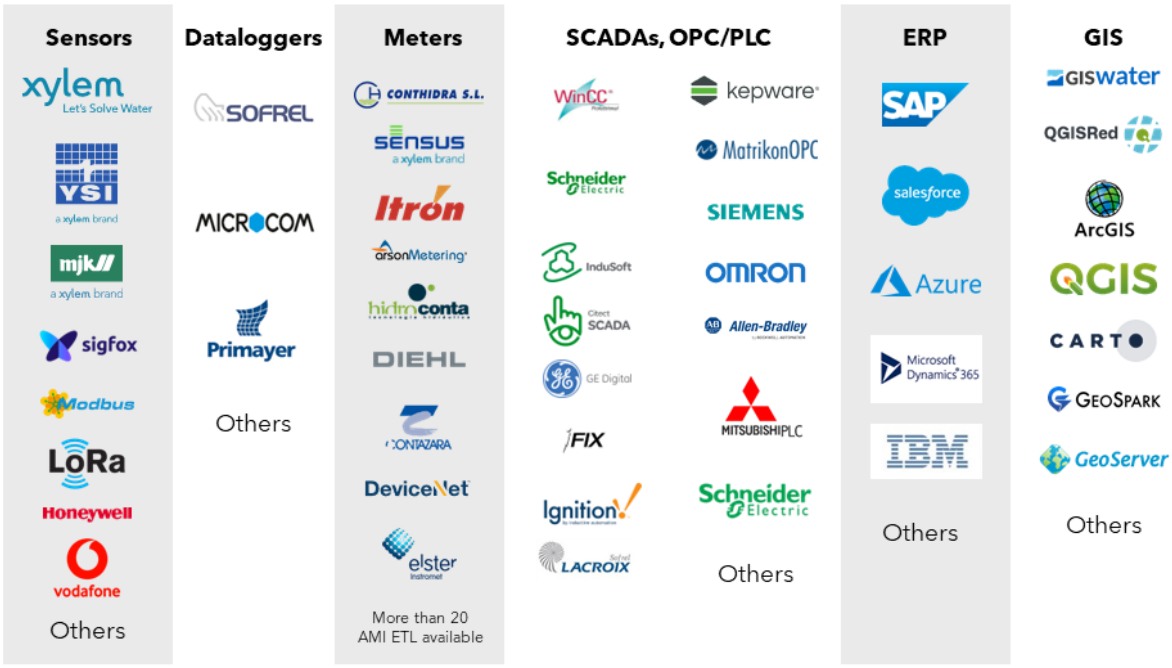
Data Integration

Smart Water Engine allows for continuous asset integration without interfering with the system operation. In other words, it is a completely scalable Software as a Service solution that does not interfere with ongoing operations and systems, such as existing SCADAs, web monitoring solutions, sensors and monitors, GIS platforms, and work order systems. The aim is to always keep the platform as a mirror of the physical assets, while upgrading their functionalities and opening data access to operators and management. We can provide integration of data/systems, including the following procedures:

- **Standard industrial protocols:** OPC-DA, OPC-UA, Modbus. In this case, a software component is connected to the industrial network and uses standard protocols to get real time data from the PLCs and SCADAs.
- **IoT brokers that use MQTT as their protocol**
- **SQL:** In this case, the process is parametrized to launch SQL queries to a SQL database system, and then push the data to the platform. Depending on the target system (performance, workload, etc.), the acquisition rate (number of queries per minute) can vary.
- **REST API:** Sources exposing a REST API are also supported by the Xylem Vue platform. Third party vendors, such as Trimble, Cityworks, or ESRI, generally provide API access, making the integration relatively fast.

In general, an AMI process source can be integrated in the platform as long as it has a defined logic to uniquely identify the tags to be captured and integrated in the system. Here is a list of some examples that correspond to data loggers, sensors, water quality probes, energy meters or IoT brokers: Excel files, CSV files, Access databases, Logger files generated by different vendors (Multilog, Xi-Log, among others), Fiware, Sentilo, Amazon, Azure static storage systems (Amazon S3 buckets, etc.), Amazon SQS, etc.



A selection of the many data sources that can be connected through Smart Water Engine

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Modular Business Applications

In addition to Unified Network Management, the Xylem Vue platform offers many modular applications tailored to specific utility needs, which provide operational intelligence in the form of real-time monitoring, alerts, and suggested actions to ensure optimal system-wide efficiency. Once initial system setup with Smart Water Engine is completed, additional applications are easily added to the platform with minimal additional effort and are seamlessly integrated through the central platform. The following applications are available through Xylem Vue:

Wastewater Applications

From forecasting and monitoring wet weather events or discharges to optimizing operational efficiency in wastewater treatment plants and sewer networks, Xylem Vue provides utilities with intelligence and smart analytics at the network, plant and asset level or any customized view your utility may require.

Unified Network Management

System-wide, real-time remote monitoring and suggested actions for sewer networks which simplify decision-making, optimize operations and improve operating results.

Unified Plant Management

System-wide, real-time remote monitoring and suggested actions for wastewater treatment plants to simplify decision making, optimize operations and improve results of all monitored plants.

SSO/CSO Prediction

Understand current network state with sensor data and utilize additional data such as river/tide levels, rainfall forecasts, etc. to predict future impact of wet weather events on network performance.

Plant Real-Time Decision Support

Real-time digital monitoring and optimized modeling simulate treatment processes and enhance plant control to reduce energy costs or dosing while ensuring regulatory compliance.

Biological Monitoring

Detect high viral loads (such as SARS-CoV-2) in sewage water to help authorities and technicians optimize decision-making regarding their control.

Clog Monitoring

Generate risk-based sewer cleaning programs to prevent sanitary sewer overflows (SSOs) and ensure sewer capacity is maintained while saving money from reduction in required field operations.

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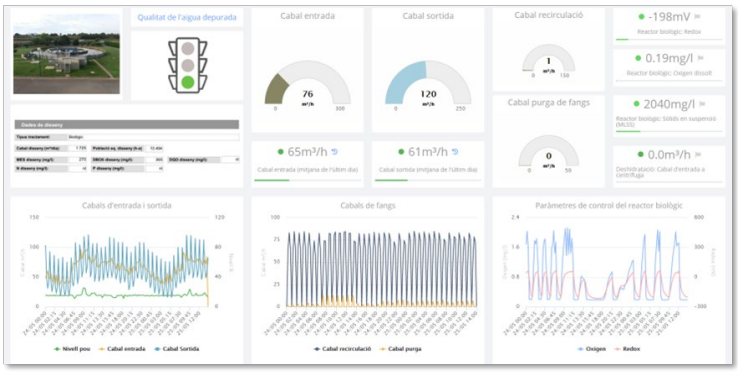
UNIFIED NETWORK MANAGEMENT (WASTEWATER)



Unified Network Management dashboard

Unified Network Management (UNM) for wastewater allows for the control and remote operation of assets that form part of sewerage networks, offering an operations center with the capacity to group the assets independent of their geographical location or their organizational dispersion. Through screens, visually/functionally equivalent to traditional SCADA systems, users can simultaneously supervise installations and have advanced data exploitation tools. Standardized access is provided to all equipment present in the integrated installations, allowing information to be processed in real time and stored in a Big Data system for industrial data historization. From here, information can be analyzed and consumed by means of different resources made available to users. An alarm system detects problems and reduces response time.

The main functionalities of UNM include:

- Allowing for the consumption and sharing of asset information from the Domain Master Data belonging to the Smart Water Engine of the Xylem Vue platform.
- Allowing for the information of the static elements to be consulted on the interactive map.
- Integration with GIS maps on the SCADA screen.
- Real-time control of the industrial processes taking place in the operation through graphical interfaces such as synoptic or variable views.
- Possibility of creating/editing monitoring interfaces without need for programming knowledge.
- Allowing for the monitoring of many process variables.
- Allowing for the geographical distribution of processes.
- Ingestion of data from different sources and creation of new variables.
- Generation of alarms by defining rules and thresholds.
- Creation of customized reports and dashboards.
- Allowing for grouping screens of an installation in the same place (workspace). Synoptic, Dashboard, Variables grouped by installation.

Use cases of the module include:

- Evaluation of asset conditions
- Creation, management, and consultation of work orders
- Audits
- Infrastructure management dedicated to relief

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REAL TIME WHAT IF SCENARIOS (WASTEWATER)

A digital twin is the assimilation of data and a computer model that helps operators understand how a physical asset, process or system should be performing, and helps to predict performance under changing conditions. Around the world, wastewater utilities are embracing data analytics and digital technologies to deliver transformative outcomes for their communities.

Digital solutions, many powered by digital twins, are helping water operators and managers solve their most pressing challenges, including bringing down the costs of safely reclaiming wastewater and reducing emissions associated with wastewater management.

Xylem Vue's digital twin application for sewer collection networks is Real Time What If Scenarios for Wastewater. Under Real Time What If Scenarios (Wastewater), hydraulic models can be deployed within Xylem Vue. Here, they receive boundary condition information and data from the Smart Water Engine, helping inform users of the starting point for simulations.

From these initial conditions, the simulation engine can compute the likely outcome from rainfall and other forecast data to provide early warning of events. In addition, this modeling capability can run past and theoretical scenarios used for training and validating implemented approaches. It should be noted that the asset data itself is not modified, rather the operating regime/conditions the model runs under.

Traditional models for simulating infrastructure were cumbersome and costly to build. Today, sophisticated machine learning tools better represent the infrastructure by automatically calibrating to match historical data. Coupled with the right expertise, advanced digital twin technology can improve network visibility, performance and compliance, and deliver significant cost savings.

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PLANT MANAGEMENT

Overview dashboard

Plant management allows for the monitoring of all of the processes involved in a wastewater treatment plant from water intake to its return to the environment.

Plant management is designed to provide operators with a comprehensive, real-time view of the plant's key performance indicators (KPIs). This main dashboard of the application consolidates critical data—such as inflow and effluent volumes, water quality, energy consumption, and sludge production—into a single, easy-to-read screen. By bringing all essential metrics together, the dashboard empowers teams to detect issues early, make proactive decisions, and maintain efficient, compliant operations across all systems. This holistic visibility significantly enhances situational awareness and supports smarter, data-driven plant management.

Key features of the application include:

- Ability to visualize key parameters, including effluent quality, sludge age, reactor performance, redox conditions, and nutrient concentrations
- Visualization of all reagent consumption in different stages of the treatment processes
- Energy management tracking to view daily energy usage, specific consumption of treated water, and overall energy efficiency
- Alarm management to alert staff of critical information, support troubleshooting, and help mitigate risks
- Automatic report generation to readily share information among staff and stakeholders

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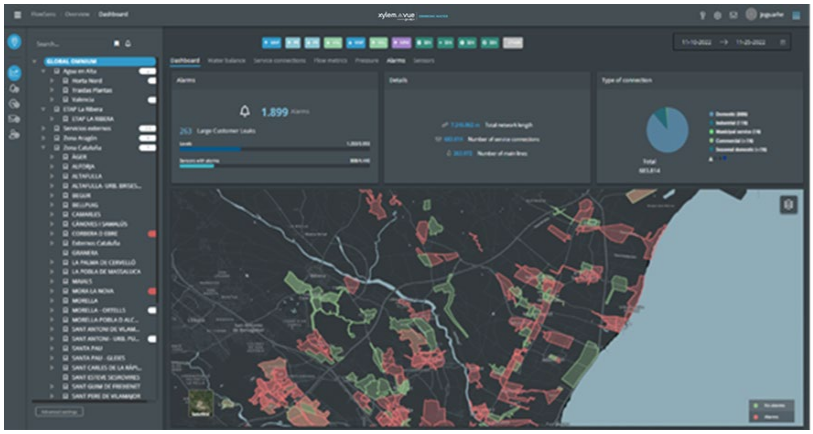
LEAK DETECTION

Leak Detection is a functional application that is helping hundreds of utilities monitor, report, and optimize non-revenue water, real water losses and system leaks, aggregated water usage, and water distribution pressures. It integrates aggregated analytics from the entire water distribution system and provides granular analytics by district metered areas (DMAs) or pressure zones (PZ).



Leak Detection initial interface

The application leverages real-time data from many sources:

- Water production and storage sources (wells, plants, tanks) for the entire system from SCADA systems
- Water entry to each DMA or PZ from flow sensors
- Water usage by client and aggregated from any existing smart metering/AMI
- Linear asset infrastructure from existing GIS platforms
- Any other sensor of interest to measure or optimize NRW (pressure sensors, acoustic sensors, PRVs, etc.)

Leak Detection applies AI and machine learning algorithms to estimate non-revenue water levels in real-time and for historical data. The module generates alarms for potential system leaks and water main breaks, projects water demand and productions by DMA, and generates notifications when minimum night flows, pressures, or other key indicators suggest a potential leak.

