



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Meeting Agenda Public Utilities Board

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Monday, April 14, 2025

9:00 AM

Council Work Session Room

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### **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 14, 2025, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

### **REGULAR MEETING**

#### **1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC**

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

#### **2. CONSENT AGENDA**

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

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

- A. [PUB25-047](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas

home-rule municipal corporation, authorizing the approval of a fourth amendment to a Professional Services Agreement between the City of Denton and Halff Associates, Inc., amending the contract approved by City Council on November 15, 2022, in the not-to-exceed amount of \$1,144,280.00; amended by Amendments 1-3 approved by the City Council and Purchasing; said fourth amendment to provide for the design, bidding, construction engineering services and FEMA application fees for a Conditional Letter of Map Revision (CLOMR) and a Letter of Map Revision (LOMR) in relation to the Westgate Drive Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7599-011 - providing for an additional fourth amendment expenditure amount not-to-exceed \$81,690.00, with the total contract amount not-to-exceed \$1,287,970.00).

**Attachments:**

[Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Original Ordinance, Contract, and Amendments 1-3](#)

[Exhibit 3 - Ordinance and Amendment 4](#)

- B. [PUB25-049](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute Change Order No. 3 to the contract between the City of Denton and Sundt Construction, Inc., for the Bonnie Brae Phase 3 Widening and Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8094-1 - Change Order No. 3 in the not-to-exceed amount of \$2,388,362.16, for a total contract award aggregated to \$42,707,207.63).

**Attachments:**

[Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Original Ordinance, Contract, and Change Order Nos. 1-2](#)

[Exhibit 3 - Ordinance and Change Order No. 3](#)

- C. [PUB25-050](#) 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 Carollo Engineers, Inc., for engineering services at the Lake Lewisville Water Treatment Plant for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8213-004 - Professional Services Agreement for engineering services awarded to Carollo Engineers, Inc., in the not-to-exceed amount of \$958,760.00).

**Attachments:**

[Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Ordinance and Contract](#)

- D. [PUB25-051](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute Change Order No. 1 to the contract between the City of Denton and Texas Materials Group, Inc., for the construction of the Robinwood Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8586 - Change Order No. 1 in the not-to-exceed amount of \$301,421.50, for a total contract award aggregated to \$3,097,446.88).

**Attachments:**      [Exhibit 1 - Agenda Information Sheet](#)  
                                 [Exhibit 2 - Original Ordinance and Contract](#)  
                                 [Exhibit 3 - Ordinance and Change Order No. 1](#)

- E.    [PUB25-053](#)    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 Altec Industries, Inc., for Altec branded equipment inspections, maintenance, and repairs for the Fleet Services Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8757 - awarded to Altec Industries, 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 \$780,000.00).

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

### 3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A.    [PUB25-058](#)    Consider approval of March 24, 2025, minutes.

**Attachments:**      [3.24.25 PUB Minutes](#)

- B.    [PUB25-046](#)    Consider recommending approval of a resolution of the City Council of the City of Denton, Texas approving the sale of certain transmission system assets by the Texas Municipal Power Agency (“TMPA”); and providing an effective date.

**Attachments:**      [Exhibit 1 - Agenda Information Sheet](#)  
                                 [Exhibit 2 - TMPA Resolution No 2025-3-4](#)  
                                 [Exhibit 3 - Resolution](#)  
                                 [Exhibit 4 - Presentation](#)

- C.    [PUB25-048](#)    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 Mountain Cascade of Texas, LLC, for the construction and movement of public water/wastewater utilities in support of TxDOT’s IH-35 and FM 1173 widening from US 288 to Ganzer Road for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7968-005 - awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$16,029,149.85).

**Attachments:**      [Exhibit 1 - Agenda Information Sheet](#)  
                                 [Exhibit 2 - Bid Tabulation](#)  
                                 [Exhibit 3 - Presentation](#)  
                                 [Exhibit 4 - Ordinance and Contract](#)

- D.    [PUB25-052](#)    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 Kirby-Smith Machinery, Inc., through the Buy Board Cooperative Purchasing Network Contract Nos. 685-22, 687-22, and 740-24, for the purchase, repairs, and rental of construction equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (File 8786 - awarded to Kirby-Smith Machinery, 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 \$7,749,000.00).

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

- E.    [PUB25-056](#)    Management Reports
1.   Southeast Denton Package B Change Order Inquiry
  2.   Future Agenda Items
  3.   New Business Action Items

**Attachments:**      [1. Southeast Denton Package B Change Order Inquiry](#)  
                                 [2. Future Agenda Items](#)  
                                 [3. New Business Action Items](#)

#### 4. CONCLUDING ITEMS

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

#### CERTIFICATE

I certify that the above notice of meeting was posted on the official website (<https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>) and bulletin board at City Hall, 215 E. McKinney Street, Denton, Texas, on April 10, 2025, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

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OFFICE OF THE CITY SECRETARY



NOTE: THE CITY OF DENTON'S DESIGNATED PUBLIC MEETING FACILITIES ARE ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE ACCOMMODATION, SUCH AS SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED, IF REQUESTED AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 940-349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATION CAN BE ARRANGED.



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## Legislation Text

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**File #: PUB25-047, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a fourth amendment to a Professional Services Agreement between the City of Denton and Halff Associates, Inc., amending the contract approved by City Council on November 15, 2022, in the not-to-exceed amount of \$1,144,280.00; amended by Amendments 1-3 approved by the City Council and Purchasing; said fourth amendment to provide for the design, bidding, construction engineering services and FEMA application fees for a Conditional Letter of Map Revision (CLOMR) and a Letter of Map Revision (LOMR) in relation to the Westgate Drive Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7599-011 - providing for an additional fourth amendment expenditure amount not-to-exceed \$81,690.00, with the total contract amount not-to-exceed \$1,287,970.00).



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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Christine Taylor  
**DATE:** April 14, 2025

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a fourth amendment to a Professional Services Agreement between the City of Denton and Halff Associates, Inc., amending the contract approved by City Council on November 15, 2022, in the not-to-exceed amount of \$1,144,280.00; amended by Amendments 1-3 approved by the City Council and Purchasing; said fourth amendment to provide for the design, bidding, construction engineering services and FEMA application fees for a Conditional Letter of Map Revision (CLOMR) and a Letter of Map Revision (LOMR) in relation to the Westgate Drive Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7599-011 – providing for an additional fourth amendment expenditure amount not-to-exceed \$81,690.00, with the total contract amount not-to-exceed \$1,287,970.00).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The Westgate Drive reconstruction project was split into two phases to expedite the east/west portion for connectivity to Bronco Way. This re-phasing will alleviate traffic congestion near the new Denton High School by connecting I-35 frontage road to existing Bronco Way. Due to re-phasing of the project, the design contract will require an Amendment No. 4 to include the additional cost for splitting the design, bidding two packages, construction engineering services through construction for two packages, and FEMA application fees. This will be the last amendment to complete the design services.

Amendment No. 1 provided for the additional hydraulic study which produced supporting documentation to complete a Conditional Letter of Map Revision (CLOMR) and a Letter of Map Revision (LOMR) to Federal Emergency Management Agency (FEMA).

Amendment No. 2, a work authorization amendment was approved by Purchasing to reallocate the funds from the Traffic Signal Design category (XIV) to Environmental Services, Illumination Study, and Final Design of the Contract. This amendment was a net zero change order to the contract NTE.

Amendment No. 3, a work authorization was approved by Purchasing to provide for the remaining category of Bidding and Construction Services re-allocated funds to a new category called “Repackage” allowing project to be split into two phases per request of City Manager’s Office. This amendment was a net zero change order to the contract NTE.

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On November 15, 2022, City Council approved a contract with Halff Associates, Inc., in the not-to-exceed amount of \$1,144,280 (Ordinance 22-2303).

On March 19, 2024, City Council approved Amendment No. 1 with Halff Associates, Inc., in the not-to-exceed amount of \$62,000, for a total not-to-exceed amount of \$1,206,280. (Ordinance 24-539).

On May 22, 2024, Purchasing approved Amendment No. 2 with Halff Associates, Inc. for additional services to the contract.

On January 6, 2025, Purchasing approved Amendment No. 3 with Halff Associates, Inc., for additional services to the contract.

## **RECOMMENDATION**

Award Amendment No. 4 with Halff Associates, Inc., to provide for the design, bidding, construction engineering services and FEMA application fees for a Conditional Letter of Map Revision (CLOMR) and a Letter of Map Revision (LOMR) in relation to the Westgate Drive Reconstruction Project for the Capital Projects Department, in a not-to-exceed amount of \$81,690, for a total amended contract amount of \$1,287,970.

## **PRINCIPAL PLACE OF BUSINESS**

Halff Associates, Inc.  
Richardson, TX

## **ESTIMATED SCHEDULE OF PROJECT**

The Westgate Drive Phase 1 Project is estimated to begin construction in June 2025.

The Westgate Drive Phase 2 Project is estimated to begin construction in January 2026.

## **FISCAL INFORMATION**

These services will be funded from the City of Denton Westgate Drive Reconstruction Project account 350522467.1360.20100. Purchase Order #201965 will be amended in the amount of \$81,690. The total amended amount of this contract is \$1,287,970.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Original Ordinance, Contract, and Amendments 1-3

Exhibit 3: Ordinance and Amendment No. 4

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

For information concerning this acquisition, contact: Jesus Perez, 940-349-7715.

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

ORDINANCE NO. 22-2303

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH HALFF ASSOCIATES, INC., FOR THE DESIGN OF THE WESTGATE DRIVE RECONSTRUCTION PROJECT FOR THE CAPITAL IMPROVEMENTS DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7599-011 – PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES AWARDED TO HALFF ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$1,144,280.00).