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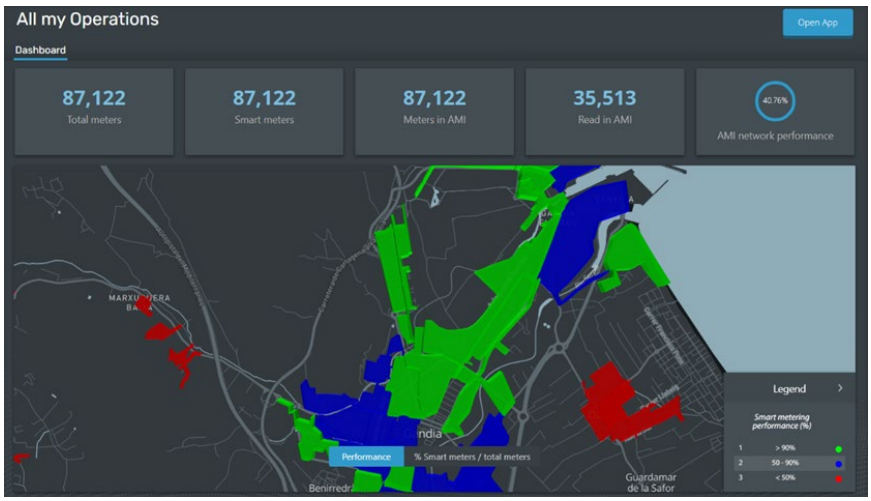
METER DATA ANALYTICS



Example of Meter Data Analytics dashboard visualization

Meter Data Analytics is a near real-time analytical module that leverages advanced meter infrastructure (AMI) and automatic meter reading (AMR) information from any metering technology or platform provider. The module makes it easy to access all AMI information at any point in time, independently of what metering technology it is using, and also provides advanced artificial intelligence (AI) and machine learning (ML) analytics to detect deviations from historical patterns, anomalies, and leaks, and also to segment your customers according to different types of behavior (irrigation, swimming pool filling, seasonal behavior, etc.)

The Meter Data Analytics module automatically collects information from smart meters, performs comprehensive data cleansing through AI algorithms, and analyzes each customer's consumption history. It also utilizes data from other systems such as the CIS, CMMS, and others through the Smart Water Engine to allow for more comprehensive analysis and event detection.

The main functionalities and algorithms are helping more than 400 utilities improve their customer satisfaction, reduce non-revenue water, increase revenues, and optimize network management and operations. Meter Data Analytics provides:

- Client characterization according to behavioral patterns
- Detection of small leaks
- Detection of extreme leaks
- Impossible reads (and correction of them to avoid customer complains)
- Detection of inaccurate meters affecting revenues
- Incorrect meter sizing
- Consumption forecasting and extrapolations
- Empty apartments and non-functioning meters
- Fraud detection
- Forecasting of public services (e.g., trash collection)

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APPENDIX B

Please see the following section for a budget broken down by Fiscal Year for the City of Denton. Fiscal years start October 1st and end September 30th. The schedule assumes the contract will begin in April 2026 during FY 2026 and end in March 2031 in FY 2031. The schedule below represents a five-year contract, where a portion of the fifth contract year would be included in the 2031 fiscal year budget.

FISCAL YEAR BUDGETS

FISCAL YEAR	ONE-TIME FEES	Additional Services as Authorized by City (ONE-TIME FEES)	Optional Additional Services Authorized by the City	Total	Starting Budget	End of FY Budget
FY 2026	$1,045,571		$711,335	**$1,756,906**	$6,496,090	$4,739,184
FY 2027	$937,805	$603,280	$137,470	**$1,678,555**	$4,739,184	$3,060,629
FY 2028	$577,186	$591,440	$137,470	**$1,306,096**	$3,060,629	$1,754,533
FY 2029	$567,789		$137,470	**$705,259**	$1,754,533	$1,049,274
FY 2030	$567,789		$137,470	**$705,259**	$1,049,274	$344,015
FY 2031	$275,280		$68,735	**$344,015**	$344,015	$0
TOTAL	**$3,971,420**	**$1,194,720**	**$1,329,950**	**$6,496,090**	N/A	N/A

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The tasks included in each fiscal year budget are listed below.

FISCAL YEAR 2026	PRICE
Task 1 – Project Management	$8,786
Task 2.1: Professional Services/Data Connections for Smart Water Engine	$246,120
Task 2.2: Unified Network Management – Wastewater	$123,730
Task 2.3: Software Training and Support	$27,200
Unified Network Management SaaS Year 1 (2 of 12 months)	$5,262
Task 3.1: Installation	$230,480
Task 3.2: Maintenance Year 1 for up to 43 sites (4 of 11 months)	$210,000
Task 5.1: Anomaly Detection	$19,700
RTWIS-WW SaaS Year 1 (2 of 12 months)	$7,140
Task 6.1: Professional services for sensor data and recommendations for Plant Management	$142,350
TOTAL:	**$1,020,768**
Optional Additional Services Authorized by the City	**PRICE**
Task 6.2: Deployment of Plant Management	$146,260
Plant Management SaaS Year 1 (6 of 12 months)	$16,440
Task 6.3: Optimization Implementation	$205,440
Plant Management Optimization SaaS Year 1 (6 of 12 months)	$25,500
Task 7.1: Leak Detection Implementation	$153,720
Task 7.1.2 DMA Design and Configuration (assumes 15 DMAs)	$35,520
Leak Detection SaaS Year 1 (6 of 12 months)	$17,865
Task 7.2: Meter Data Analytics Implementation	$101,660
Meter Data Analytics SaaS Year 1 (6 of 12 months)	$8,930
SaaS Schedule Contingency	**PRICE**
RTWIS-WW SaaS Year 1 (4 of 12 months)	$14,280
Unified Network Management SaaS Year 1 (4 of 12 months)	$10,523
TOTAL FISCAL YEAR 2026 with additional services authorized by City	**$1,756,906**

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FISCAL YEAR 2027	PRICE
Task 1 – Project Management	$17,572
Unified Network Management SaaS Year 1-2	$31,570
Task 3.2: Maintenance Year 1 for up to 43 sites (7 of 11 months)	$367,500
Task 3.3: Optional Ongoing Maintenance for up to 43 sites (5 of 47 months)	$191,074
Task 4.1: Develop and Calibrate the Hydraulic Model	$39,960
Task 4.2: Perform Capacity Analysis	$16,050
Task 4.3: Quantify I&I Across the Sewer System	$27,370
Task 4.4: Alternatives Analysis	$139,290
Task 5.2: Early Warning System	$9,850
Task 5.3: What If Scenarios	$37,500
Task 5.4: CIP Map & Capacity Analysis	$17,228
RTWIS-WW SaaS Year 1-2	$42,840
TOTAL:	**$937,805**
Additional Services as Authorized by City (ONE-TIME FEES)	See subtasks
Re-locate sensors	$13,200
Equipment, Installation, and Service for Additional Sites[2]	$487,070
Replacement Equipment Budget	$91,170
Task 4.3.2 Refine I&I Analysis with AMI data	$11,840
Optional Additional Services Authorized by the City	See subtasks
Plant Management SaaS Year 1-2	$32,880
Plant Management Optimization SaaS Year 1-2	$51,000
Leak Detection SaaS Year 1-2	$35,730
Meter Data Analytics SaaS Year 1-2	$17,860
TOTAL FISCAL YEAR 2 with additional services authorized by City	**$1,678,555**

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FISCAL YEAR 2028	
Task 1 – Project Management	$17,572
Unified Network Management SaaS Year 2-3	$31,570
Task 3.3: Optional Ongoing Maintenance for up to 43 sites (12 of 47 months)	$458,579
Task 5.4: CIP Map & Capacity Analysis	$26,625
RTWIS-WW SaaS Year 2-3	$42,840
TOTAL:	**$577,186**
Additional Services as Authorized by City (ONE-TIME FEES)	See subtasks
Re-locate sensors	$13,200
Equipment, Installation, and Service for Additional Sites[2]	$487,070
Replacement Equipment Budget	$91,170
Optional Additional Services Authorized by the City	
Plant Management SaaS Year 2-3	$32,880
Plant Management Optimization SaaS Year 2-3	$51,000
Leak Detection SaaS Year 2-3	$35,730
Meter Data Analytics SaaS Year 2-3	$17,860
TOTAL FISCAL YEAR 3 with additional services authorized by City	**$1,306,096**

FISCAL YEAR 2029	
Task 1 – Project Management	$17,572
Unified Network Management SaaS Year 3-4	$31,570
Task 3.3: Optional Ongoing Maintenance for up to 43 sites (12 of 47 months)	$458,579
Task 5.4: CIP Map & Capacity Analysis	$17,228
RTWIS-WW SaaS Year 3-4	$42,840
TOTAL:	**$567,789**
Optional Additional Services Authorized by the City	
Plant Management SaaS Year 3-4	$32,880
Plant Management Optimization SaaS Year 3-4	$51,000
Leak Detection SaaS Year 3-4	$35,730
Meter Data Analytics SaaS Year 3-4	$17,860
TOTAL FISCAL YEAR 2028 with additional services authorized by City	**$705,259**

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FISCAL YEAR 2030	
Task 1 – Project Management	$17,572
Unified Network Management SaaS Year 4-5	$31,570
Task 3.3: Optional Ongoing Maintenance for up to 43 sites (12 of 47 months)	$458,579
Task 5.4: CIP Map & Capacity Analysis	$17,228
RTWIS-WW SaaS Year 4-5	$42,840
TOTAL:	**$567,789**
Optional Additional Services Authorized by the City	
Plant Management SaaS Year 4-5	$32,880
Plant Management Optimization SaaS Year 4-5	$51,000
Leak Detection SaaS Year 4-5	$35,730
Meter Data Analytics SaaS Year 4-5	$17,860
TOTAL FISCAL YEAR 2030 with additional services authorized by City	**$705,259**

FISCAL YEAR 2031	
Task 1 – Project Management	$8,786
Unified Network Management SaaS Year 5 (6 of 12 months)	$15,785
Task 3.3: Optional Ongoing Maintenance for up to 43 sites (6 of 47 months)	$229,289
RTWIS-WW SaaS Year 5 (6 of 12 months)	$21,420
TOTAL:	**$275,280**
Optional Additional Services Authorized by the City	
Plant Management SaaS Year 5 (6 of 12 months)	$16,440
Plant Management Optimization SaaS Year 5 (6 of 12 months)	$25,500
Leak Detection SaaS Year 5 (6 of 12 months)	$17,865
Meter Data Analytics SaaS Year 5 (6 of 12 months)	$8,930
TOTAL FISCAL YEAR 2031 with additional services authorized by City	**$344,015**

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xylem vue

AGREEMENT FOR XYLEM VUE PROFESSIONAL SERVICES

This **Agreement for Professional Services** (this "**Agreement**"), dated as of _____, 2026 (the "**Effective Date**"), is by and between Xylem Vue Inc., a Delaware corporation, with offices located at 3725 Foundation Court, Suite EF, South Bend, IN 46628 ("**Service Provider**") and the City of Denton, a government entity, with offices located at 601 East Hickory Street, Denton, TX 76205 ("**Customer**" and together with "**Service Provider**", the "**Parties**", and each a "**Party**").

WHEREAS, Service Provider has the capability and capacity to provide certain monitoring and prediction services; and

WHEREAS, Customer desires to retain Service Provider to provide the said services, and Service Provider is willing to perform such services under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Customer agree as follows:

1. **SERVICES.** Service Provider shall provide to Customer the services (the "**Services**") set out in one or more statements of work (each, a "**Statement of Work**"). The initial Statement of Work is attached hereto as Exhibit A. Additional Statements of Work shall be deemed issued and accepted only if signed by representatives of Service Provider and Customer.

2. **TERM.** This Agreement shall commence on the Effective Date and continue in effect until terminated as provided in the Standard Terms and Conditions (as defined below).

3. **COMPENSATION AND PAYMENT.** As consideration for providing the Services in accordance with the Statement of Work, Customer agrees to pay the Service Provider the amounts specified in the applicable Statement of Work. Expenses shall be paid solely in accordance with the Standard Terms and Conditions unless superseded by an applicable Statement or Work.

4. **ADDITIONAL CONDITIONS.**
   a. **Terms and Conditions.** Terms and Conditions for Services – Xylem Americas set forth in Exhibit B and attached hereto, are hereby incorporated by reference herein and shall be deemed incorporated into all Statements of Work.
   b. **Software.** Service Provider shall grant to Customer continuing access to the Go-Aigua Software, subject to the applicable End User Licensing Agreement ("EULA") outlined in Exhibit C, and only for so long as Customer is current in its payments for the Go-Aigua Software. Service Provider acknowledges that the Go-Aigua Software is an essential component of the package being purchased by Customer.
   c. **Sale of Equipment.** If the attached Statement of Work contemplates the sale of equipment to Customer, then the following provisions will apply:
      i. **Title, Delivery, Risk of Loss.** Unless agreed otherwise, all goods and equipment ordered from Service Provider are shipped Ex Works (Incoterms 2020) shipping point, prepay freight and add. Title to, and property in, the goods and equipment shall pass to Customer upon shipment. Risk of loss of the goods and equipment ordered from Service Provider shall also pass to Customer upon shipment. Shipping dates and completion dates quoted by Service Provider are made in good faith but are not guaranteed; Service Provider reserves the right to extend shipping dates as it deems necessary in its sole discretion, without liability to Customer. In the absence of shipping instructions from Customer, Service Provider will use its discretion as to the selection of shipping services and routings.
      ii. **Warranty.** Service Provider warrants that the goods and equipment sold to Customer hereunder (with the exception of software, computer hardware, computer servers, membranes, seals, elastomer materials, coatings and other "wear parts" or consumables all of which are not warranted except as otherwise provided in the quotation or sales form) will be (i) built in accordance with the specifications referred to in the quotation or sales form, if such specifications are expressly made a part of the Agreement, and (ii) free from defects in material and workmanship for a period of one (1) year from the date of installation or

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eighteen (18) months from the date of shipment (which date of shipment will not be greater than thirty (30) days after receipt of notice that the goods are ready to ship), whichever occurs first, unless a longer period is provided by law (the "**Warranty**"). Except as otherwise provided by law, Service Provider will, at its option and at no cost to Customer, either repair or replace any goods which fails to conform with the Warranty; provided, however, that under either option, Service Provider will not be obligated to remove the defective goods or install the replaced or repaired goods and Customer will also be responsible for all other costs, including service costs, shipping fees and expenses. Customer's failure to comply with Service Provider's repair or replacement advice will constitute a waiver of Customer's rights and render all warranties void. Any parts repaired or replaced by Service Provider under the Warranty are warranted only for the remaining balance of the warranty period. The Warranty is conditioned on Customer giving written notice to Service Provider of any defects in material or workmanship of warranted goods within ten (10) days, or shorter period as dictated by the issue, of the date when any defects are first manifest. Service Provider will have no warranty obligations to Customer with respect to any goods or parts of the goods that: (a) have been repaired by third parties other than Service Provider or without Service Provider's written approval; (b) have been subject to misuse, misapplication, neglect, alteration, accident, or physical damage; (c) have been used in a manner not consistent with Service Provider's instructions for installation, operation and maintenance; (d) have been damaged from ordinary wear and tear, corrosion, or chemical attack; (e) have been damaged due to abnormal conditions, vibration, failure to properly prime, or operation without flow; (f) have been damaged due to a defective power supply or improper electrical protection; (g) have been damaged resulting from the use of accessory equipment not sold by Service Provider or not approved by Service Provider in connection with goods supplied by Service Provider hereunder; or (h) not sold by Service Provider or its authorized supplier. In any case of goods not manufactured by Service Provider, there is no warranty from Service Provider; however, Service Provider will extend to Customer any warranty received from Service Provider's supplier of such goods. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE GOODS PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. EXCEPT AS OTHERWISE PROVIDED BY LAW, CUSTOMER'S EXCLUSIVE REMEDY AND SERVICE PROVIDER'S AGGREGATE LIABILITY FOR BREACH OF ANY OF THE FOREGOING WARRANTIES ARE LIMITED TO REPAIRING OR REPLACING THE GOODS AND WILL IN ALL CASES BE LIMITED TO THE AMOUNT PAID BY THE CUSTOMER HEREUNDER.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

XYLEM SERVICE PROVIDER:

By: Brian Vu
Name: Brian Vu
Title: Director, Sales MCS Xylem Vue, West

CUSTOMER:

By: _____
Name: _____
Title: _____

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Exhibit A

STATEMENT OF WORK #1

This Statement of Work #1 (the "SOW") is entered into as of _____, 2026 ("**SOW Effective Date**"), by and between Xylem Vue Inc. having a place of business at 3725 Foundation Court, Suite EF, South Bend, IN 46628 ("**Service Provider**"), and the City of Denton a government entity, having a place of business at 601 East Hickory Street, Denton, TX 76205, ("**Customer**"). The Standard Terms and Conditions attached as Exhibit B govern this SOW and are hereby incorporated into this SOW by reference.

General Description of Project: Monitoring and prediction services through the Xylem Vue platform

Description of Specific Services: Implementation of the Xyle Vue platform – see attached proposal

Deliverables:

1. Description of Deliverables (Services/Equipment): See attached proposal
2. Schedule of Delivery of Deliverables (Services/Equipment): See attached proposal

Fees & Expenses:

1. Schedule of payment: See attached proposal

XYLEM SERVICE PROVIDER:	**CUSTOMER:**
XYLEM SERVICE PROVIDER:	**CUSTOMER:**
By: Brian Vu	By: _____
Name: Brian Vu	Name: _____
Title: Director, Sales MCS Xylem Vue, West	Title: _____

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Exhibit B

TERMS AND CONDITIONS FOR SERVICES – XYLEM AMERICAS

1. Applicability.

(a) These terms and conditions for services - Xylem Americas (these "**Terms**") along with any special conditions expressly incorporated in the quotation or sales form, will govern any sale of services by **Service Provider** to **Customer**. The Parties may also be referred to individually as "Party" and collectively as "Parties."

(b) These Terms, collectively with any applicable Statement(s) of Work, (the "**Agreement**") comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. If the Parties have entered into a Master Services Agreement (a "MSA"), the Order shall be governed by the terms of such MSA. In case of discrepancy between the Agreement documents, they shall be applied in the following order: (i) the MSA (if any); (ii) these Terms.

(c) These Terms prevail over any of Customer's general terms and conditions regardless of whether Customer has submitted its request for proposal, or order on such terms and Service Provider expressly rejects such Customer general terms and conditions. Provision of Services to Customer does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

2. Services. Service Provider shall provide the Services to Customer as described in the Statement of Work (the "**Services**") in accordance with these Terms.

3. Performance Dates. Service Provider shall use reasonable efforts to meet any performance dates specified in the Statement of Work, and any such dates shall be estimates only.

4. Customer's Obligations. Customer shall: (a) cooperate with Service Provider in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Service Provider, for the purposes of performing the Services;

(b) deliver to Service Provider all relevant environmental, health and safety information before conducting the Services and at all relevant times thereafter, including mitigating hazards to the maximum extent practicable and/or warning of any such hazards along with requirements for appropriate personal protective equipment, as required to establish and maintain safe working conditions;

(c) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of this Agreement;

(d) provide such customer materials or information as Service Provider may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and

(e) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

5. Customer's Acts or Omissions. If Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Service Provider shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay ("**Customer Delay**").

6. Change Orders.

(a) A Change Order may result only from any of the following: (i) a change in scope or other proposal by Customer or Service Provider agreed to by other Party in writing; (ii) a material change in site conditions discovered as a latent condition during performance of the Services or otherwise not previously known or disclosed (iii) the occurrence of a force majeure event as described in Section 17; (iv) a change in law, rule or regulation that impacts Service Provider's work; (v) a Customer Delay as provided in Section 5.

(b) In the event(s) or circumstance(s) giving rise to a Change Order above, the Party seeking the Change Order shall prepare a detailed proposal for such Change Order. Service Provider shall, within a reasonable time after such detailed proposal is submitted, provide a written estimate to Customer of: (i) the likely time required to implement the change; (ii) any necessary variations to the fees and other charges for the Services arising from the change; (iii) the likely effect of the change on the Services;

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and (iv) any other impact the change might have on the performance of this Agreement.

Promptly after receipt of the detailed proposal, the Parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 25. Notwithstanding the foregoing, in the event(s) or circumstance(s) giving rise to a Change Order under Section 6(a)(ii), 6(a)(iii), 6(a)(iv), or 6(a)(v) above, Service Provider shall be entitled to an equitable adjustment in compensation (including mobilization and demobilization costs) and the time for performance of the Services. If the Parties cannot agree on the terms of such change and Service Provider is unable to complete performance of the Services, then Service Provider may elect to terminate the Agreement and Customer shall be responsible for payment for the Services provided to the date of termination, including costs for work in progress and demobilization, and without further obligation or liability to Customer.

(c) Notwithstanding Section 6(a) and Section 6(b) above, Service Provider may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Statement of Work.

(d) Service Provider may charge for the time it spends assessing and documenting a change request from Customer on a time and materials basis in accordance with the Statement of Work.

7. Quotation, Withdrawal, Expiration. Quotes are valid for thirty (30) calendar days from the date of issuance unless otherwise provided therein. Service Provider reserves the right to cancel or withdraw the quotation at any time with or without notice or cause prior to acceptance by Customer. There is no Agreement if any conditions specified within the quotation or sales form are not completed by Customer to Service Provider's satisfaction within thirty (30) calendar days of Service Provider's acknowledgement in writing of an order. Service Provider nevertheless reserves its right to accept any contractual documents received from Customer after this thirty (30) calendar day period.

8. Fees and Expenses; Payment Terms; Interest on Late Payments.

(a) In consideration of the provision of the Services by the Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the Statement of Work.

(b) Customer agrees to reimburse Service Provider for all reasonable travel and out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services, that have been pre-approved by Customer.

(c) Payment in full is due within thirty (30) days from receipt of the invoice unless otherwise stated in Service Provider's documentation. In the event payment is not made when due, to the extent permitted under law, Customer agrees to pay Service Provider a service or finance charge of the lesser of (i) one and one-half percent (1.5%) per month (18% per annum), or (ii) the highest rate permitted by applicable law, on the unpaid balance of the invoice from and after the invoice due date. Customer is responsible for all costs and expenses associated with any checks returned due to insufficient funds or costs and expenses incurred from Service Provider's collection efforts. All credit sales are subject to prior approval of Service Provider's credit department. (iii) Further, in the event payment is not made when due, Service Provider may suspend performance for all Services until payment has been made in full.

9. Taxes. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder. Notwithstanding the forgoing, if Customer is exempt from any such taxes, Customer shall provide Service Provider with a certificate evidencing such exemption upon execution of this Agreement.

10. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the Service Provider in the course of performing the Services, including any items identified as such in the Statement of Work (collectively, the "**Deliverables**") except for any Confidential Information of Customer or customer materials, shall be owned by Service Provider. Service Provider hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-

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sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

11. Confidential Information.

(a) All non-public, confidential or proprietary information of the Parties, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "**Confidential Information**"), that is clearly marked as "Confidential" by Service Provider to Customer and Customer to Service Provider, in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied without the prior written consent of the disclosing Party. Confidential Information does not include information that is: (i) in the public domain; (ii) known to Customer at the time of disclosure; or (iii) rightfully obtained by Customer on a non-confidential basis from a third party.

(b) Customer agrees to use the Confidential Information only to make use of the Services and Deliverables.

(c) Service Provider shall be entitled to seek injunctive relief for any violation of this Section. Service Provider acknowledges that the City of Denton must strictly comply with the Public Information Act, Chapter 552, Texas Government Code in responding to any request for public information related to this Agreement. This obligation supersedes any conflicting provisions of this Agreement. Any portions of such material claimed by Service Provider 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.

12. Representation and Warranty.

(a) For a period of ninety (90) days from the date of invoice, unless otherwise expressly set forth in the quotation or sales form or order acknowledgment, Service Provider represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement ("Warranty").

(b) The Service Provider shall not be liable for a breach of the Warranty set forth in Section 12(a) unless Customer gives written notice of the defective Services, reasonably described, to Service Provider within ten (10) days of the time when Customer discovers or reasonably should have discovered that the Services were defective.

(c) Subject to Section 12(b), Service Provider shall, in its sole discretion, either: (i) repair or re-perform such Services; or (ii) credit or refund the price of such Services at the pro rata contract rate.

(d) **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. EXCEPT AS OTHERWISE PROVIDED BY LAW, BUYER'S EXCLUSIVE REMEDY AND SERVICE PROVIDER'S AGGREGATE LIABILITY FOR BREACH OF THE FOREGOING WARRANTY IS LIMITED TO REMEDIES SET FORTH IN SECTION 12(c).**

13. Limitation of Liability.

EXCEPT AS OTHERWISE PROVIDED BY LAW, IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THE APPLICABLE STATEMENT OF WORK GIVING RISE TO THE CLAIM. SERVICE PROVIDER SHALL HAVE NO LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY FOR LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR REVENUE, LOSS OF INCOME, LOSS OF BUSINESS, LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF DATA OR DIMINUTION IN VALUE, LOSS OF REPUTATION, OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOT WITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATIONS OF LIABILITY SHALL BE EFFECTIVE WITHOUT REGARD TO SERVICE

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PROVIDER'S ACTS OR OMISSIONS OR NEGLIGENCE OR STRICT LIABILITY IN PERFORMANCE OR NON-PERFORMANCE HEREUNDER.

14. Termination. In addition to any remedies that may be provided under this Agreement, Service Provider may terminate this Agreement with immediate effect upon written notice to Customer, if Customer:

(a) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Customer's receipt of written notice of nonpayment;

(b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or

(c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. Insurance. During the term of this Agreement, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a coverage amount no less than the statutory limitation of liability in the State of Texas for property damage and bodily injury.

16. Waiver. No waiver by Service Provider of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Service Provider. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. Force Majeure. Service Provider may cancel or suspend this Agreement and Service Provider shall have no liability for any failure to deliver or perform, or for any delay in delivering or performing any obligations, due to circumstances beyond Service Provider's reasonable control, including but not limited to acts of God, fire, flood or other natural disasters, war and civil disturbance, riot, acts of governments, terrorism, disease, currency restrictions, labor shortages or disputes, unavailability of materials, fuel, power, energy or transportation facilities, failures of suppliers or subcontractors to effect deliveries, in which case the time for performance shall be extended in an amount equal to the excused period, provided that Service Provider shall have, as soon as reasonably practicable after it has actual knowledge of the beginning of any excusable delay, notified Customer of such delay, of the reason therefore and of the probable duration and consequence thereof. Service Provider shall use its best efforts to eliminate the cause of the delay, interruption or cessation and to resume performance of its obligations hereunder with the least possible delay.

18. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Service Provider. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement. Service Provider shall provide prompt written notice of any assignment to Customer.

19. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other party in any manner whatsoever.

20. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

21. Governing Law. THE TERMS OF THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

22. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the Parties at the addresses set forth in the Statement of Work or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon

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receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

23. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Survival. Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidentiality, Governing Law, Insurance, Submission to Jurisdiction/Arbitration and Survival.

25. Amendment and Modification. This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each Party.

26. Exports Regulations. Service Provider agrees to comply with all applicable laws, rules and regulations, including relating to the export or re-export of technical data and services. Service Provider will, at its reasonable expense, provide Customer with information, documentation, and electronic transaction records relating to the Services performed necessary for Customer to fulfill any customs-related obligations, origin marking or labeling requirements and certification or local content reporting requirements, or to enable Customer to claim preferential duty treatment for products eligible under applicable trade preference regimes.