WHEREAS, on May 18, 2021, the City Council approved a pre-qualified professional engineering list (Ordinance 21-894); and

WHEREAS, the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Halff Associates, Inc., for the design of the Westgate Drive Reconstruction Project for the Capital Improvements Department, a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

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

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Vicki Byrd, District 1:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brian Beck, District 2:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Jesse Davis, District 3:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Alison Maguire, District 4:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brandon Chase McGee, At Large Place 5:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Chris Watts, At Large Place 6:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

PASSED AND APPROVED this the 15<sup>th</sup> day of November, 2022.

  
GERARD HUDSPETH, MAYOR

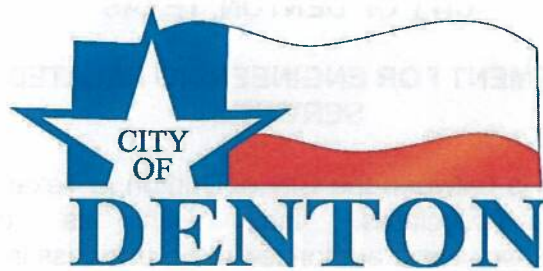
ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: Rosa Rios



APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn  
Digitally signed by Marcella Lunn  
DN: cn=Marcella Lunn, o, ou=City of Denton, email=marcella.lunn@cityofdenton.com, c=US  
Date: 2022.11.01 17:27:29 -05'00'



## DocuSign City Council Transmittal Coversheet

PSA	7599-011
File Name	Westgate Drive Reconstruction Design
Purchasing Contact	Cori Power
City Council Target Date	NOVEMBER 15, 2022
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	22-2303



## **CITY OF DENTON, TEXAS**

### **STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES**

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Halff Associates, Inc., with its corporate office at 1201 North Bowser Rd, Richardson, TX and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Westgate Drive Reconstruction Project (the "PROJECT").

#### **SECTION 1** **Scope of Services**

- A.** The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Exhibit A. These services shall be performed in connection with the PROJECT.
- B.** Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

#### **SECTION 2** **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed **\$1,144,280** in the manner and in accordance with the fee schedule as set forth in Exhibit B. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Exhibit A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Exhibit A.

#### **SECTION 3** **Terms of Payment**

Payments to the ENGINEER will be made as follows:

## **A. Invoice and Payment**

- (1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Exhibit A to reasonably substantiate the invoices.
- (2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.
- (3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.
- (4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.
- (5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

## **SECTION 4 Obligations of the Engineer**

### **A. General**

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

### **B. Standard of Care**

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and
- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

### **C. Subsurface Investigations**

- (1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Exhibit A.
- (2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

### **D. Preparation of Engineering Drawings**

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

### **E. Engineer's Personnel at Construction Site**

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.
- (2) Except to the extent of specific site visits expressly detailed and set forth in Exhibit A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the

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

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

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

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

#### **G. Construction Progress Payments**

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

## **H. Record Drawings**

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

## **I. Right to Audit**

- (1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.
- (2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.
- (3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

## J. INSURANCE

### (1) ENGINEER'S INSURANCE

- a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence with a \$2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.
  - i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the CITY. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.
  - ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.
- b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.
  - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.
- c. Workers' Compensation – ENGINEER shall maintain workers compensation and employers liability insurance and, if necessary,

commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.

- i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

## (2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.
- b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
- c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.
- d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- e. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.
- f. Insurers for all policies must be authorized to do business in the State of



Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.

- g. Any deductible or self insured retention in excess of \$25,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.
- h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.
- i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.
- l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.
- m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

#### **K. Independent Consultant**

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.

#### **L. Disclosure**

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

#### **M. Asbestos or Hazardous Substances**

- (1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.
- (2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

#### **N. Permitting Authorities - Design Changes**

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

#### **O. Schedule**

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Exhibit A to this AGREEMENT.

#### **P. Equal Opportunity**

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.

- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and

ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

## **SECTION 5** **Obligations of the City**

### **A. City-Furnished Data**

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

### **B. Access to Facilities and Property**

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

### **C. Advertisements, Permits, and Access**

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

### **D. Timely Review**

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Exhibit A.

### **E. Prompt Notice**

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

### **F. Asbestos or Hazardous Substances Release.**

- (1) CITY acknowledges ENGINEER will perform part of the work at CITY's facilities that may contain hazardous materials, including asbestos containing

materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.

- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

#### **G. Contractor Indemnification and Claims**

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

#### **H. Contractor Claims and Third-Party Beneficiaries**

- (1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."

- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.
- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

#### **I. CITY's Insurance**

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement cost value of the PROJECT. The CITY may provide ENGINEER a copy of the

policy or documentation of such on a certificate of insurance.

#### **J. Litigation Assistance**

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

#### **K. Changes**

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

### **SECTION 6** **General Legal Provisions**

#### **A. Authorization to Proceed**

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

#### **B. Reuse of Project Documents**

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

#### **C. Force Majeure**

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER's performance of its obligations hereunder.

#### **D. Termination**

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.

- b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.
- (2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:
- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
  - b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
  - c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.
- (3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

#### **E. Suspension, Delay, or Interruption to Work**

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

#### **F. Indemnification**

**IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.**

## **G. Assignment**

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

## **H. Jurisdiction**

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

## **I. Severability and Survival**

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

## **J. Observe and Comply**

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES.**

## **K. Immigration Nationality Act**

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



ENGINEER.

#### **L. Prohibition on Contracts with Companies Boycotting Israel**

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

#### **M. Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization**

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

#### **N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

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

#### **O. Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations**

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

#### **P. Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies**

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

#### **Q. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

#### **R. Agreement Documents**

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. This AGREEMENT may be

executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of this AGREEMENT:

Exhibit A - Scope of Services and Schedule  
Exhibit B - Compensation

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

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

Duly executed by each party's designated representative to be effective on  
11/15/2022

BY:  
CITY OF DENTON, TEXAS

DocuSigned by:  
Sara Hensley  
Sara Hensley, City Manager

BY:  
ENGINEER  
Half Associates, Inc.

DocuSigned by:  
Benjamin L. McGahey  
2B2A715A9AE5417...

Date: 10/28/2022

ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: DocuSigned by:  
Rosa Rios  
1C5CA8C5E175493...

2022-949744  
TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

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

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

DocuSigned by:  
Rebecca Dirviney  
Signature 4B6745F...

Director of Capital Projects/City Engineer  
Title

Capital Projects/Engineering  
Department

**EXHIBIT A  
SCOPE OF SERVICES  
for  
WESTGATE DRIVE RECONSTRUCTION  
In  
THE CITY OF DENTON**

**1. DESCRIPTION**

The purpose of this project is to design the reconstruction and widening of Westgate Drive from Windsor Drive to Bronco Way, considered North/South Westgate, and to design permanent connectivity of Westgate Drive from Bronco Way to existing Westgate Drive, considered East/West Westgate. It is anticipated that the North/South Westgate will be a two-lane, 28-foot wide street section with curb and gutter and East/West Westgate will be a four-lane, divided street section to match the Bronco Way street section configuration. Pedestrian ramps shall be provided at all intersections. Design will include a new eight-foot sidewalk located on the northbound side of North/South Westgate. Windsor Drive will also be widened from the northbound I-35E Frontage Road to the existing North/South Westgate and Windsor Drive intersection to match the existing four-lane, divided street section configuration east of the intersection. Drainage improvements and an 8" water line extension from Coffey Drive to Bronco Way will also be provided. The scope of this project includes topographic and boundary map design surveys, right-of-way appraisal and parcel preparation, conceptual, preliminary and final design, construction plans, specifications, opinions of probable construction cost, and bidding and construction administration services.

**2. PROJECT MANAGEMENT**

**A. Manage the Team:**

- Lead, manage and direct design team activities
- Ensure quality control is practiced in performance of the work
- Communicate internally among team members
- Allocate team resources

**B. Communications and Reporting:**

- Attend one pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs that meet City requirements.
- Conduct review meetings with the City at the end of each design phase. Up to three (3) total.
- Prepare and submit monthly invoices in the format acceptable to the City.
- Coordinate with franchise utilities as necessary for the design of the proposed infrastructure and provide and obtain information needed to

prepare the design. Includes up to two (2) franchise utility coordination meetings.

**C. Data Collection:**

- (1) Research and make efforts to obtain any additional design criteria, available GIS information, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, previous studies prepared by others, as-built plans for portions of surrounding infrastructure, historical drainage complaints and other information available for the project area. This shall coincide with the project kickoff meeting.
- (2) The City shall provide any existing available data concerning the Project including as built plans for existing streets, drainage facilities, water and sanitary sewer mains.
- (3) The City shall also assist the Consultant, as necessary, in obtaining any required data and information from TxDOT, DME and/or other local utility companies.
- (4) The City will provide the following data / information to assist with traffic projections:
  - (a) Development plans / future land use plans
    - i. Plans for known developments to be located in the area generally bordered by Interstate Highway (IH) 35E Frontage Road, Westgate Drive, Windsor Drive and Bronco Way
    - ii. Future land use plan for the City
    - iii. Growth rate for future development / traffic projections
  - (b) Thoroughfare Plan
  - (c) Information related to planned / proposed roadway improvement projects in the study area
  - (d) Historical traffic count data and future traffic projections in the study area, as available

**3. DESIGN SURVEY**

The Consultant shall provide surveying services, which, in general, may be defined as normal services applicable to a project of this type. The following particulars will also apply.

- A. Vertical benchmarks shall be established such that all points of construction shall be within 500 feet of an established City of Denton benchmark. Benchmarks should not be subject to loss during construction. Fire hydrants and similar appurtenances are not to be used for benchmarks. The surveyor shall establish temporary benchmarks throughout the length of the project.
- B. Topographic features will be surveyed along with any and all other features needed for design, review, permitting, construction, and inspection of the

project. Coverage will extend beyond the proposed rights-of-way far enough to integrate the design with the adjacent properties.

- C. Existing property corners, iron pins, etc. shall be tied in order to establish existing rights-of-way. Prior to surveying on private property, the surveyor shall secure written permission from the property owners and/or tenant and shall provide the City a copy of said written permission. Should only oral permission be granted, the surveyor shall document the permission granted by letter to the property owner/tenant, with a copy to the City. If permission cannot be obtained, the City will assist, or other arrangements will be worked out.
- D. Consultant shall use a combination of mobile LiDAR and conventional survey as necessary to collect the field data. Feature extraction for the above two items will include the detailed list shown below in "Deliverables".

**Deliverables:**

- Survey files will be delivered in MicroStation or AutoCAD CADD files
- Topographic survey will include a DTM with minor contours at 1-foot intervals and major contours at 5-foot intervals and site planimetric along the route.
- Locate topographic features along with any above-ground features needed, such as edges of pavement, curbs and gutter, sidewalks, building corners, power poles, valves and other appurtenances.

#### **4. RIGHT-OF-WAY REQUIREMENTS**

The Consultant shall evaluate where right-of-way may be required.

- A. Prepare a preliminary list of right-of-way parcels necessary to construct the project (if any). Submit to the City of Denton as soon as possible and prior to the final plan submittal.
- B. Preparation of a Boundary Map/Right-of-Way Strip Map that will include:
  - City title block
  - Property owner name, address, and recording information of deed
  - Location of all existing property pins and monuments
  - Location of easements of record
  - Existing rights-of-way
  - Location of proposed easement pins
  - Easement areas
  - Parcel numbers
  - All of the above shall be placed on standard plan sheets and bear the seal of a Texas Licensed Professional Engineer.
- C. Meet with the City of Denton Staff to determine right-of-way requirements for preparation of field notes and exhibits.

- D. A maximum of twenty (20) right-of-way parcels, two (2) permanent drainage easements and ten (10) temporary construction easements may be required for the project.
- E. Individual Exhibits for each parcel shall be prepared to contain the following:
  - Area required
  - Parcel number
  - Property owner name, mailing address, and volume and page of deed
  - Existing easements
  - Exhibits will be drawn to scale
  - All of the above shall be placed on one page of 8-1/2" x 11" paper, labeled as Exhibit "B" and signed and sealed by a Texas Registered Professional Land Surveyor.
- F. Legal descriptions for each parcel shall reference the volume, page, and owner of the parent tract and shall be incorporated into a standard City of Denton conveyance document as Exhibit "A". Individual parcels will be cross-referenced on the plans. Front end documents shall be provided by the City.
- G. Submit right-of-way documents to the City and make necessary corrections.
- H. Upon approval of the right-of-way by the City, and if required, the Consultant shall stake and flag the right-of-way for inspection by the appraiser and property owner. The documents, including legal description, shall be furnished to the City in Microsoft Word and PDF format.

## **5. RIGHT-OF-WAY SERVICES**

The Consultant shall provide Right-of-Way services, including acquisition services, negotiations, and property valuations which, in general, may be defined as normal services applicable to a project of this type. The following particulars will also apply.

### **A. Project Administration:**

#### **(1) Initial Site Visit**

- a. ROW Consultant will visit project site with City Personnel.

#### **(2) Communication:**

- a. Maintain status reports of all parcel and project activities and provide weekly to City.
- b. Provide schedule of all areas of work indicating anticipated start and end dates.
- c. Attend weekly status meetings.
- d. Prepare initial property owner contact list for use by City in distribution of ROW Consultant introduction letters.

#### **(3) File Management:**

- a. Project and parcel files will be kept at the City. Working files will be kept in the ROW Consultant's project administrative office, but



documents generated or received by the ROW Consultant will be forwarded to the City as they are generated or received by the ROW Consultant.

- b. Prepare invoices utilizing City standard payment submissions forms with supporting documentation.
- c. Maintain records of all payments including warrant/check number, amount, and date paid, etc.
- d. Maintain copies of all correspondence and contacts with property owners

**B. Title and Closing Services:**

- (1) Secure preliminary title commitment or preliminary title search and 5-year sales data from the title company that will be providing title insurance.
  - a. The charges from the Title Company for the preliminary title commitments will be paid by the City and are not be included in the Consultant's negotiated fee schedule.
- (2) Secure title commitments updates in accord with insurance rules and requirements for parcel payment submissions. The charges from the Title Company for the update of the title commitment will be paid by City and should not be included in the Consultant's negotiated fee schedule.
- (3) Secure title insurance for all parcels acquired, insuring acceptable title to City. Written approval by City required for any exception. The charges from the Title Company for the update of the title insurance will be paid by City and should not be included in the Consultant's negotiated fee schedule.
- (4) The curative services necessary to provide clear title to the City is the responsibility of the Consultant and is to be included in the negotiated fee schedule for this service. Note: the Consultant's curative services do not include cost/expenses that qualify as payment of incidental expenses to transfer real property to the City.
- (5) The Consultant has the responsibility of direct contact with the Title Company to obtain an updated title commitment along with other forms and certified copy of the instrument of conveyance when requesting the Parcel Payment from the City.
- (6) The Consultant provides closing services in conjunction with the Title Company and at the discretion of the City may be required to attend closings.
- (7) Any fee related to obtaining certified court documents and fees for recording same which are not collected at the closing of the parcel shall be direct pass through fees.
- (8) Consultant shall cause the recordation of all original instruments immediately after closing at the respective County Clerk's Office. The cost of recording fees and filing fees are paid by the City and should not be included in the Consultant's negotiated fee schedule.

**C. Negotiation Services:**

- (1) Analyze appraisal and appraisal review reports and confirm City's approved value prior to making offer for each parcel.
- (2) Analyze preliminary title report to determine potential title problems, propose methods to cure title deficiencies.
- (3) Prepare and send the letter transmitting the Landowners' Bill of Rights by Certified Mail-Return Receipt Requested (CMRRR).
- (4) Prepare the initial offer letter, memorandum of agreement, instruments of conveyance, and any other documents required or requested by City on applicable forms.
- (5) Contact each property owner or owner's designated representative, to present the written offer in person where practical, and deliver appraisal report and required brochures. Maintain follow-up contacts and secure the necessary instruments upon acceptance of the offer for the closing.
- (6) Provide a copy of the appraisal report for the subject property exclusively to the property owner or authorized representative at the time of the offer. Maintain original signed Receipt of Appraisal for billing purposes.
- (7) Respond to property owner inquiries verbally and in writing within two business days.
- (8) Prepare a separate negotiator contact report for each parcel per contact on approved form.
- (9) Maintain parcel files of original documentation related to the purchase of the real property or property interests.
- (10) Advise property owner on the Administrative Settlement process. Transmit to City any written counter offer from property owners including supporting documentation, and Consultant recommendation regarding Administrative Settlements in accordance with City policy and procedures.
- (11) Prepare final offer letter, documents of conveyance as necessary.
- (12) Appear and provide Expert Witness testimony as a Consultant when requested. The cost of the Consultant's expert witness testimony for trial is not part of this contract.
- (13) Issue Property Owner's Survey to property owner.

**ADDITIONAL RIGHT-OF-WAY SERVICES**

Additional services to be performed by Consultant, if authorized in writing by the City, which are not included in the above-described Basic Services, are described below:

**D. Relocation Assistance Services for Residential, Business, Personal Property, Mini Storage Units and Outdoor Advertising Signs**

- (1) Notify all Displacees and potential Displacees of eligibility for relocation assistance. At the time of initial contact, provide Displacees with a Relocation Assistance Packet consisting;

- a. Page one of the Relocation Advisory Assistance – Parcel Record form
  - b. Displacee Move Plan
  - c. Certification of Eligibility
  - d. Relocation Assistance Brochure
- (2) Provide on-going relocation assistance and advisory services to Displacees affected by acquisition of the property and deliver a completed Relocation Advisory Assistance – Parcel Record form signed by the Displacee to the City.
- (3) Locate, evaluate, and maintain files on comparable available housing to complete Right of Way Acquisition Services Contract.
- (4) Compute and submit request for relocation housing/rental supplement to the City Project Manager on the Supplemental Payment Estimate, Replacement Housing form with supporting Residential Property Evaluation forms with photos attached.
- (5) Provide 90-day notice to vacate, if required by the City, simultaneous with the delivery of relocation benefits package.
- (6) Provide 30-day notice once property has been acquired by the City. Note: the Displacee must be given no less than 90-day notice.
- (7) Notify the City Project Manager immediately if Displacee does not move after the 30-day notice expires.
- (8) Perform a decent, safe, and sanitary inspection of the replacement housing in accordance with City and State of Texas policy. Prepare and complete Replacement Housing Inspection form and submit to the City Project Manager.
- (9) For non-residential moves, Negotiated Self-Moves:
  - a. If a moving plan exceeds \$20,000, prepare moving plan with appropriate photos and sketches along with inventory of personal property to be moved for non-residential moves. This is required for pre-approval by the City.
  - b. If the moving plan for a Negotiated Self-Move is less than \$20,000 the Consultant must submit Negotiated Self-Move Request with moving plan for the business owner or tenant. This includes photos, written inventory list, type of move requested, and project move date.
- (10) For all Negotiated Self-Moves, the Consultant is responsible for requesting moving estimates from moving companies. Moving estimates must be obtained by the Consultant and not the Displacee. Moving estimates must be prepared in writing and in the name of City and not the Consultant.
- (11) Coordinate and monitor moves with displaced homeowners, business owners, and tenants and with moving companies in accordance with State and City procedures.
- (12) Maintain relocation contact logs on Relocation Advisory Assistance - Parcel Record form journaling all attempted and completed contacts

with all parties. This includes descriptions of the reasons and outcome for each contact.