27. Successors and Assigns. The Order and these Terms are binding upon the Parties and their successors and assigns. If either the Customer or Service Provider is merged with another entity, the legal successor of the merged Party shall automatically become party to this contract and shall have the same rights and obligations as its predecessor under this contract. Service Provider agrees and warrants that it shall provide Customer notice as soon as reasonably practicable upon knowledge of any material change of control in Service Provider's business or if Service Provider ceases or threatens to cease trading, but in no case shall notice be provided more than forty-eight (48) hours after a change in control has occurred.

28. Headings. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of these Standard Terms.

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Exhibit C

End User License Agreement
(Hosted SaaS Solution)

1. Scope and Applicability.

1.1 This End User License Agreement ("**EULA**") between You and Xylem covers Your use of the Xylem Vue Software selected in Exhibit I (hereinafter "**Software**"). This document also incorporates any Product Specific Terms that may apply to the Software. Definitions of capitalized terms are in Section 12 (Definitions).

1.2 You agree to be bound by this EULA through:

- **a.** Your download, installation, or use of the Software; or
- **b.** Your express agreement to this EULA.

2. Using the Software.

2.1 Right to Access and Use.

- **a.** Subject to the terms and conditions of this EULA, and subject to the full and timely payment of all applicable fees owed to the Approved Source, Xylem grants to You and You hereby accept, a limited, a non-exclusive, non-transferable, right to access and use the Software and Documentation, both as acquired from an Approved Source, for Your direct benefit during the Usage Term, and as set out in Your Entitlement (collectively, the "**Usage Rights**").
- **b.** You will use the Software only as permitted in this EULA. Any additional or other use by You may require additional rights and the payment of additional fees.

2.2 Use by Third Parties. You may permit Authorized Third Parties to exercise the Usage Rights on Your behalf, provided that You are responsible for:

- **a.** ensuring that such Authorized Third Parties comply with this EULA; and
- **b.** any breach of this EULA by such Authorized Third Parties.

2.3 Beta and Trial Use. If Xylem grants You Usage Rights in the Software on a trial, evaluation, beta, or other free-of-charge basis ("**Evaluation Software and Services**"):

- **a.** You may only use the Evaluation Software and Services on a temporary basis for the period limited by the license key or specified by Xylem in writing. If there is no period identified, such use is limited to thirty (30) days after the Evaluation Software and Services are made available to You;
- **b.** If You fail to stop using and/or return the Evaluation Software and Services or the equipment on which it is authorized for use by the end of the trial period, You may be invoiced for its list price and agree to pay such invoice;
- **c.** Xylem, in its discretion, may stop providing the Evaluation Software and Services at any time, at which point You will no longer have access to any related data, information, and files and must immediately cease using the Software; and
- **d.** YOU ACCEPT THAT XYLEM DISCLAIMS ANY AND ALL LIABILITY THAT MAY ARISE FROM XYLEM'S DECISION TO STOP PROVIDING THE EVALUATION SOFTWARE AND SERVICES.
- **e.** The Evaluation Software and Services may not have been subject to usual testing and quality assurance processes and may contain bugs, errors, or other issues. Unless agreed in writing by Xylem, You will not put Evaluation Software and Services into production use. Xylem provides Evaluation Software and Services "AS-IS" without support or any express or implied warranty or indemnity for any problems or issues, and Xylem has no liability relating to Your

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use of the Evaluation Software and Services.

2.4 Upgrades or Additional Copies of Software. You may only use Upgrades or additional copies of the Software beyond Your license Entitlement if You have:

- **a.** acquired such rights under a support agreement covering the Software; or
- **b.** purchased the right to use Upgrades or additional copies separately.

2.5 Interoperability of Software. If required by law and upon Your request, Xylem will provide You with the information needed to achieve interoperability between the Software and another independently created program, provided You agree to provide Xylem with access to said program and agree to any additional terms reasonably required by Xylem. You will treat such information as Confidential Information.

2.6 Subscription Renewal. Usage Rights in the Software acquired on a subscription basis will automatically renew for the renewal period indicated on the order You or the Xylem Partner placed with Xylem ("**Renewal Term**") unless:

- **a.** You notify Your Approved Source in writing at least forty-five (45) days before the end of Your then-current Usage Term of Your intention not to renew; or
- **b.** You or the Xylem Partner elect not to auto-renew at the time of the initial order placed with Xylem.

Your Approved Source will notify You reasonably in advance of any Renewal Term if there are fee changes. The new fees will apply for the upcoming Renewal Term unless You or the Xylem Partner promptly notify Xylem in writing, before the renewal date, that You do not accept the fee changes. In that case, Your subscription will terminate at the end of the current Usage Term.

2.7 Technical Support. Xylem will provide You with the technical support set forth in Exhibit II.

3. Additional Conditions of Use.

3.1 EULA Generally. You acknowledge and agree that this EULA does not grant You any rights with respect to the Software's source code. Further, unless expressly agreed by Xylem, You may not:

- **a.** transfer, sell, sublicense, monetize or make the functionality of any Software available to any third party;
- **b.** use the Software on second hand or refurbished equipment not authorized by Xylem, or use Software licensed for a specific device on a different device (except as permitted under Xylem's Software License Portability Policy);
- **c.** remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks;
- **d.** reverse engineer, decompile, decrypt, disassemble, modify, or make derivative works of the Software; or
- **e.** use Xylem Content other than as part of Your permitted use of the Software, such as user manuals, trainings, and screenshots.

3.2 Protecting Account Access. You will keep all Xylem account information up to date, use reasonable means to protect Your account information, passwords and other login credentials, and promptly notify Xylem by sending written notice to security@xylem.com of any known or suspected unauthorized use of, or access to, Your account.

3.3 Use with Third Party Products. If You use the Software from the Approved Source with third party products not authorized by Xylem, such use is at Your risk. You are responsible for complying with any third-party provider terms, including its privacy policy. Xylem does not provide support or guarantee ongoing integration support for products that are not a native part of the Software.

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4. **Fees.** To the extent permitted by law, orders for the Software are non-cancellable. The fee to be paid for Your use of the Software is set out in Your purchase terms with Your Approved Source. If You use the Software beyond Your Entitlement ("**Overage**"), the Approved Source may invoice You according to the applicable fees outlined in the Agreement, and You agree to pay, for such Overage.

5. Confidential Information and Use of Data.

5.1 Confidentiality.

- **a.** Recipient will hold in confidence and use no less than reasonable care to avoid disclosure of any Confidential Information to any third party, except for its employees, Affiliates and contractors who have a need to know ("**Permitted Recipients**").
- **b.** Recipient:
  - **(1)** must ensure that its Permitted Recipients are subject to written confidentiality obligations no less restrictive than the Recipient's obligations under this EULA; and
  - **(2)** is liable for any breach of this Section by its Permitted Recipients.
- **c.** Such nondisclosure obligations will not apply to information which:
  - **(1)** is already in the possession of Recipient without confidentiality obligations, as established by documentary evidence, prior to disclosure to Recipient;
  - **(2)** is public knowledge through no fault of Recipient; or
  - **(3)** is independently developed by Recipient, as established by documentary evidence, without use of Confidential Information; or
  - **(4)** is made available to Recipient on a non-confidential basis from a third-party source, provided that such third-party is not and was not prohibited from making such a disclosure of the Confidential Information to the Recipient.
- **d.** Recipient may disclose Discloser's Confidential Information if required under a regulation, law or court order provided that Recipient provides prior notice to Discloser (to the extent legally permissible) upon becoming aware of the need to make the disclosure and reasonably cooperates, at Discloser's expense, regarding protective actions pursued by Discloser.
- **e.** Upon the reasonable request of Discloser, Recipient will either return, delete or destroy all Confidential Information of Discloser and certify the same.
- **f.** Xylem acknowledges that the City of Denton must strictly comply with the Public Information Act, Chapter 552, Texas Government Code in responding to any request for public information related to this Agreement. This obligation supersedes any conflicting provisions of this Agreement. Any portions of such material claimed by Xylem 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.

5.2 **How We Use Data.** Xylem will access, process and use data in connection with Your use of the Software in accordance with applicable privacy and data protection laws.

5.3 **Notice and Consent.** To the extent Your use of the Software requires it, You are responsible for providing notice to, and obtaining consents from, individuals regarding the collection, processing, transfer and storage of their data through Your use of the Software.

6. **Ownership.** Unless agreed in writing, nothing in this EULA transfers ownership in, or grants any license to, any intellectual property rights. You retain any ownership of Your content and Xylem retains ownership of Xylem Content. Xylem may use any feedback You provide in connection with Your use of the Software in its business operations.

7. Representations and Indemnity.

7.1 **Performance.** Xylem represents that:

- **a.** for ninety (90) days from the Delivery Date, that, the Software will substantially comply with

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the Documentation.

7.2 **Malicious Code.** Xylem represents that it will use commercially reasonable efforts to deliver the Software free of Malicious Code.

7.3 **Indemnity.** Xylem agrees to indemnify and defend You and Your respective employees, officers, directors, agents, successors and assigns, from and against liability, loss, damage, and expenses (including without limitation reasonable attorneys' fees) arising from or in connection with third-party claims or demands, allegations, or claims that the use of the Software by You infringes, misappropriates, or otherwise violates a third party's intellectual property or proprietary rights. Xylem's indemnification obligations outlined in this provision do not apply to the extent the infringement or violation arises from Xylem's compliance with particular requirements that You provided that in fact differ from Xylem's standard specifications for the Software. Xylem shall undertake, at its expense, the defense of any such suit or proceeding using reputable counsel. If either party receives notice of an alleged infringement arising from the Software, or if Xylem reasonably believes that such a claim is likely, Xylem shall perform one of the following actions: (i) procure for You the right to continue using the Software and using any results of the Software, (ii) modify the allegedly infringing Software so that such Software is no longer infringing, or (iii) replace the Software so that the Software becomes non-infringing; provided always that the modified or replaced Software does not modify or detract from agreed functionality.

7.4 **Qualifications.**

a. Sections 7.1 and 7.2 do not apply if the Software or the equipment on which it is authorized for use:
- **(1)** has been altered, except by Xylem or its authorized representative;
- **(2)** has been subjected to abnormal physical conditions, accident or negligence, or installation or use inconsistent with this EULA or Xylem's instructions;
- **(3)** is acquired on a no charge, beta or evaluation basis;
- **(4)** is not a Xylem-branded product or service; or
- **(5)** has not been provided by an Approved Source.

b. Upon Your prompt written notification to the Approved Source during the warranty period of Xylem's breach of this Section 7.4, Your sole and exclusive remedy (unless otherwise required by law) is, at Xylem's option, either:
- **(1)** repair or replacement of the applicable Software; or
- **(2)** a refund of the fees paid for the non-conforming Software.

c. Where Xylem provides a refund of license fees for Software, You must return or destroy all copies of the applicable Software.

d. **Except as set out in this Section and to the extent permitted by law, Xylem expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition or other implied term as to merchantability, fitness for a particular purpose or non-infringement, or that the Software will be secure, uninterrupted or error-free.**

e. If You are a consumer, You may have legal rights in Your country of residence that prohibit the limitations set out in this Section from applying to You, and, to the extent prohibited, they will not apply.

8. Liability.

8.1 **NEITHER PARTY WILL BE LIABLE FOR INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES; LOSS OR CORRUPTION OF DATA OR INTERRUPTION OR LOSS OF BUSINESS; OR LOSS OF REVENUES, PROFITS, GOODWILL OR ANTICIPATED SALES OR SAVINGS.**

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8.2 **THE MAXIMUM AGGREGATE LIABILITY OF XYLEM UNDER THIS EULA IS LIMITED TO THE FEES RECEIVED BY XYLEM FOR THE APPLICABLE SOFTWARE AND ATTRIBUTABLE TO THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY.**

8.3 Sections 8.1 and 8.2 do not apply to liability arising from:

- **a.** Your failure to pay all amounts due; or
- **b.** Your breach of Sections 2.1 (License and Right to Use), 3.1 (EULA Generally) or 11.7 (Export).

8.4 This limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement, or otherwise, even if either party has been advised of the possibility of such damages. Nothing in this EULA limits or excludes any liability that cannot be limited or excluded under applicable law. This limitation of liability is cumulative and not per incident.

9. Termination and Suspension.

9.1 **Suspension**. Xylem may immediately suspend Your Usage Rights if You materially breach the EULA.

9.2 **Termination.**

- **a.** If a party materially breaches this EULA and does not cure that breach within thirty (30) days after receipt of written notice of the breach, the non-breaching party may terminate this EULA for cause.
- **b.** Xylem may immediately terminate this EULA if You breach Sections 2.1 (License and Right to Use), 3.1 (EULA Generally), or 11.7 (Export).
- **c.** Upon termination of the EULA, You must stop using the Software and destroy any copies of Software, Documentation and Confidential Information within Your control.
- **d.** Upon Xylem's termination of this EULA for Your material breach, You will pay Xylem or the Approved Source any unpaid fees through to the end of the then-current Usage Term.

10. Verification.

10.1 During the Usage Term and for a period of twelve (12) months after its expiry or termination, You will take reasonable steps to maintain complete and accurate records of Your use of the Software sufficient to verify compliance with this EULA ("**Verification Records**"). Upon reasonable advance notice, and no more than once per twelve (12) month period, You will, within thirty (30) days from Xylem's notice, allow Xylem and its auditors access to the Verification Records and any applicable books, systems (including Xylem product(s) or other equipment), and accounts during Your normal business hours.

10.2 If the verification process discloses underpayment of fees:

- **a.** You will pay such fees; and
- **b.** You will also pay the reasonable cost of the audit if the fees owed to Xylem as a result exceed the amounts You paid for Your Usage Rights by more than five percent (5%).