- (13) Attend closings on replacement property if requested by any party involved, and assure supplemental payment is properly distributed.
- (14) Process and compute increased interest payments as required.
- (15) Relocation agent shall be available for any appeals or hearings. For this assignment, the fee for preparation and testimony will be a reasonable hourly rate, preapproved in writing by the City Project Manager.
- (16) Prepare all relocation payment claim submissions for all Displacees in accordance with State and City guidelines.
- (17) Deliver warrants in accordance with City guidelines.
- (18) Issue Relocation Survey to all Displacees.
- (19) Provide an executed Certification of Eligibility form with all Displacee claims.

#### E. Condemnation Support:

Consultant shall not act as the attorney for condemnation purposes. City must self perform legal services or contract with third party attorney. Consultant shall provide those support services to City or to City's attorney as described below:

##### (1) Pre-Hearing Support

- a. Request updated Title Commitment from title Company.
- b. Use information from the Title Commitment to identify interested parties. \*
- c. Submit information packet as requested by Condemning Attorney.
- d. Request update of appraisal.
- e. File original petition with County Court at Law or other appropriate Court for a cause number to be assigned.
- f. File Lis Pendens including the cause number with the County Clerk's Office
- g. Upon assignment of a court, file the Order Appointing Commissioners with the judge, retaining a copy of the Order for the files.
- h. Following appointment of Commissioners by the judge, secure Oath of Commissioners signed by the Commissioners, Order Setting Hearing and Notice of Hearing signed by the Commissioners.
- i. File all originals with the court and send copies to City and Condemning Attorney.

##### (2) Post-Hearing Support

- a. File Award of the Commissioners with the court for the Judge's signature within 48 hours of hearing, unless on Friday or before a holiday when court will not be open.
- b. Obtain certified copy of Award and provide to City with request for funding in amount of Award.

- c. Obtain Commissioners' Fees and submit to City for payment.
- d. File Award payment in registry of the court, file Notice of Deposit with the court and send certified copies to each defendant notifying them of the date of deposit. The Date of Deposit is the Date of Take.
- e. Send written notices of the date of deposit to the City and all interested parties.

\* Updated Title Commitments shall be paid directly by City. Please refer to B. Title and Closing Services.

F. Relocation Appeal(s):

- (1) Assist City with coordination of appeal process.
  - a. Submit appeal to City for review.
  - b. Provide supporting documentation.

G. Eviction Process:

- (1) Assist City with Eviction Process
  - a. Maintain paperwork necessary for filing eviction.
  - b. File necessary documents with court.
  - c. Attend Hearing(s).

H. Disposal of Property Services:

- (1) Provide a Release of Property to the City Project Manager signed by the former owner stating that all personal property has been removed and any remaining items belong to the City.
- (2) Provide the City Project Manager a copy of the plat and field notes, photographs of the property in a PDF format, a copy of the appraisal, and the Release of Property form when buildings are vacant and ready for disposal. The City Project Manager will initiate the environmental surveys as needed.

I. Initial and Update Appraisal Service:

- (1) Appraisers should provide advance notice of the date and time of their appraisal inspections of the subject property to the Consultant's Project Administrator in order to coordinate the appraiser's inspection.
- (2) Secure written permission from the owner to enter the property from which real estate is to be acquired. If the Appraiser, after diligent effort, is unable to secure the necessary letter of permission from the property owner, a waiver must be obtained in writing from the City.

- (3) Prepare and conduct personal pre-appraisal contact with interest owner(s) for each parcel using acceptable City forms.
- (4) Contact property owners or their designated representative to offer opportunity to accompany the appraiser on the appraiser's inspection of the subject property. Maintain record of contract in file.
- (5) For the initial appraisal, prepare complete appraisal report for each parcel to be acquired. These reports shall conform to City policies and procedures along with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Foundation.
- (6) For an updated appraisal, prepare complete appraisal update for the parcel to be acquired. These reports shall conform to City policies and procedures along with the Uniform Standards of Professional Appraisal Practices.
- (7) As necessary, prepare written notification to the City of any environmental concerns associated with the right of way to be acquired, which could require environmental re-mediation.
- (8) All completed appraisals will be administratively reviewed by the City staff and recommend for approval by the City staff.
  - a. City staff coordinate with Consultant's review appraiser (if applicable) regarding revisions, comments, or additional information that may be required. The Consultant's review appraiser will then coordinate with the appraiser.
- (9) As necessary, the appraiser will coordinate with the review appraiser regarding revisions, comments, or additional information that may be required.
- (10) The fees for initial and updated appraisal assignments are based on separate appraisal assignments.
- (11) Beyond delivery of initial and update appraisal assignments, the appraiser can be called to provide preparation and testimony for a Special Commissioners Hearing. For this appraisal assignment, the fee for the preparation time and testimony must be based on the hourly rate shown in the Consultant's Fee Schedule.

**J. Miscellaneous:**

- (1) Testimony for Hearing(s) or appeals.
- (2) Document/Form establishment.
- (3) Reporting outside of typical status reports.

**RIGHT-OF-WAY SERVICES BY CITY/CONSULTANT EXCLUSIONS**

Services to Be provided by the City include, but are not limited to the following:

- (1) Provide timely reviews and approval of submissions.
- (2) Process and issue all warrants for payment of approved purchase prices for each parcel, relocation payment, and incidental expense involved in the transfer of property to City in accordance with State law.

- (3) Provide a copy to the Consultant's performance evaluation at end of project or as needed throughout the project.
- (4) Initiate, coordinate, and administer environmental investigation surveys.
- (5) Provide Bill of Sale for disposal of improvements.
- (6) Pay direct costs of preliminary title commitment, updates and title insurance for all parcels acquired.
- (7) Provide Review Committee for Relocation Appeal(s).

## **6. GEOTECHNICAL ANALYSIS/PAVEMENT DESIGN**

The Consultant will subcontract with a Geotechnical engineering firm to provide sub-surface soil investigation, testing and pavement design including the following:

- Soil investigations, including field and laboratory tests, borings, related engineering analysis and recommendations for determining soil conditions will be made.
- Borings shall be of sufficient depth and spacing to provide general information needed for the design and construction of the project. Fifteen (15) borings will be advanced to a depth of 12 feet below the existing surface the roadway.
- Testing will be in accordance with ASTM or TxDOT procedures. The specific types and quantities of tests will be determined based on geologic conditions encountered in the borings. Laboratory testing will include moisture content, soil classification according to USCS, Atterberg limits and California bearing ratio. In the event the subgrade requires lime treatment the optimum percentage of lime will be determined by the Eades and Grim pH test.
- An engineering report will be prepared by a registered engineer and will present the results of the field and laboratory data together with analyses of the results and recommendations. The report will address:
  - General soil and groundwater conditions encountered at the boring locations
  - An evaluation of the swell characteristics of the subgrade soils
  - Recommendations for pavement subgrade preparation
  - Recommendations for pavement design
  - Earthwork recommendations

Deliverables:

- Boring logs with location map
- Soil testing results
- Geotechnical report

## **7. SUBSURFACE UTILITY ENGINEERING**

Half will perform SUE in accordance with ASCE CI/ASCE 38-02 "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data." This standard defines the following Quality Levels:

- Quality Level-A: Precise horizontal and vertical location of utilities obtained by the actual exposure (or verification of previously exposed and surveyed utilities) and subsequent measurement of subsurface utilities, usually at a specific point. Minimally intrusive excavation equipment is typically used to minimize the potential for utility damage. A precise horizontal and vertical location, as well as other utility attributes, is shown on plan documents.
  - Quality Level-B: Information obtained through the application of appropriate surface geophysical methods to determine the existence and approximate horizontal position of subsurface utilities. Quality Level-B data should be reproducible by surface geophysics at any point of their depiction. This information is surveyed to applicable tolerances defined by the project and reduced onto plan documents.
  - Quality Level-C: Information obtained by surveying and plotting visible above-ground utility features and by using professional judgment in correlating this information to Quality Level-D information.
  - Quality Level-D: Information derived from existing records or oral recollections.
- A. Quality Level-A Utility Test Holes (Vacuum Excavation): Up to ten (10) test holes will be performed on various utilities at locations approved by the City of Denton. Halff will cut up to a 12" square test hole, excavate down to utility, record the depth to top of utility, backfill & compact the hole, and restore the surface to its original condition. An iron rod with cap or "x-cut" will be set to mark the approximate centerline location of the utility. A jackhammer will be utilized for work to be performed in asphalt and concrete areas.
- B. Quality Level-B Utility Designating: Halff will designate the approximate horizontal position of conductive/toneable utilities within the project limits using geophysical prospecting equipment and mark using paint and/or pin flags. We anticipate the designation of approximately 50,000 linear feet of utilities including buried communication, electric, natural gas, water, and waste water/sanitary sewer. Designation of storm drain/storm sewer, irrigation lines, HDPE lines, gathering lines, asbestos concrete and/or pvc lines, as well as pvc lines without tracer wire or access are not part of this Scope of Services.
- C. Because of limited utility record information and the possibility of non-conductive/un-toneable utilities, Halff cannot guarantee all utilities will be found and marked within the project limits.
- D. Quality Level-C Surveying: Quality Level-B Utility Designation paint markings, pin flags, and above ground utility appurtenances as well the iron rod with cap or "x-cut" for Quality Level-A Test Holes will be surveyed and tied utilizing project survey control.
- E. Quality Level-D Records Research: Available Records will be provided to Halff by City of Denton. Halff will perform additional utility record research as needed to successfully complete the project.



- F. Because there are situations where the utility does not have a metallic composition, a metallic tracer line attached, or access to insert a tracer line, the approximate location of the utility may be determined by the use of utility records and direct correspondence with the utility owner/representative. In these areas, the information will be considered Quality Level-D, depicted according to utility record information only.
- G. SUE Field Manager / Professional Engineer: A SUE Field Manager will be on-site for a portion of this project for field crew supervision, field quality control, and coordination with on-site personnel. A Professional Engineer will be responsible for QA/QC, management of the contract, coordination with the project team and signing the final deliverables if required.
- H. Permitting: Street Cut permits will be coordinated with the City of Denton as required.
- I. Work Zone Traffic Control: Halff will provide standard temporary work zone traffic control consisting of cones and free-standing signage for this project. This Scope of Services does not include lane closure(s), flag person(s), changeable message board(s), arrow board(s) and/or engineered traffic control plans.

**Deliverables:**

- Deliverables for the designating work will include an electronic file (Microstation and/or AutoCAD format) containing the horizontal locations of the utilities. The utilities will be overlaid onto the survey base file.
- Deliverables for the Quality Level-A Test Hole Excavations will be an 8.5-in. x 11-in. Test Hole Data Form for each Test Hole performed indicating depth, size, locations, and other notable characteristics of the utility.

## **8. DRAINAGE STUDY**

Consultant shall perform a floodplain analysis related to a roadway improvement project. The study aims for analyze impacts to the Pecan Creek (Above SCS Dam #16) floodplain along Westgate Drive (PROJECT). The purpose of the floodplain analysis is to ensure no negative impacts to the effective floodplain due to the proposed roadway improvements. Based off the effective FIRM (48121C0360G eff. 4/18/2011), there is an effective Zone AE with floodway and established BFEs downstream of the site, but upstream of the site there is a Zone A floodplain that likely does not have existing modeling. The downstream Zone AE model will have to be extended upstream of the project to evaluate the impacts of the project. This scope assumes the following for the PROJECT:

- PROJECT will be kept within the area shown in **Figure 1**;
- The ultimate (future) hydrologic conditions from the *Pecan Creek and North Pecan Creek Watershed Study and Alternative Analysis* (Halff 2021) will be used. It is assumed no new hydrology will be performed as part of this study;
- Per the previously mentioned study, the contributing drainage area for the PROJECT is less than one square mile. Therefore, per Section 3.8.1 of the City of Denton Stormwater Design Manual, a CLOMR/LOMR or Flood Study may be

performed. This scope assumes no CLOMR/LOMR will be needed, since BFEs are already established, and a Flood Study will be performed;

- The FEMA effective model for Pecan Creek (Above SCS Dam #16) will be used for the hydraulic analysis. If this model is not available, then additional services and fees would be required to develop a pre-project model.



Figure 1. PROJECT Limits

#### J. PROJECT MANAGEMENT

- (1) Coordinate with design team.
- (2) Meetings with CLIENT. Includes a maximum of three meetings (3).

#### K. DATA COLLECTION AND TERRAIN DEVELOPMENT

- (1) Process best available Texas Natural Resources Information System (TNRIS) LiDAR for the PROJECT area.
- (2) Develop a Digital Terrain Model (DEM) and contours.
- (3) Utilize topographic survey (to be provided by ENGINEER).

#### L. HYDROLOGIC ANALYSIS

- (1) Utilize drainage areas from Pecan Creek and North Pecan Creek Watershed Study and Alternative Analysis (Halff 2021).
- (2) Obtain flows from report and models for use in hydraulic modeling.

#### M. HYDRAULIC ANALYSIS

- (1) Obtain the FEMA effective model for Pecan Creek (Above SCS Dam 16). If FEMA or CLIENT cannot provide the effective model, then additional services and fees will be required to develop a pre-project model for the reach.
- (2) Execute the Effective Model to verify its integrity.
- (3) Create revised existing model by incorporating updated survey into the existing model.
- (4) Using the 30, 60, 90, and 100% civil design drawings, create a proposed conditions hydraulic model. Up to two (2) design alternatives will be analyzed.
- (5) Execute and debug the model.
- (6) Perform QAQC on results and hydraulic model.
- (7) Address QAQC comments.

#### **N. FLOOD STUDY REPORT**

- (1) Write, edit, and compile a flood study report detailing the results of the floodplain analysis. It is assumed no FEMA CLOMR or LOMR will be needed.
- (2) Submit key digital data, including modeling and GIS layers. The report and data will be submitted to the CLIENT.
- (3) Deliverables: Flood Study Report, in PDF format, and all relevant digital data.
- (4) Address any review comments with the CLIENT, if necessary.

#### **9. CONSTRUCTION PLANS**

The Consultant shall develop construction plans for review, permitting, bidding, construction, inspection and record keeping. In general, construction plans shall be consistent with normal practice for projects of this nature. The construction plans will consist of numerous sheets ordered as follows:

- A. Cover Sheet and Sheet Index: The cover sheet shall include a location map. Additionally, the cover sheet shall show the project name, project number, date, City logo, Consultant's name, address, and telephone number and other items as may be specified. Following the title sheet shall be a sheet index with drawings numbered consecutively and without subscripts.
- B. Project Layout Sheet(s): The project layout sheet(s) will be laid out with the north arrow up or to the right. The purpose of the project layout is to depict the project in a simplified view. Major items of work will be shown without excessive detail. Additionally, survey control points shall be shown.
- C. Project General Notes and Legend: These sheets will include a listing of abbreviations, legend, and general notes.
- D. Typical Sections: Typical sections shall be drawn to depict a view looking north or east. As a minimum, typical sections will be drawn showing the relationship

of the proposed street and existing and proposed improvements. Typical sections will include existing roadways, right-of-way lines, etc., along with all proposed roadway improvements and will depict all significant items of work.

- E. Plan and Profile Sheets (Paving, Storm Drain and Water): Plan-profile sheets will be arranged from south to north and from west to east, with the north arrow up or to the right on the sheet. Stationing will be from south to north or west to east with the beginning station being set at approximately 1+00. The plan and profile station will align vertically on the sheet with the proposed centerline drawn parallel to the profile grid. When there is a centerline curvature, the plan-profile should be drawn so that as much of the plan view is in alignment as possible. Plan-profile sheets shall depict all existing and proposed items pertinent to the project. Water line profiles shall only be provided for lines 12-inch and larger. Lines smaller than 12-inch shall be designed in plan only.
- F. Grading Plans: Halff will provide grading plans that include 1' proposed contours with spot elevations labeled at PC, PT, PI, drainage structures and maximum 50 feet spacing.
- G. Drainage Plans: Halff will provide a drainage area map and calculations to support the design of a closed conduit system and determine any additional inlets needed to appropriately convey runoff for the street corridor. Existing storm drain infrastructure will remain in place wherever practicable.
- H. Roadway Illumination Plans: Halff will provide illumination layout plans, electrical circuit plans and details for roadway lighting system. These plans shall include street illumination and safety lighting at all intersections and other locations as necessary to meet City standards for spacing. A photometric study will not be provided.
- I. Detail Sheets: The City's standard drawings will be used as a beginning point in developing standard details for this project. They will be reviewed and modified for this project. Where other agency standards are used, they shall be reduced as necessary to fit on the City's standard sheet format with complete title block.
- J. Miscellaneous: Construction plans will also address erosion control, utility adjustments, traffic control (including phasing, detours, road closures, signing, barricading, etc.), pavement markings and signage, and other improvements.
- K. Cross Sections: Cross sections shall be arranged from bottom to top of the sheet looking up station and shall show existing and proposed features and improvements. Generally, no more than eight (8) sections per sheet are to be plotted. Each section should extend beyond the easement and rights-of-way a sufficient distance to clearly show the relationship between the proposed improvements and the existing properties. Full sections will be drawn at maximum spacings of 500 feet.