11. General Provisions.

11.1 **Survival**. Sections 3 (Additional Conditions of Use), 4 (Fees), 5 (Confidential Information and Use of Data), 6 (Ownership), 7 (Representations and Indemnity), 8 (Liability), 10 (Verification) and 11 (General Provisions) survive termination or expiration of this EULA.

11.2 **Third Party Beneficiaries.** This EULA does not grant any right or cause of action to any third party.

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11.3 Assignment and Subcontracting. Neither party may assign or novate this EULA in whole or in part without the express written consent of Xylem and the applicable authorized distributor, if any.

11.4 Xylem Partner Transactions. If You purchase the Software from a Xylem Partner, the terms of this EULA apply to Your use of the Software and prevail over any inconsistent provisions in Your agreement with the Xylem Partner.

11.5 Modifications to the EULA. Xylem may change this EULA or any of its components by updating this EULA at any time. Changes to the EULA apply to any Entitlements acquired or renewed after the date of modification.

11.6 Compliance with Laws.

a. General. Each party will comply with all laws and regulations applicable to their respective obligations under this EULA. Xylem may restrict the availability of Software in any particular location or modify or discontinue features to comply with applicable laws and regulations.

b. Data collection and transfer. If You use the Software in a location with local laws requiring a designated entity to be responsible for collection of data about individual end users and transfer of data outside of that jurisdiction (e.g., Russia and China), You acknowledge that You are the entity responsible for complying with such laws.

11.7 Export. Xylem's Software, products, technology and services (collectively the "**Xylem Products**") may be subject to applicable export control and sanctions laws. You acknowledge and agree to the applicability of and Your compliance with those laws, and You will not receive, use, transfer, export or re-export any Xylem Products in a way that would cause Xylem to violate those laws. You also agree to obtain any required licenses or authorizations.

11.8 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods, to the extent it may be deemed to apply, does not apply to this EULA or any Xylem Products provided hereunder. The parties agree that any dispute arising from this Agreement, in relation to its effectiveness, execution, performance, interpretation or any other matter, shall be submitted to the courts of the State of Texas, waiving any other jurisdiction.

11.9 Notice. The parties designate as their respective domicile for the purpose of notifications the one stated at the head of this contract, although they may modify it by means of a written notification sent to the other party in an irrefutable manner. Notifications shall always be made in writing and in an irrefutable manner.

11.10 Force Majeure. Except for payment obligations prevented by a financial system disruption, neither party will be responsible for failure to perform its obligations due to an event or circumstances beyond its reasonable control. Xylem shall promptly 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) in writing and describe at a reasonable level of detail the circumstances rise to the Force Majeure event.

11.11 No Waiver. Failure by either party to enforce any right under this EULA will not waive that right.

11.12 Severability. If any portion of this EULA is not enforceable, it will not affect any other terms.

11.13 Entire Agreement. This EULA along with the attached City of Denton contract and Service Provider's Quote are the complete agreement between You and Xylem regarding the subject matter of this EULA and supersedes all prior or contemporaneous communications, understandings or

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agreements (whether written or oral).

11.14 Translations. Xylem may provide local language translations of this EULA in some locations. You agree those translations are provided for informational purposes only and if there is any inconsistency, the English version of this EULA will prevail.

12. Definitions.

"**Affiliate(s)**" means any corporation or company that directly or indirectly controls, or is controlled by, or is under common control with the relevant party, where "control" means to: (a) own more than fifty percent (50%) of the relevant party; or (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).

"**Approved Source**" means Xylem or an Xylem Partner.

"**Authorized Third Parties**" means Your Users, Your Affiliates, Your third party service providers, and each of their respective Users, permitted to access and use the Software on Your behalf as part of Your Entitlement.

"**Confidential Information**" means non-public proprietary information of the disclosing party ("**Discloser**") obtained by the receiving party ("**Recipient**") in connection with this EULA, which:

a. is conspicuously marked as confidential, is summarized in writing to the Recipient within fourteen (14) days and marked as confidential.

"Delivery Date" means the date agreed upon in Your Entitlement, or if no date is agreed the earlier of the date Software is made available for download or installation, or the date that Xylem ships the tangible media containing the Software.

"**Documentation**" means the technical specifications and usage materials officially provided by Xylem specifying the functionalities and capabilities of the applicable Software.

"**Entitlement**" means the specific metrics, duration, and quantity of Software You commit to acquire from an Approved Source through individual acquisitions or Your participation in a Xylem buying program.

"**Malicious Code**" means code designed or intended to disable or impede the normal operation of, or provide unauthorized access to, networks, systems, Software other than as intended by Xylem.

"**Product Specific Terms**" means additional product related terms applicable to specific Xylem Products.

"**SaaS**" means a managed software as a service in which Xylem will be responsible for the day-to-day monitoring, maintenance, and management of certain software applications provided to You.

"**Upgrades**" means minor releases only unless a major release is expressly agreed upon.

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"**Usage Term**" means the period commencing on the Delivery Date and continuing until expiration or termination of the Entitlement, during which period You have the right to use the applicable Software.

"**User**" means the individuals (including contractors or employees) permitted to access and use the Software on Your behalf as part of Your Entitlement.

"**Xylem**" "**we**" "**our**" or "**us**" means the applicable Affiliate(s) of Xylem Inc.

"**Xylem Content**" means any:

a. content or data provided by Xylem to You as part of Your use of the Software; and

b. content or data that the Xylem generates or derives in connection with Your use of the Software.

Xylem Content also includes geographic and domain information, rules, signatures, threat intelligence and data feeds and Xylem's compilation of suspicious URLs.

"Xylem Partner" means a reseller, distributor or systems integrator authorized by Xylem to sell the Software.

"**Xylem Vue Software**" means the Applications, including Upgrades, firmware, and applicable Documentation defined in Exhibit I.

"**You**" means the individual or legal entity acquiring Usage Rights in the Software.

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EXHIBIT I: XYLEM VUE SOFTWARE

1. **Description of Software as a Service.**

This exhibit contains the details of the SaaS that Xylem shall provide to You if; (i) pricing for the application of SaaS has been provided to You; (ii) the application is selected with a checkmark below, and (iii) You are current in payments to the Approved Source for such selected application of SaaS.

A. **Software as a Service Generally.**
In a Software as a Service solution, Xylem owns all components of the solution (Infrastructure, operative systems, storage and all third-party software) required to run and operate the application. These software applications consist of the following (each an "Application"):

1. **Smart Water Engine:**
   - ☒ Domain Master Data
   - ☐ Device Management
   - ☐ Iot Core
   - ☐ Portal
2. **Operational Intelligence:**
   - ☐ Service Operations Center
3. **Agriculture Applications:**
   - ☐ AgroTwin
4. **Cross Applications:**
   - ☐ Billing
   - ☐ WorkOrders
5. **Drinking Water Applications:**
   - ☐ Early Warning System
   - ☒ Leak Detection
   - ☒ Meter Data Analytics
   - ☐ Meter Asset Management
   - ☐ Network Real-Time Decision Support
   - ☐ Pipe Planner
   - ☐ Plant Management
   - ☒ Unified Network Management
6. **Wastewater Applications:**
   - ☐ Biological Monitoring
   - ☐ Clog Monitoring
   - ☒ Plant Management
   - ☒ Real Time & What If Scenario
   - ☐ SewerProtect
   - ☐ SewerTracker
   - ☒ Unified Network Management

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EXHIBIT II: TECHNICAL SUPPORT

1. Description of the Service

The Technical Support Service aims to ensure that any incidents that users may encounter while using the solutions provided by Xylem are resolved as quickly as possible. The support and maintenance service are structured into two levels to ensure agility in the incident resolution process. These levels correspond to the different Specialist's teams:

- **Level 1 or Customer Service**: The team that is in contact with the users will register the ticket, in case it is not submitted through the ticketing tool. Additionally, they will perform an initial diagnosis, informing the user about the possible problem and the resolution timelines. This team is responsible for responding to customer inquiries within the agreed timeframe. In the case of incidents, they are responsible for detecting them, escalating them to the team responsible for resolving them.

- **Level 2/Level 3 or Specialist Teams**: These are specialized teams responsible for resolving problems reported by users, according to their area of expertise. This level is composed of different teams or areas that are involved in the development and implementation process of Xylem Vue Software: analysts, data scientists, product development, implementation, infrastructure administrators, deployment, DevOps, etc.

End users can refer to the provided manuals and other materials to address their queries. If they require additional support or encounter abnormal behaviour in the solution, they should report it to the key users of the client, if any.

Key users will analyse the need and respond based on their knowledge of the application. If they cannot resolve the query or if there is an incident (abnormal behaviour of the solution), they should escalate the query or incident through any established channels.

The Level 1 technician will analyse and diagnose the problem.

- If more information is required in the ticket, it will be requested from the key user who reported it through the ticketing tool. If the user needs to be informed through another available communication channel, communication will take place through that channel.
- Once the client has the necessary information, the Level 1 technician will either resolve the problem or escalate it to the specialist team.
- Once the ticket has been resolved by Xylem (both by L1 and L2/L3), they will validate the solution and inform the key user who raised the ticket through the ticketing tool.

The specialist team (L2/L3 teams) will analyse the escalated tickets and provide a solution.
Once the ticket is resolved, the Level 1 team will validate the solution and send the resolution to the user who reported the ticket.

2. Technical Support Organization

The organization is service-oriented with a multidisciplinary team of Level 1 technicians will be responsible for addressing user needs. The team has extensive training in both technical competencies and skills to manage customer relationships in any situation and to communicate information clearly and effectively to all users. The Level 1 technicians available in the Customer Service team have extensive training in technical and functional competencies, both in the ITIL methodology and in the implemented

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solutions. This team works under the supervision of the Support Area Manager, who will always maintain direct contact with the client to provide the required information.

3. **Technical Support Process**

The Maintenance and Support service includes all the necessary software and maintenance operations for the proper functioning of the IT infrastructure covered by the service to be provided. These tasks are grouped into:

- Operational Support
- Corrective Maintenance
- Evolutionary Maintenance
- Preventive Maintenance

The maintenance and operational support service does not include the following:

- Support for any element unrelated to the IT infrastructure covered by the service.
- Acquisition and purchase of hardware infrastructure elements.
- Acquisition and purchase of software licenses.
- Training services.
- Support services for operating system installations, installations, and configurations of third-party applications, operating system configurations, hardware configurations, network installations and configurations, equipment optimization, etc.

Operational Support

The support for the daily operation includes the resolution of queries or doubts made by the client regarding the operation of the software object of the service. The consultations should be specific, and in no case will they consist of training by phone, email or face-to-face. The client will use the communication mechanisms established in the service to inform Xylem of the query.

Corrective Maintenance

Corrective maintenance includes the necessary activities to resolve incidents or anomalies and ensure the proper functioning of the Xylem Vue Software.

Innovative Maintenance

Evolutionary maintenance includes the activities necessary to incorporate new functionalities or improvements in the Xylem Vue Software. These activities involve the release of Updates or Upgrades of the System by Xylem to the client.

4. **Communication Channels.**

The end user will have access to the Customer Service Portal so that they can register and manage their support requests. Additionally, there are other communication channels with the client, such as phone, Teams channel, email, or chat box, depends on the need of the client. The client should preferably submit their request through the Customer Service Portal, providing as much information as possible to enable a quick diagnosis of their query or incident.

5. **Service Location.**

The Technical Support Services may be provided at the client's premises, or at the premises of any of its respective collaborating companies or suppliers, as necessary. However, this service will retain full

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autonomy and organization, without implying the existence of any dependency or inclusion within the scope of the client's organization and management.

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Explore the power of Xylem Vue by scanning this QR code

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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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INSURANCE REQUIREMENTS
Exhibit E

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, Service Provider 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. Service Provider may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Service Providers 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. Service Provider 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.
- Liability policies shall be endorsed to provide the following:
    - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.

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- 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 thirty (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, Service Provider shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three (3) 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 Service Provider shall either double the occurrence limits or obtain Owners and Service Providers 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 Service Providers, and Contractual Liability with combined bodily injury (including death) and property damage limits of $2,000,000.00 per occurrence and $4,000,000.00 general aggregate.

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B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The policy limits for **Employers Liability** are:

Bodily Injury by Accident: $500,000.00 Each Accident
Bodily Injury by Disease: $500,000.00 Each Employee
Bodily Injury by Disease: $500,000.00 Policy Limit

NOTES:

a. If SERVICE PROVIDER will not be providing services under the Contract at a City facility, has no employees and/or is operating as a sole owner and single operator, SERVICE PROVIDER shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If SERVICE PROVIDER is a non-subscriber or is self-insured SERVICE PROVIDER shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a combined single limit for bodily injury (including death) and property damage limit of $1,000,000 per occurrence.

NOTE:

a. If SERVICE PROVIDER does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the Contract, SERVICE PROVIDER shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

D. PROFESSIONAL LIABILITY INSURANCE

If SERVICE PROVIDER is a licensed or certified person who renders professional services, then **Professional Liability Insurance** to provide coverage against any claim which the SERVICE PROVIDER becomes legally obligated to pay as damages arising out of the performance of professional services caused by any negligent error, omission or act with limits of $2,000,000.00 per claim, $4,000,000.00 annual aggregate.

SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the SERVICE

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PROVIDER, the SERVICE PROVIDER 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 SERVICE PROVIDER as an additional insured.

(2) SERVICE PROVIDER shall obtain and monitor the certificates of insurance from each Subcontractor. SERVICE PROVIDER 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.**

Xylem Vue 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: Rocio Echeverria 34FD70376BEA44C...