L. Review Plans: The Consultant shall develop conceptual plans and profiles and estimates of probable cost for the 30% milestone. A rolled schematic will be provided for review and comment and to determine the feasibility of the project and confirm constructability and cost prior to developing preliminary plans. Preliminary plans shall then be prepared and submitted at the 60% milestone. Final plans shall be prepared and submitted at the 90% and 100% milestone. Also, the Consultant may submit plan sheets or working drawings to the City for review and comment to reduce the number of revisions that otherwise would be required. During development of the plans, the Consultant shall attend meetings as needed. The Consultant shall, in company with the City, perform at least one plans-in-hand review for each submittal. Deliverables for each design submission are as follows:

- (1) 30% Design Package
  - (a) Roll schematic depicting plan layout for roadway and storm drain conduit
  - (b) Typical Sections
  - (c) Letter report summarizing the design criteria utilized, and assumptions made during preparation of the conceptual design. The report will also address design constraints discovered during the preliminary alignment preparation
  - (d) Engineer's Preliminary Estimate of Probable Construction Cost
- (2) 60% Design Package
  - (a) Information provided in previous design package revised per City comment
  - (b) Cover sheet, sheet index and legend, general notes
  - (c) Project layout and control
  - (d) Right-of-Way Map sheets
  - (e) Demolition plans
  - (f) Roadway, storm drain and water line plan and profile sheets
  - (g) Drainage area map, hydraulic and inlet computations
  - (h) Preliminary grading plans
  - (i) Roadway cross-sections
  - (j) Engineer's 60% Preliminary Estimate of Probable Construction Cost
- (3) 90% Design Package
  - (a) Information provided in previous design package revised per City comment.
  - (b) Traffic control and phasing sheets
  - (c) Roadway Illumination plan sheets
  - (d) Pavement markings and signage
  - (e) Erosion control plans
  - (f) Project detail sheets
  - (g) Project manual and technical specifications.
  - (h) Engineer's 90% Pre-Final Estimate of Probable Construction Cost
- (4) 100% Final Design Package

- (a) Information provided in previous design package revised per City comment, signed and sealed for bidding.
  - (b) Engineer's 100% Final Estimate of Probable Construction Cost
- M. Design: The design of the project shall be in general accordance with the City of Denton ordinances, standard details, and good Consulting practices. During the design phase, the Consultant shall contact various utility companies and obtain information relating to existing utility lines. The design should avoid major utility relocations, where practical. When required, proposed relocations or replacements will be shown in plan and profile.
- N. Prints: One (1) 11x17 set of plans and electronic files in PDF format shall be submitted to the City for each review stage. The Consultant will upload a set of plans in PDF format to the City's PROCORE submission software at each project milestone. The Consultant will provide utility companies with electronic PDF files of 60% plans for review. The City shall provide local utility contact information to assist with distribution.
- O. General: Construction plans shall be furnished half-size. The Consultant will provide one 11x17 set of vellum plans and electronic pdf files for bidding and construction. The City's standard format shall be used. Electronic files in PDF and DGN or DWG format shall be provided to the Contractor for use during construction.
- P. Generic Sheet List: Following is a general list of plan sheets required for each construction package.
  - (1) Cover Sheet
  - (2) Sheet Index and Legend
  - (3) Project General Notes
  - (4) Typical Paving Sections
  - (5) Project Layout Sheet(s)
  - (6) Right-of-Way Maps
  - (7) Demolition Plans
  - (8) Paving Plan and Profile Sheets
  - (9) Grading Plans
  - (10) Drainage Area Map and Calculations
  - (11) Storm Drain Plan and Profile Sheets
  - (12) Water Line Plan Sheets
  - (13) City of Denton Pavement Standard Details
  - (14) Miscellaneous Pavement Details
  - (15) City of Denton Storm Drain Details
  - (16) City of Denton Water Line Details
  - (17) Erosion Control Plans
  - (18) City of Denton Erosion Control Details
  - (19) Pavement Markings, and Signage Plans and Details
  - (20) Roadway Illumination Plans
  - (21) Illumination Tables and Details



- (22) Traffic Control and Sequencing Plans
- (23) Traffic Control Details
- (24) Roadway Cross Sections

Q. Specifications: The Consultant shall prepare a project manual and technical specifications required for bidding and constructing the project. The project manual will be provided in the City's standard format. Only specifications amending or supplementing the City's specifications need be furnished. Project manual, specifications, bid items and quantities shall be furnished on hard copy and by electronic file.

## **10. PERMITTING**

The Consultant shall prepare applications to the Texas Department of Licensing and Review (TDLR) for code review of sidewalks and ramps. After construction the Consultant shall notify TDLR of completion date. Consultant shall address any questions or issues by TDLR as a result of review and inspection. TDLR review and inspection fees are included in this proposal.

The Consultant shall prepare construction plans permit set to submit to TxDOT for approval to allow Westgate Dr. and Windsor Dr. improvements in TxDOT Right-of-Way as they pertain to connections to the northbound frontage road.

## **11. BID AND CONSTRUCTION PHASE ENGINEERING ASSISTANCE**

A. Bidding – During the bidding phase, the Consultant will prepare bid documents and assist the City in advertising the project for bids. The Consultant will address technical questions and prepare addenda and issue to the bidders. The Consultant shall attend a pre-bid meeting and prepare minutes. The Consultant will tabulate bids and make recommendation for award of contract.

### **B. Construction:**

- (1) Attend a pre-construction meeting and monthly progress meetings as required. Document each meeting with written minutes.
- (2) Review shop drawings and Contractor submittals.
- (3) Review laboratory test reports on materials and equipment.
- (4) Prepare and negotiate Change Orders between the Contractor and the City.
- (5) Prepare record drawings from information supplied by the Contractor.
- (6) Attend final inspection and assist in preparation of a punch list report.

C. Closure – The Consultant shall prepare "record" plans, incorporating all changes and known variations to provide the City the best possible set of record drawings. The final record drawings shall be furnished in.pdf format. CADD files shall be furnished as well.

## **12. TRAFFIC STUDY & DESIGN**

Based on correspondence with the project team, Halff Associates, Inc. (Halff) will conduct an Intersection Alternatives Evaluation (Phase 1) for the proposed Westgate

Street / Bronco Way intersection in Denton, Texas. Halff will also conduct a Traffic Signal Warrant Study and prepare traffic signal design plans for the intersection, if warranted (Phase 2).

If the City of Denton requires task items outside of this scope, Halff will prepare an additional services agreement for authorization by the City prior to initiating those items.

## **PHASE 1 – INTERSECTION ALTERNATIVES EVALUATION**

### **TASK 1.0 DATA COLLECTION**

- 1.1 Conduct a site visit to check roadway conditions in the study area.
- 1.2 Conduct weekday AM and school and commuter PM peak period turning movement traffic counts (7:00 – 9:00 AM and 2:00 – 6:00 PM) at the following intersections:
  - 1.2.1 Northbound IH 35 frontage road / Westgate Drive
  - 1.2.2 Windsor Drive / Westgate Drive
  - 1.2.3 N. Bonnie Brae Street / Riney Road / Bronco Way
- 1.3 Conduct weekday 24-hour bi-directional link volume traffic counts at the following locations:
- 1.4
  - 1.4.1 Westgate Drive between the northbound IH 35 frontage road and the retail center driveway
  - 1.4.2 Westgate Drive north of Windsor Drive
  - 1.4.3 Bronco Way west of N. Bonnie Brae Street
- 1.5 Acquire the following information from the City of Denton:
  - 1.5.1 Plans for future roadway improvements in the study area
  - 1.5.2 Historical traffic count data in the study area
  - 1.5.3 Planned or proposed developments in the study area
  - 1.5.4 Growth rate for projecting future traffic volumes in the study area
  - 1.5.5 Rates for existing traffic volumes to account for school and / or COVID-19 impacts, as applicable
  - 1.5.6 Thoroughfare plan
  - 1.5.7 Future land use plan

### **TASK 2.0 ANALYSIS**

- 2.1 Identify existing AM and school and commuter PM peak hour volumes at the study intersections listed in Task 1.2, based on the traffic count data collected in Task 1.2.
- 2.2 Develop projected weekday AM and school and commuter PM peak hour turning movement traffic volumes at the future Westgate Drive / Bronco Way intersection for the Build Out scenario. Build out year to be determined in consultation with the City.



- 2.3 Conduct weekday AM and school and commuter PM peak hour intersection level of service (LOS) analyses at the Westgate Drive / Bronco Way intersection using the Build Out scenario volumes development in Task 2.2. Evaluate up to three intersection configurations, to be determined in consultation with the City.
- 2.4 Address pedestrian routing at the Westgate Drive / Bronco Way intersection.
- 2.5 Address school access and potential queuing along Westgate Drive south of Bronco Way.
- 2.6 Work with the City and project team to determine a preferred intersection configuration, including traffic controls and lane assignments.

### **TASK 3.0 REPORT PREPARATION**

- 3.1 Prepare a preliminary draft technical report that addresses the findings in Tasks 1 and 2.
- 3.2 Submit a copy of the draft report to the City and project team for review and comment.
- 3.3 If necessary, revise the report once based upon comments from the City and project team.
- 3.4 Prepare a final version of the technical report and submit to the City.

### **TASK 4.0 CONFERENCE CALLS**

- 4.1 Attend up to three conference calls with City staff and / or the project team to discuss the traffic study.

### **SERVICES NOT COVERED – INTERSECTION ALTERNATIVES EVALUATION**

The services stipulated below are specifically excluded from the scope of this contract. In the event additional services are required, an addendum to this contract will be required before work can proceed. Additional services include but are not limited to the following:

1. Conduct any traffic counts for the project, other than those specifically identified in Task 1.
2. Conduct any operational / level-of-service analyses of site driveways, street intersections or other roadways in the study area, other than those specifically identified in Task 2.
3. Provide any services related to permits or detailed engineering plans for recommendations.
4. Conduct any revisions to the report caused by changes to the study assumptions, such as changing the land uses / densities / build out year for the study.
5. Attend any more than the three conference calls for the project identified in Task 4.
6. Attend any City of Denton meetings, including Planning and Zoning Commission and City Council meetings.
7. Address any review comments that may be generated by the City more than the one round noted in Task 3.3.

## **PHASE 2 – TRAFFIC SIGNAL WARRANT STUDY / TRAFFIC SIGNAL DESIGN**

### **TASK 1.0 TRAFFIC SIGNAL WARRANT STUDY**

- 1.1 Develop weekday hourly approach volumes at the Westgate Drive / Bronco Way intersection for the Build Out scenario. Build out year will be the same as the year analyzed in the Intersection Alternatives Evaluation, as determined in consultation with the City.
- 1.2 Conduct a Traffic Signal Warrant Study for the Westgate Drive / Bronco Way intersection based on the projected volumes developed in Task 1.1.
- 1.3 Prepare a technical report outlining the findings and results of the Traffic Signal Warrant Study.
- 1.4 Attend one conference call with City staff and / or the project team to discuss the warrant study.

### **TASK 2.0 TRAFFIC SIGNAL DESIGN**

- 2.1 Attend a conference call with City Traffic Engineering staff to discuss the signal design requirements.
- 2.2 Acquire signal design standards and requirements from the City.
- 2.3 From the project team, acquire the electronic CAD files (MicroStation) for the preferred Westgate Drive / Bronco Way intersection configuration. Design files shall include at minimum all existing and proposed curb lines, pavement markings, pedestrian ramps, existing signal equipment, aboveground and underground utilities, and right-of-way around the study intersection, as applicable.
- 2.4 PDF signal design plans will be produced for the intersection and will be submitted to the City for review and comment at the following design levels:
  - 2.4.1 60 percent plans
  - 2.4.2 90 percent plans
  - 2.4.3 Final plans
- 2.5 Provide PDF and CAD files of final plans and one set of original signed and sealed plans.
- 2.6 Prepare a quantities summary, bid item spreadsheet and estimate of construction cost for the traffic signal modifications and submit this information to the City.
- 2.7 Coordinate the signal design process with the City.
- 2.8 Conduct a maximum of six meetings or conference calls with the City and / or project team as needed to discuss the signal design plans at the design levels outlined in Task 2.4.

### **SERVICES NOT COVERED – TRAFFIC SIGNAL WARRANT STUDY / TRAFFIC SIGNAL DESIGN**

The services stipulated below are specifically excluded from the scope of this contract. In the event additional services are required, an addendum to this contract

will be required before work can proceed. Additional services include but are not limited to the following:

1. Collect any survey data for the projects (all necessary survey data shall be provided by the City and / or project team, as described in Task 2.3).
2. Conduct any traffic counts for the project other than those specifically identified in Phase 1.
3. Conduct any operational / level-of-service analyses of site driveways, street intersections or other roadways in the study area.
4. Attend any City meetings above staff level, such as Planning and Zoning Commission or City Council meetings.

### **13. ENVIRONMENTAL SERVICES**

Federal Permitting (Section 404 of Clean Water Act)

- A. Jurisdictional Determination: Halff will perform a field delineation to identify the limits of waters of the United States, including wetlands. A brief summary report will be prepared describing the methodology and results of the investigation, so that the report may satisfy the jurisdictional determination requirement for permit requirements pursuant to Section 404 of the Clean Water Act (Section 404).
- B. Nationwide Permit Pre-Construction Notification: It is anticipated the proposed activity may be authorized by Nationwide Permit 14 – *Linear Transportation Projects*, which requires a PCN. Halff will prepare and submit a pre-construction notification (PCN) to the USACE. The contents of a PCN include:
  - (1) Name, address and telephone numbers of the prospective permittee;
  - (2) Location of the proposed project;
  - (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure;
  - (4) Delineation of waters of the United States (**see Jurisdictional Determination**);
  - (5) Compensatory mitigation plan, if needed;
  - (6) Threatened and endangered species assessment; and
  - (7) Cultural resources assessment.

### **14. ILLUMINATION STUDY**

- A. Halff Associates, Inc. is pleased to submit this proposal for Electrical Engineering to design the illumination for approximately 8,600 feet of proposed public roadway. The lighting design shall meet the City of Denton / DME's Design criteria for street light design. Halff shall design the layout of the poles, design the conduit layout and conductor requirements to the DME transformer/service connection location for DME to make final connections at

the service point and provide the equipment for the DME transformer/service connection.

- B. Halff will coordinate with City staff and DME related to service location(s) and the selection of an appropriate luminaire and pole.
- C. A point-by-point photometric analysis will be performed to illustrate the design meets the required foot-candle levels.
- D. Voltage drop calculations will be performed to ensure circuit design meets the maximum voltage drop allowed.

**Construction Document Phase:**

- Lighting Site plan
- Lighting Schedules
- Electrical Details (as needed).
- Coordination with the City, Utility, and Halff Design Team.
- Provision of two (2) deliverables.

**Construction Phase Services:**

- Responses to RFI's.
- Review of submittals and shop drawings.
- We are excluding site visits.

## **15. EXCLUSIONS**

Other additional services, not included in this contract, will be negotiated with the City as needed. Compensation will be based upon a mutually agreed lump sum fee or an hourly rate as described below. Items that are considered additional services include:

- Attendance or preparation for Public Meeting(s)
- Attendance or preparation for City Council Meetings
- Full Tree preservation/mitigation plan
- Landscape architecture and irrigation design
- Revisions to plans requested by the City after plans are approved
- Permit fees, filing fees, pro-rated fees, impact fees and taxes
- Property acquisition or negotiations other than stipulated in the "5. Right-of-Way Services" section.
- Design of sanitary sewer, gas, telephone, or other utility improvements except as noted herein
- Graphic products except as noted herein
- Design of utilities or other improvements outside of the project boundary or roadway rights of way (not in scope)
- SWPPP preparation
- Environmental assessments
- Construction staking
- FEMA CLOMR and/or LOMR submittal

- Hydrologic and Hydraulic analysis other than stipulated in the 8. Drainage Study section.
- Advanced, 2D hydraulic analysis
- Sediment transport analysis
- Scour Analysis
- Drainage Study design drawings, plans, or specifications
- Preparation of an Individual Permit
- Preparation of a Pedestrian Survey for Cultural Resources
- Design for additional power connection or circuiting to other devices not mentioned above.
- Design for receptacles located at the base of the electrical lighting pole.

## **16. SCHEDULE**

The Scope of Services for this PROJECT is based on the following schedule:

- A. Completion of design surveys, SUE level "B", and geotechnical investigation: 60 calendar days from date of written authorization to begin work.
- B. Completion/furnishing 30% conceptual schematic, preliminary drainage study, bid quantities, and construction cost estimate: 90 calendar days from date of written authorization to begin.
- C. Completion/furnishing 60% preliminary plans, final drainage study, bid quantities, and construction cost estimate: 165 calendar days from date of written authorization to begin, excluding City review time.
- D. Completion/furnishing 90% final plans, specifications, bid quantities, and construction cost estimate: 225 calendar days from date of written authorization to begin, excluding City review time.
- E. Completion/furnishing 100% final plans, specifications, bid quantities, and construction cost estimate: 255 calendar days from date of written authorization to begin, excluding City review time.
- F. Bidding services: 60 calendar days from city's approval of final plans.
- G. Construction services: In accordance with construction schedule (estimated to be 540 calendar days total)
- H. Closure: 60 calendar days from the date of construction completion.

**EXHIBIT B**

**COMPENSATION**

**FOR**

**WESTGATE DRIVE RECONSTRUCTION**

Exhibit "B" defines the basis of compensation to the Professional for the services rendered.

**Basic Fee Services (Project Management and Construction Plans)** – The basic fee for the services as described in Exhibit "A" as Project Management and Construction Plans will be **\$558,900** which includes printing, direct costs and computer charges normally associated with production of these services.

The basis of compensation for Basic Fee services shall be as follows:

1. \$97,000 for Conceptual Design Phase (30% submittal)
2. \$200,000 for Preliminary Design Phase (60% submittal)
3. \$200,000 for Pre-Final Design Phase (90% submittal)
4. \$61,900 for Final Design Phase (100% submittal)

Items (1) through (4) will be billed lump sum monthly based on actual completion of the tasks and may include partial payments of the total amounts designated for each item.

**Special Services** – The maximum not-to-exceed fee for special services as described in Attachment "A" will be **\$585,380**, which includes printing, direct costs and computer charges normally associated with production of these services. The basis of compensation for special services shall be lump sum unless noted otherwise. The table below summarizes special services fees.

<b>TASK DESCRIPTION</b>	<b>FEE</b>
I. Topographic and Boundary Design Surveys	\$52,620
II. Right-of-Way Parcels (\$2,800 per each)	\$56,000
III. Drainage Easements (\$2,500 per each)	\$5,000
IV. Temporary Construction Easements (\$2,500 per each)	\$25,000
V. Right-Of-Way Appraisal, Acquisition, and Title/Closing Services (\$10,500 per each)	\$210,000
VI. Geotechnical Engineering	\$23,550

VII.	Subsurface Utility Engineering Level B, C, & D	\$29,670
VIII.	Subsurface Utility Engineering Level A – Vacuum Excavation (\$2,000 per each)	\$20,000
IX.	Drainage Study	\$47,010
X.	TDLR Plan Review, State Filing and Inspection Fees	\$2,140
XI.	TxDOT Permit Coordination	\$9,000
XII.	Bidding and Construction Engineering	\$35,290
XIII.	Traffic Study	\$23,730
XIV.	Traffic Signal Design	\$30,620
XV.	Environmental Services	\$6,500
XVI.	Illumination Study	\$9,250
<b>TOTAL SPECIAL SERVICES</b>		<b>\$585,380</b>

**Miscellaneous Services** – The fee for additional services not provided herein will be negotiated based on the scope of work and included in a contract amendment.

The total maximum fee for all services is **\$1,144,280.00**.

Item II. The City will only be billed for the number of right-of-way parcels produced.

Item III. and IV. The City will only be billed for the number of easement parcels produced.