Signature of vendor doing business with the governmental entity

3/9/2026

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: 82981048-EFE7-40E4-BE84-3530C4DAEC71
Status: Sent
Subject: Please DocuSign: City Council Contract 8931 Water Utility Monitoring & Data Analytics Project
Source Envelope:
Document Pages: 76
Signatures: 4
Envelope Originator:
Certificate Pages: 6
Initials: 1
Gabby Leeper
AutoNav: Enabled
901B Texas Street
EnvelopeId Stamping: Enabled
Denton, TX 76209
Time Zone: (UTC-06:00) Central Time (US & Canada)
Gabby.Leeper@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
3/3/2026 1:07:33 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: 198.49.140.104	Sent: 3/3/2026 1:08:49 PM Viewed: 3/3/2026 1:10:29 PM Signed: 3/3/2026 1:10:44 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: 3/3/2026 1:10:48 PM Viewed: 3/3/2026 1:12:33 PM Signed: 3/3/2026 1:13:11 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: 3/3/2026 1:13:30 PM Viewed: 3/6/2026 2:41:25 PM Signed: 3/9/2026 10:29:54 AM
Rocio Echeverria Rocio.Echeverria@xylem.com SVP, General Manager - MCS Water Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/9/2026 11:50:34 AM ID: de2fb1d6-1a79-4410-b141-5ae9efef9fc7	Signed by: Rocio Echeverria 34FD70376BEA44C... Signature Adoption: Pre-selected Style Using IP Address: 174.168.119.157	Sent: 3/9/2026 10:30:00 AM Viewed: 3/9/2026 11:50:34 AM Signed: 3/9/2026 12:51:58 PM

Signer Events	Signature	Timestamp
Stephen D. Gay Stephen.Gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/9/2026 2:16:29 PM ID: de9ff6cb-8d36-4f95-87b8-c3e75a1791fc	Signed by: FEB48BB9726E4A9... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/9/2026 12:52:06 PM Viewed: 3/9/2026 2:16:29 PM Signed: 3/9/2026 2:20:33 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: 3/9/2026 2:20:41 PM
Cassandra Ogden Cassandra.Ogden@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/12/2026 5:00:16 PM ID: 0c4dbe9c-18c0-433a-8b34-ef6d70091ffd		
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: 3/3/2026 1:10:48 PM

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign	COPIED	Sent: 3/9/2026 2:20:40 PM Viewed: 3/10/2026 9:47:50 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via Docusign		
David Brown David.Brown@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 3/4/2026 7:56:52 AM ID: cf0f3174-8f0b-4389-b353-a13ca4b5fc0a		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/3/2026 1:08:49 PM
Envelope Updated	Security Checked	3/4/2026 11:07:07 AM
Envelope Updated	Security Checked	3/6/2026 2:54:27 PM
Envelope Updated	Security Checked	3/6/2026 2:54:27 PM
Envelope Updated	Security Checked	3/6/2026 2:54:27 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.

Denton Municipal Electric
1659 Spencer Rd., Denton, TX 76205 • (940) 349-8009

MEMORANDUM

DATE: March 31, 2026

TO: Antonio Puente, Jr., DME General Manager

FROM: Stuart Birdseye, External Affairs Administrator/PIO

SUBJECT: Tree Line USA Recognition

I am pleased to inform you that Denton Municipal Electric (DME) has been recognized as a Tree Line USA utility by the Arbor Day Foundation for the fourth consecutive year. The Tree Line USA program recognizes utilities for best practices in tree care, worker training, and community engagement, and promotes safe, reliable service and healthier urban forests.

To qualify as a Tree Line USA, DME showed commitment to the program's five core principles:

- Following industry standards for quality tree care,
- Providing annual worker training in best tree care practices,
- Sponsoring a tree planting and public education program,
- Maintaining a tree-pased energy conservation program; and,
- Participating in an Arbor Day celebration.

DME is proud of this achievement, and worked toward these principles through our annual staff training, sponsorsoring and participating in Keep Denton Beautiful's tree programs including the annual Tree Giveaway and Denton Redbud Festival. We also distribute proper tree planting and maintenance information throughout the year.

As the Arbor Day Foundation notes, Trees make communities more livable. They clean the air, cool cities, and provide physical and mental health benefits for people. When the right trees are planted in the right places, they also shade homes and businesses and help reduce the demand on energy during peak service hours, ultimately lowering energy costs for residents. The proper maintenance of trees can also increase the reliability of utility services during strong storms, as properly maintained trees result in fewer downed lines.

Tree Line
— USA —
Arbor Day Foundation

Denton Municipal Electric
1659 Spencer Rd., Denton, TX 76205 • (940) 349-7591

MEMORANDUM

DATE: April 13, 2026

TO: Members of the Public Utilities Board

FROM: Melissa Cuevas, Division Manager of Business Services

SUBJECT: Electric Rates Comparison

As requested by PUB Chair Devin Taylor, DME staff is providing the latest electric rates comparison as of April 2026.

Denton Municipal Electric (DME) conducts quarterly rates comparisons to benchmark its rates against municipal-owned utilities (MOUs), electric cooperatives (co-ops), and investor-owned utilities (IOUs) across Texas. DME investigates rates across four customer classes: Residential, General Service Small (GSS), General Service Medium (GSM), and General Service Large (GSL).

To provide a consistent and transparent method for evaluating DME's competitiveness and understanding how rate adjustments impact customers, comparisons use average kWh (kilowatt-hour), kW (kilowatt), and kVA (kilovolt-ampere). These values derive from DME's internal customer base and apply them to the posted rates of peer utilities and private enterprises, including all applicable riders and rate structures.

Exhibit A illustrates where DME ranks for each customer class previously mentioned.

Energy Cost Adjustment and Transmission Cost Recovery Factor Rates

DME also reviews the Energy Cost Adjustment (ECA) and the Transmission Cost Recovery Factor (TCRF) on a quarterly basis to ensure cost recovery associated with energy delivery and transmission service. The ECA rate is calculated as $/kWh across all customer classes. The TCRF rate is calculated as $/kWh for Residential and General Service Small, $/kW for General Service Medium, and $/kVA for General Service Large.

Staff has determined the TCRF will decrease to reflect updated transmission charges, effective April 1, 2026. The table below summarizes the ECA and TCRF rates by customer class since 10/01/2023:

Month/Year	ECA	Res TCRF	GSS TCRF	GSM TCRF	GSL TCRF
Oct-23	$0.0341	$0.00	$0.00	$0.00	$0.00
Apr-24	$0.0447	$0.0135	$0.0135	$3.85	$5.34
Aug-24	$0.0515	$0.0135	$0.0135	$3.85	$5.34
Dec-24	$0.0462	$0.0176	$0.0176	$5.02	$6.95
Apr-26	$0.0462	**$0.0156**	**$0.0156**	**$4.45**	**$6.16**

Denton Municipal Electric
1659 Spencer Rd., Denton, TX 76205 • (940) 349-7591

Average Monthly Impact

The table below summarizes the average billed amount history by customer class.

Average Billed Amount

Customer Class	Oct-23	Apr-24	Aug-24	Dec-24	Apr-26
Residential	$106.59	$131.76	$138.56	$137.36	$135.36
General Service Small	$147.95	$176.16	$183.65	$182.33	$180.13
General Service Medium	$1,360.96	$1,704.20	$1,797.48	$1,780.94	$1,753.58
General Service Large	$28,002.39	$36,509.91	$38,838.27	$38,419.39	$37,734.46

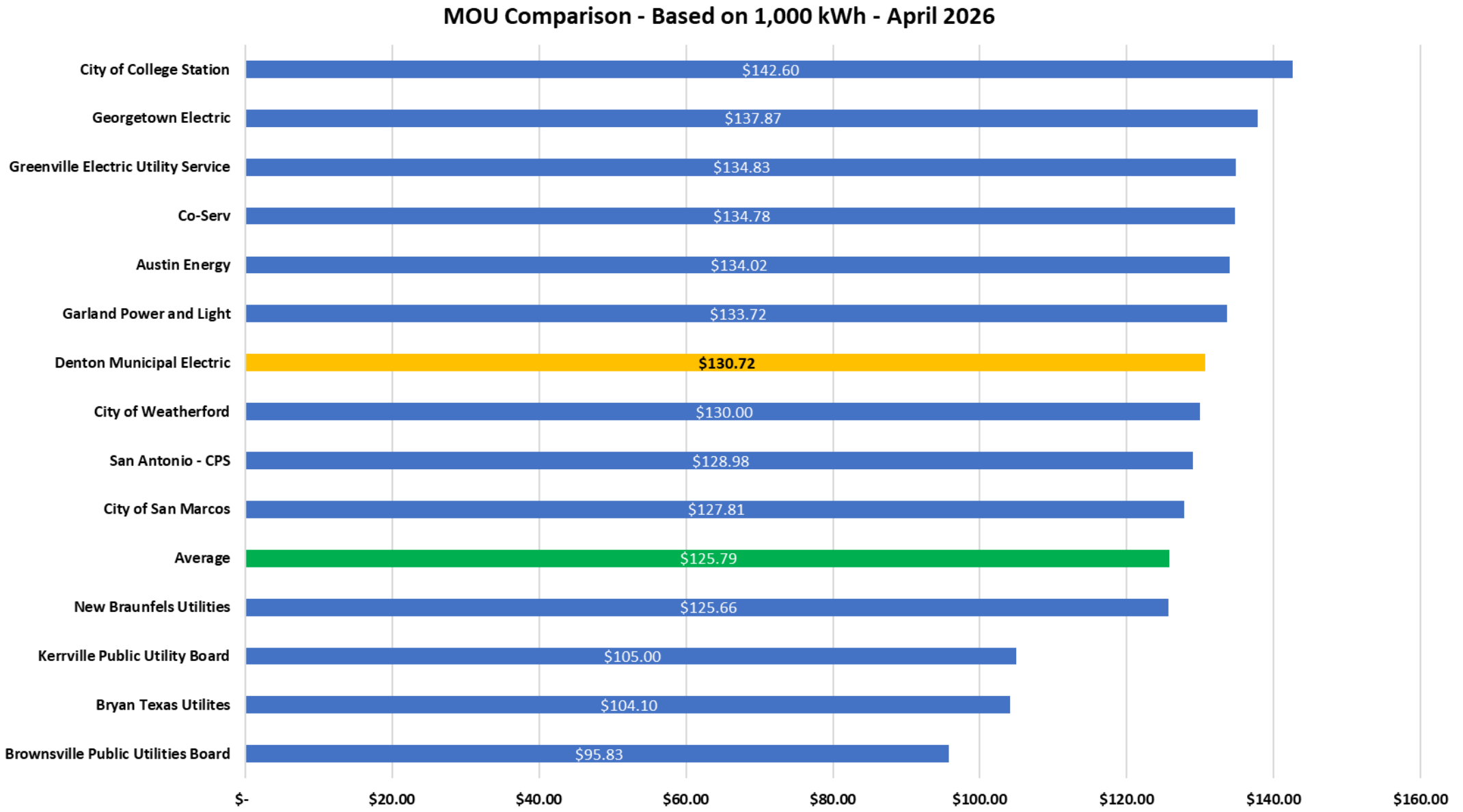
These changes reflect the combined effects of ECA fluctuations and TCRF adjustments over the review period. Including the proposed April 2026 TCRF update, the past two years represent an average 1.2% decrease for DME customers.

Prepared By:
John Lockwood, Business Analyst

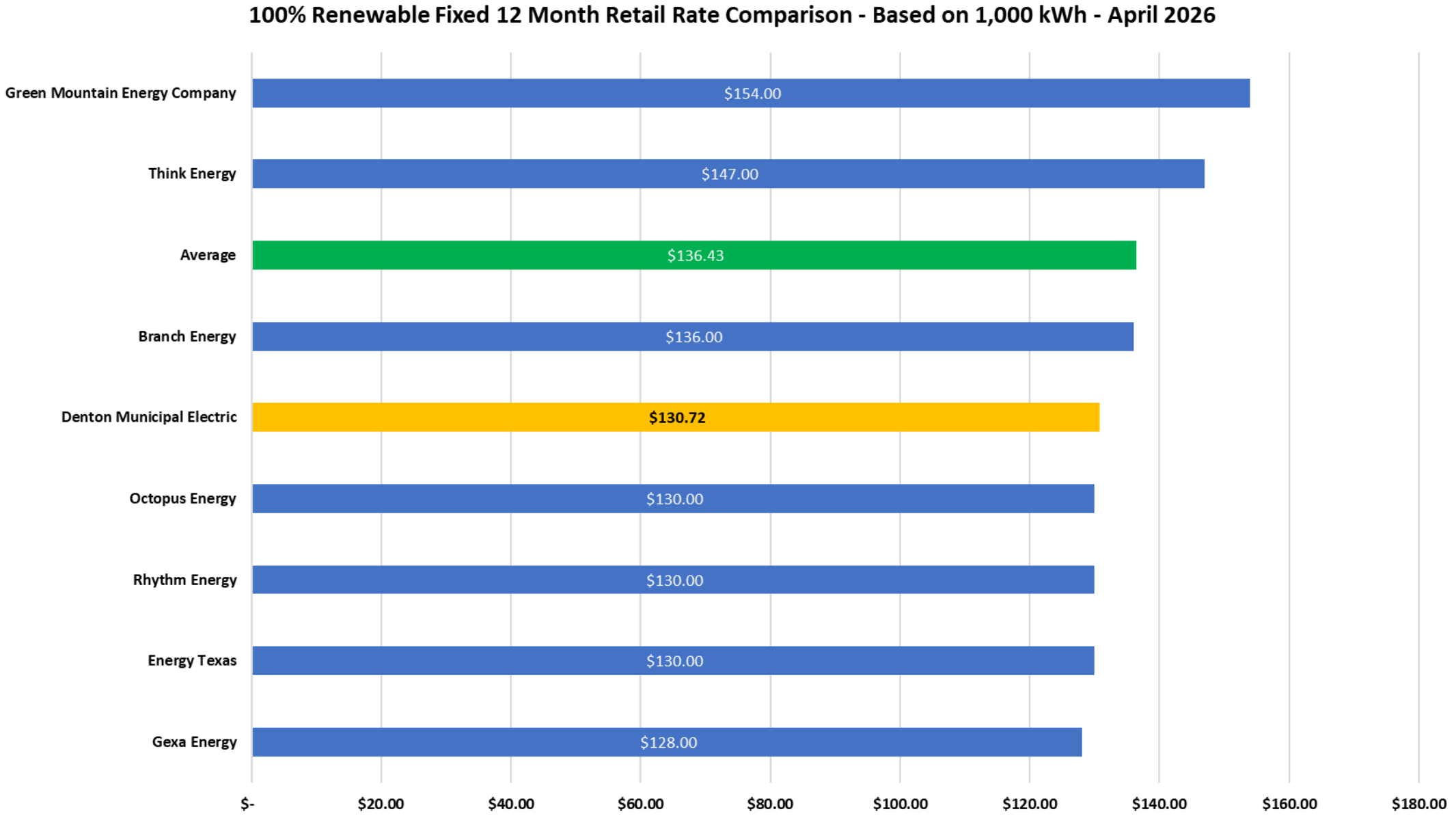
April 2026
Rates Comparison

DENTON
MUNICIPAL
ELECTRIC

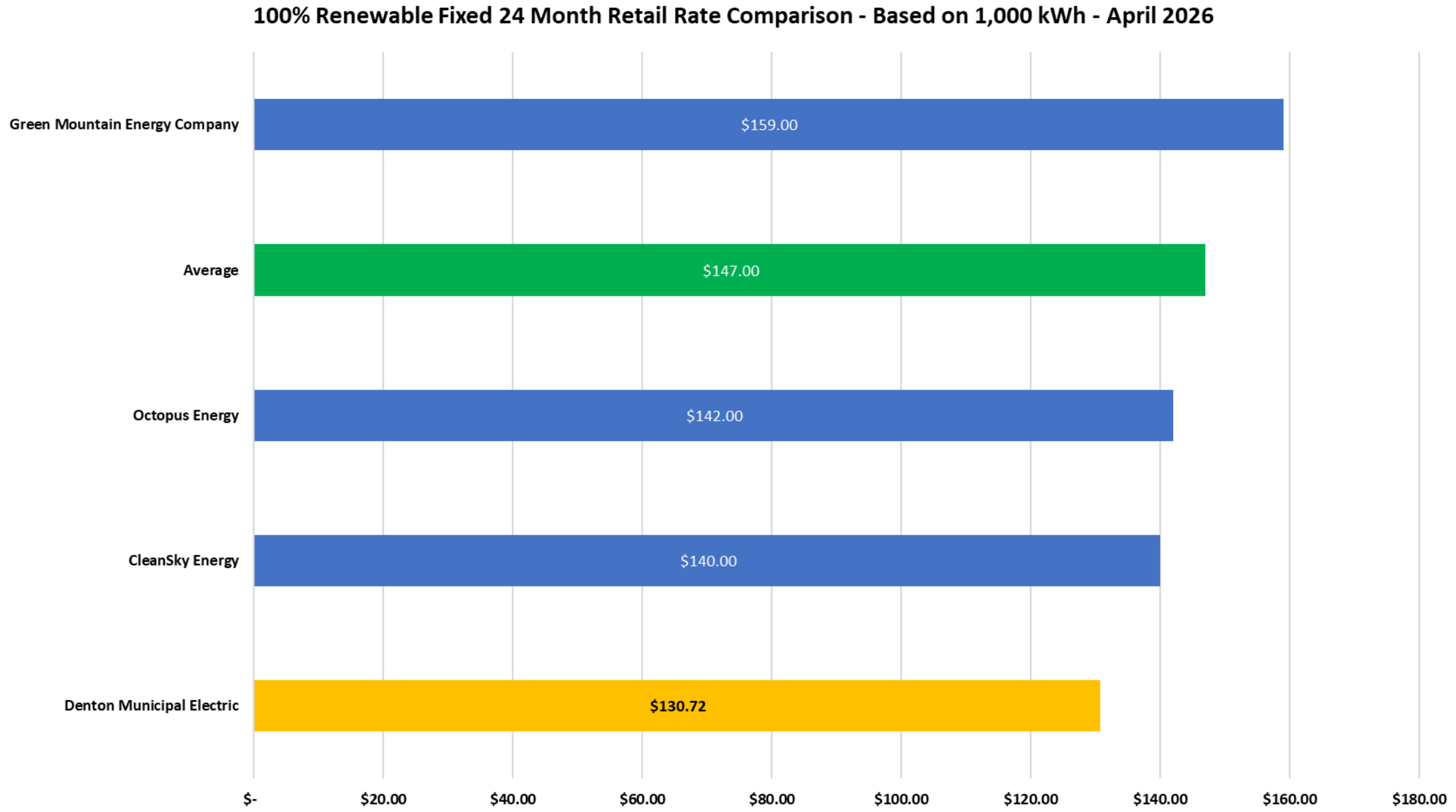
Residential - MOU



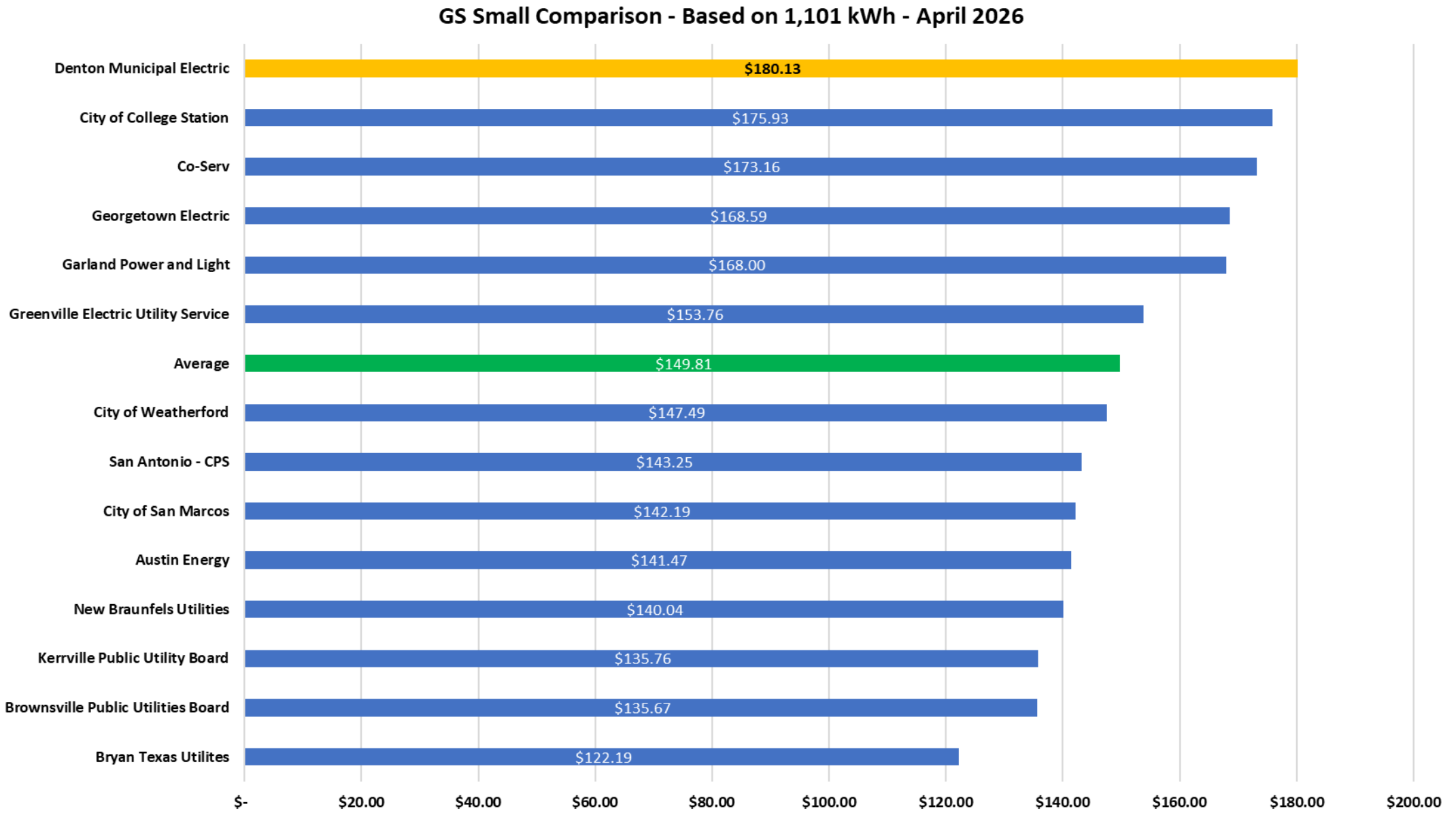
Residential - IOU



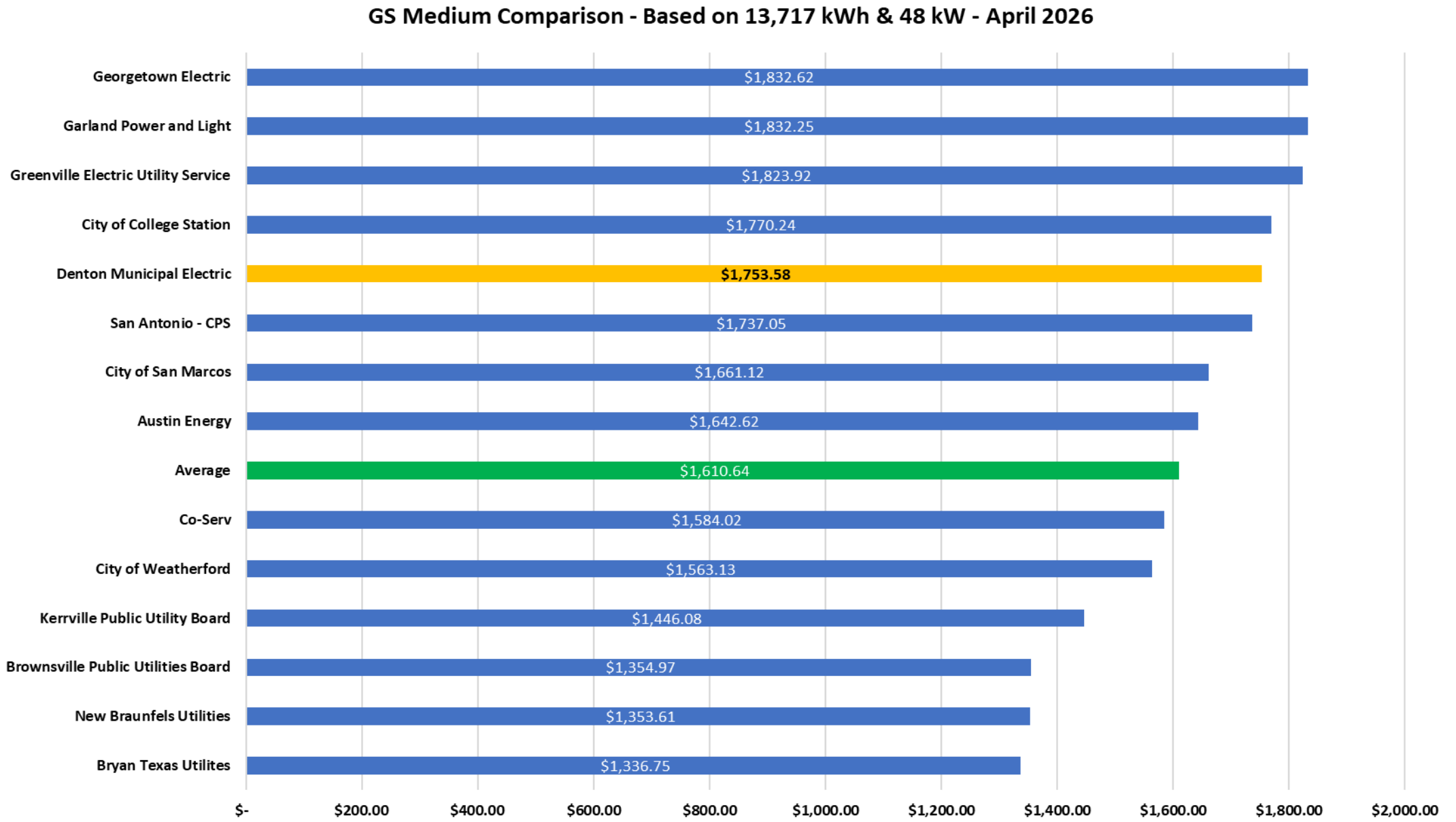
Residential - IOU



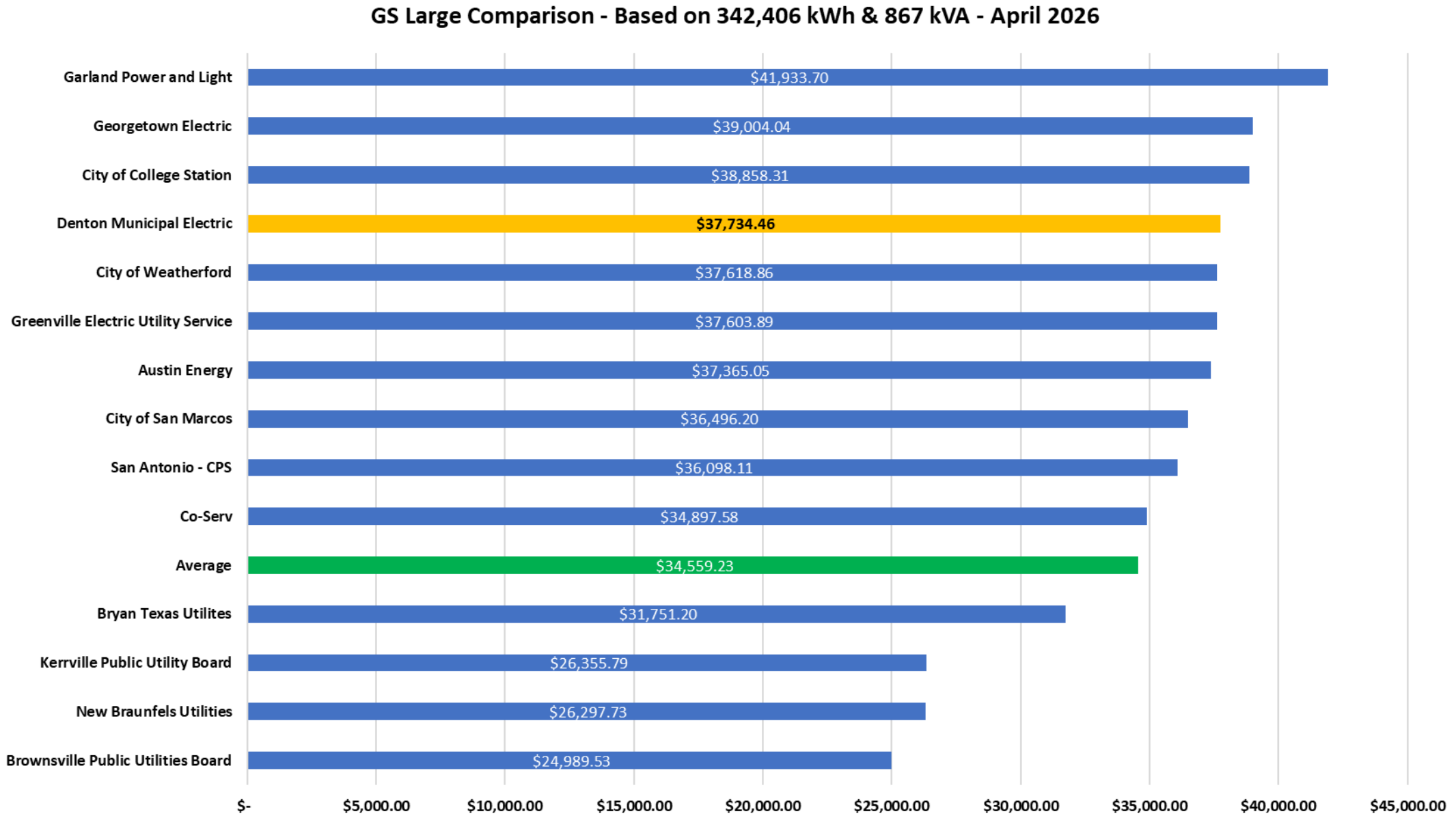
GS Small


GS Small Comparison - Based on 1,101 kWh - April 2026
Denton Municipal Electric
$180.13
City of College Station
$175.93
Co-Serv
$173.16
Georgetown Electric
$168.59
Garland Power and Light
$168.00
Greenville Electric Utility Service
$153.76
Average
$149.81
City of Weatherford
$147.49
San Antonio - CPS
$143.25
City of San Marcos
$142.19
Austin Energy
$141.47
New Braunfels Utilities
$140.04
Kerrville Public Utility Board
$135.76
Brownsville Public Utilities Board
$135.67
Bryan Texas Utilites
$122.19
$-
$20.00
$40.00
$60.00
$80.00
$100.00
$120.00
$140.00
$160.00
$180.00
$200.00

GS Medium


GS Medium Comparison - Based on 13,717 kWh & 48 kW - April 2026
Georgetown Electric
$1,832.62
Garland Power and Light
$1,832.25
Greenville Electric Utility Service
$1,823.92
City of College Station
$1,770.24
Denton Municipal Electric
$1,753.58
San Antonio - CPS
$1,737.05
City of San Marcos
$1,661.12
Austin Energy
$1,642.62
Average
$1,610.64
Co-Serv
$1,584.02
City of Weatherford
$1,563.13
Kerrville Public Utility Board
$1,446.08
Brownsville Public Utilities Board
$1,354.97
New Braunfels Utilities
$1,353.61
Bryan Texas Utilites
$1,336.75
$-
$200.00
$400.00
$600.00
$800.00
$1,000.00
$1,200.00
$1,400.00
$1,600.00
$1,800.00
$2,000.00

GS Large


GS Large Comparison - Based on 342,406 kWh & 867 kVA - April 2026
Garland Power and Light
$41,933.70
Georgetown Electric
$39,004.04
City of College Station
$38,858.31
Denton Municipal Electric
$37,734.46
City of Weatherford
$37,618.86
Greenville Electric Utility Service
$37,603.89
Austin Energy
$37,365.05
City of San Marcos
$36,496.20
San Antonio - CPS
$36,098.11
Co-Serv
$34,897.58
Average
$34,559.23
Bryan Texas Utilites
$31,751.20
Kerrville Public Utility Board
$26,355.79
New Braunfels Utilities
$26,297.73
Brownsville Public Utilities Board
$24,989.53
$-
$5,000.00
$10,000.00
$15,000.00
$20,000.00
$25,000.00
$30,000.00
$35,000.00
$40,000.00
$45,000.00

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
April 13, 2026	Water/Wastewater Quarterly Report	Water
April 27, 2026		
May 4, 2026		
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 4/13/26, 6/22/26, 9/28/26, 12/14/26
2.	2/23/26	Taylor	Comparison of Electric Commercial Rates	Electric	4/13/26

City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: **Finance**

ACM: **Christine Taylor**

DATE: **April 13, 2026**

SUBJECT

Receive a report, hold a discussion, and give staff direction on the City's financial policies.

BACKGROUND

The purpose of this item is to undertake an effort to formalize and centralize the City's financial governance structure by developing a comprehensive financial policy. The existing approach, while functional, relies on multiple independent practices, shorter-range forecasts, and fund-by-fund assessments without an overarching framework. The Government Finance Officers Association (GFOA), along with the American Water Works Association (AWWA) and American Public Power Association (APPA), strongly recommend that governments adopt written policies that define long-term financial planning assumptions, reserve requirements, capital reinvestment strategies, rate-setting principles, and links between revenues and expenses. A unified policy will ensure consistency, transparency, fiscal resilience, and compliance with financial standards.

The development and implementation of a comprehensive financial policy is estimated to take approximately 12 to 18 months. Periodic updates to the Public Utilities Board (PUB) and City Council will be provided at key milestones throughout the process for feedback and direction.

RECOMMENDATION

Staff recommends moving forward with the development of a comprehensive financial policy.

EXHIBITS

Exhibit 1 – Agenda Information Sheet
Exhibit 2 – Presentation

Respectfully submitted:
Matt Hamilton
Chief Financial Officer

Financial Policies

Strategies for Stability, Resiliency, and Growth

Matt Hamilton, CFO

Finance Department

April 13, 2026

PUB 26-052 4/13/2026

Financial Objectives

- Establish a comprehensive financial policy outlining strategies for:
  - Long-term financial planning
  - Reserve funds
  - Capital & reinvestment
  - Cost-of-service-based rates
  - Linking specific revenues to expenditures
  - Incremental rate adjustments to avoid spikes
  - Competitive rate benchmarking

- Ensure compliance with federal & state laws, accounting and financial standards.
- Ensure alignment with the Government Finance Officers Association (GFOA), American Water Works Association (AWWA), and American Public Power Association (APPA) best practices.
- Enhance financial position of the City and support high credit ratings.
- Provide a centralized framework for financial policies within the City.

PUB 26-052 4/13/2026

Long-Term Financial Planning

- Establish longer-term financial forecasts (e.g., 10-year proforma).
  - Currently 5-year forecasts are developed, with a focus only on the next fiscal year.
  - GFOA recommends a financial plan greater than 5 years for all governments that utilize debt financing and/or utility rate setting.

  - Define specific forecast assumptions supported by available data, including:
    - Population/customer growth
    - Volume/demand growth
    - Inflation
    - Service levels
    - Staffing levels
    - Rate changes
    - Capital projects
    - Reserve balances

- Identify structural imbalances early and develop strategies to address them proactively.

PUB 26-052 4/13/2026

Reserve Funds Policy (402.05)

- GFOA recommends that governments establish a formal policy on the level of unrestricted fund balance that should be maintained in the general fund for GAAP and budgetary purposes.

- Reserves should provide financial stability, protect against revenue volatility, and ensure continuity of services during economic downturns or emergencies.

- Review reserve fund levels for the major funds (General Fund, Electric, Water, Wastewater, & Solid Waste) to ensure operating reserves are sufficient to meet operating needs and industry standards.

- Clearly delineate the role and use of Working Capital Reserves and Operating Reserves.
  - Working Capital: Provides short-term support for fluctuations in day-to-day operations.
  - Operating Reserve: Provides long-term support for rate stabilization and emergencies.

- Establish fund targets for internal service funds and the Airport.

Capital & Reinvestment Policies

GFOA recommends a written policy addressing capital asset reserves for renewal and replacement. The City does not currently have an adopted policy.

1. Establish funding strategy based on the type of asset and life-cycle.
    - Cash Funding: Preferred for existing, recurring replacements and short-lived assets.
    - Debt Funding: Reserved for new capacity or long-lived assets.

2. Establish depreciation-based funding.
    - Cash funding for asset replacement aligned with annual depreciation.
        - This ensures a reserve is available to replace assets at the end of their useful life.
        - Proceeds from the sale of assets are used to replace similar assets.
        - Inflation adjusted to assume true replacement cost will exceed the original asset cost.

3. Establish an integration with the Long-Term Financial Planning strategy.
    - Track reinvestment ratio (annual capital spending / depreciation expense)
    - Periodically evaluate deferred maintenance cost vs. proactive reinvestment

PUB 26-052 4/13/2026

Revenue & Expense Policies

GFOA recommends adopting strong policies to maintain a structurally balanced budget.

Outline and document specific links between revenue and expenses in financial forecasting.

- Impact Fee Reserve → Offset debt service for impact fee-eligible projects.
- Vehicle Replacement Fund → Fund fleet purchases and replacements.
- Energy Cost Adjustment (ECA) → Recover net power costs.
- Transmission Cost Recovery Factor (TCRF) → Recover transmission costs.

Identify which revenues are restricted, committed, or designated for specific expenses.

- How surplus or deficits will be managed.
- How compliance will be monitored and reported. Including language on excess funds (e.g., surplus ECA collections) and how they will be applied (rate stabilization).

Establish an integration with the Long-Term Financial Planning strategy.

- Track alignment with state law, bond covenants, utility standards, and GASB accounting standards.

PUB 26-052 4/13/2026

Incremental Rate Adjustments

Rate adjustments should be based on multi-year financial forecasts (e.g., 5–10 years) that incorporate:

- Operating and capital needs
- Reserve targets
- Debt service obligations
- Inflation and growth assumptions

Gradual Adjustments – Tied to long-term planning to provide predictable annual increases rather than infrequent large spikes.

Review fee adjustments annually to ensure alignment with actual cost of service.

Target adjustments that maintain compliance with:

- Cost-of-service principals
- Debt coverage ratios
- Reserve policies

PUB 26-052 4/13/2026

Benchmarking

Identify and document comparable utilities based on:

- Service type (electric, water, wastewater, solid waste)
- Size (customer base, units of infrastructure, staffing)
- Regional and state context
- Ownership type (municipal vs. investor-owned)

Identify and document comparable metrics based on:

- Average residential, commercial, and industrial rates.
- Total bill comparison for typical usage levels.
- Rate structure differences (fixed vs. variable components).
- Affordability indicators (e.g., % of median household income).

Data Sources

- Industry associations (AWWA, APPA), State regulatory filings, consultant studies, publicly available rate schedules

Implementation

Phase 1 — Framework & Direction (0–3 Months)

- Council confirmation to establish a comprehensive financial policy.
- Finalize definitions for reserves, capital reinvestment, revenue/expense policies, and benchmarking.
- Begin development of the 10-year long-term financial forecasts.

Phase 2 — Technical Development (3–9 Months)

- Build and validate long-range forecasts through the budget process.
- Develop reserve targets for all major funds and internal service funds.
- Develop depreciation-based reinvestment strategy and capital funding framework.
- Document revenue-expense linkages and restrictions.
- Compile benchmarking datasets.

PUB 26-052 4/13/2026

Implementation

Phase 3 — Policy Adoption & Integration (9–15 Months)

- Present draft policies to Council; incorporate feedback.
- Integrate adopted policies into FY 2027-28 budget development.
- Establish compliance and monitoring dashboards (reserves, rate path, reinvestment ratios).

Phase 4 — Ongoing Monitoring (15–24 Months)

- Implement incremental rate adjustment strategy.
- Perform annual reserve adequacy review.
- Evaluate reinvestment ratio and deferred maintenance.
- Conduct annual benchmarking as part of budget process.

Updates on the progress of the comprehensive financial policy initiative will be provided to PUB and Council at key development milestones for feedback.

Next Steps

- April 13, 2026: PUB recommendation on the establishment of a comprehensive financial policy.
- April 21, 2026: City Council direction on the establishment of a comprehensive financial policy.

Questions