Item V. The City will only be billed for the number of parcels that require acquisition, appraisal and title/closing services.

Item VIII. Subsurface Utility Engineering Level A fee includes a maximum of ten (10) excavations completed times \$2,000 per each. The City will be final billed based on the number of excavations completed with a minimum of two excavations.

Reimbursable costs include printing, deliveries, mileage and other direct costs associated with the project. Subcontract expenses and outside services shall be reimbursed at cost to Consultant plus a markup of ten percent (10%).

CITY OF DENTON  
Westgate Drive Reconstruction

City of Denton Westgate Drive Reconstruction Fee Proposal - August 2022	Labor Category	Project Mgr.	QA/QC Manager	St. Water Resources Eng.	Traffic Eng.	Electrical Eng.	Lead Civil Eng.	Civil Eng.	EIT	CADD	GIS	Survey RPLS/ Geospatial Manager	St. Survey Technician	Survey Crew 2-Man	Designing 2-man Crew	SUE Manager	SUE Field Manager	hrs /sheet	All		Total Labor \$		Mileage \$0.20		Deliv./Print Misc.		Total Expense \$		All		Total \$		Remarks
Team Member	Hourly Billing Rate	\$240	\$270	\$225	\$205	\$150	\$150	\$145	\$125	\$100	\$115	\$235	\$130	\$180	\$180	\$145	\$155		All		Total Labor \$		Mileage \$0.20		Deliv./Print Misc.		Total Expense \$		All		Total \$		Remarks
Scope	Plan																																
Ref.	Sheets																																
1.0 PROJECT MANAGEMENT		2																															
1.1 Kickoff Meeting (1)				4			4																										
1.2 Design coordination meetings/plan review (3)				12			12																										
1.3 Monthly reports and billing (36)				18																													
1.4 Project scheduling				1			4																										
1.5 Franchise utility coordination				16			16																										
1.6 Quality assurance/quality control				24																													
1.7 Team Coordination				2			12																										
2.0 DESIGN SURVEY		3																															
2.1 Topographic																																	
2.2 Boundary																																	
3.0 RIGHT-OF-WAY		4																															
3.1 Right-of-way Parcels (20 @ \$2,800)																																	
3.2 Drainage Easement Parcels (2 @ \$2,500)																																	
3.2 Temporary Construction Easement Parcels (10 @ \$2,500)																																	
4.0 RIGHT-OF-WAY SERVICES		5																															
4.1 Appraisal, Acquisition and Title/Closing (20 @ \$10,500)																																	
5.0 GEOTECHNICAL ENGINEERING		6																															
5.1 Geotech Report and Recommendations																																	
6.0 SUBSURFACE UTILITY ENGINEERING		7																															
6.1 Level B																																	
6.2 Level A Test Holes (10 each @ \$2,000)																																	
7.0 DRAINAGE STUDY		8																															
7.1 Project Management				12																													
7.2 Data Collection and Terrain Development				4																													
7.3 Hydrologic Analysis				1																													
7.4 Hydraulic Analysis				24																													
7.5 Flood Study Report				8																													
8.0 CONSTRUCTION PLANS		9																															
8.1 Construction Plans																																	
Cover Sheet		1																															
Sheet Index and I sheet		1																															
General Notes		2																															
Typical Paving Sections		2																															
Project Layout		2																															
Right-of-Way Map Sheets		9																															
Demolition Plans		9																															
Paving Plan and Profile Sheets		18																															
Driveway and Sidewalk Plan and Profile Sheets		6																															
Grading Plans		19																															
Drainage Area Map and Computations		9																															
Storm Drain Plan and Profile Sheets		16																															
Storm Drain Laterals Sheets		4																															
Water Line Plan and Profile Sheets		6																															
Erosion Control Plans		4																															
Pavement Marking Sequencing Plans		5																															
Traffic Control and Sequencing Plans		22																															



Halff Associates, Inc.

**CONFLICT OF INTEREST QUESTIONNAIRE -****FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

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

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

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

Halff Associates, Inc.

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

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

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

None.

\_\_\_\_\_  
Name of Officer

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

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

None.

**4 ☒ I have no Conflict of Interest to disclose.****5 DocuSigned by:***Benjamin L. McGahey*

10/28/2022

Signature of Vendor doing business with the governmental entity

Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

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

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

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

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

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

(2) the vendor:

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

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

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
  - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
  - (3) has a family relationship with a local government officer of that local governmental entity.

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

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> 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: 62A3EA5742B14BF899309C88902B15F2

Status: Completed

Subject: Please DocuSign: City Council Contract 7599-011 Westgate Drive Reconstruction Design PSA

Source Envelope:

Document Pages: 49

Signatures: 6

Envelope Originator:

Certificate Pages: 7

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelope Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Cori Power

Location: DocuSign

10/24/2022 9:51:57 AM

cori.power@cityofdenton.com

**Signer Events****Signature****Timestamp**

Cori Power

**Completed**

Sent: 10/26/2022 12:53:39 PM

cori.power@cityofdenton.com

Viewed: 10/26/2022 12:53:48 PM

Senior Buyer

Signed: 10/26/2022 12:54:41 PM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell



Sent: 10/26/2022 12:54:45 PM

lori.hewell@cityofdenton.com

Viewed: 10/26/2022 1:57:04 PM

Purchasing Manager

Signed: 10/26/2022 1:58:45 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Marcella Lunn



Sent: 10/26/2022 1:58:48 PM

marcella.lunn@cityofdenton.com

Viewed: 10/27/2022 10:14:09 PM

Deputy City Attorney

Signed: 10/27/2022 10:18:29 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Cori Power

**Completed**

Sent: 10/28/2022 10:13:00 AM

cori.power@cityofdenton.com

Viewed: 10/28/2022 10:14:35 AM

Senior Buyer

Signed: 10/28/2022 10:14:38 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Signer Events	Signature	Timestamp
<p>Benjamin L. McGahey bmcgahey@halff.com Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 10/28/2022 8:29:16 AM ID: 7633a27b-d6dd-4ffa-bd6f-2299a157680e</p>	<p>DocuSigned by:  2B2A715A9AE5417...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 208.66.149.92</p>	<p>Sent: 10/27/2022 10:18:36 PM Resent: 10/28/2022 10:25:40 AM Viewed: 10/28/2022 10:36:07 AM Signed: 10/28/2022 10:46:52 AM</p>
<p>Cori Power cori.power@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p><b>Completed</b></p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 10/28/2022 10:46:56 AM Viewed: 10/28/2022 10:55:02 AM Signed: 10/28/2022 10:55:23 AM</p>
<p>Rebecca Diviney Rebecca.Diviney@cityofdenton.com Director of Capital Projects/City Engineer Capital Projects/Engineering Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 10/28/2022 11:32:20 AM ID: ec3e40cd-c0a1-47e4-b6d3-b5079bf23794</p>	<p>DocuSigned by:  CE9F2B4E4B6745F...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 10/28/2022 10:46:56 AM Viewed: 10/28/2022 11:32:20 AM Signed: 10/28/2022 11:32:43 AM</p>
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p><b>Completed</b></p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 10/28/2022 11:32:51 AM Viewed: 11/16/2022 9:23:16 AM Signed: 11/16/2022 9:23:36 AM</p>
<p>Sara Hensley sara.hensley@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>DocuSigned by:  5236DB296270423...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 107.77.198.132 Signed using mobile</p>	<p>Sent: 11/16/2022 9:23:41 AM Viewed: 11/16/2022 9:30:04 AM Signed: 11/16/2022 9:30:16 AM</p>
<p>Rosa Rios rosa.rios@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 11/16/2022 4:35:26 PM ID: 55b3fe2e-8304-4727-9b12-ddf609c902d0</p>	<p>DocuSigned by:  1C5CA8C5E175493...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 11/16/2022 9:30:21 AM Viewed: 11/16/2022 4:35:26 PM Signed: 11/16/2022 4:35:46 PM</p>
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) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 10/26/2022 12:54:45 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 10/28/2022 11:32:48 AM Viewed: 10/28/2022 11:38:42 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 11/16/2022 4:35:52 PM Viewed: 11/17/2022 9:58:53 AM
Jesus Perez Jesus.Perez@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 9/16/2022 8:31:39 AM ID: 3402c001-979e-481a-ac9e-9fa361dce7cf	COPIED	Sent: 11/16/2022 4:35:56 PM Viewed: 11/17/2022 9:41:07 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 11/16/2022 4:35:59 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	10/26/2022 12:53:39 PM
Certified Delivered	Security Checked	11/16/2022 4:35:26 PM
Signing Complete	Security Checked	11/16/2022 4:35:46 PM
Completed	Security Checked	11/16/2022 4:35:59 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](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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. 24-539

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIRST AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF DENTON AND HALFF ASSOCIATES, INC., AMENDING THE CONTRACT APPROVED BY THE CITY COUNCIL ON NOVEMBER 15, 2022, IN THE NOT-TO-EXCEED AMOUNT OF \$1,144,280.00; SAID FIRST AMENDMENT TO PROVIDE ADDITIONAL ENGINEERING AND DESIGN SERVICES FOR A CONDITIONAL LETTER OF MAP REVISION AND A LETTER OF MAP REVISION IN RELATION TO THE WESTGATE DRIVE RECONSTRUCTION PROJECT FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7599-011 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$62,000.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$1,206,280.00).

WHEREAS, on November 15, 2022, City Council awarded a contract to Halff Associates, Inc. in the amount of \$1,144,280.00, for the design of the Westgate Drive Reconstruction Project for the Capital Improvements Department; and

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The First Amendment, increasing the amount of the contract between the City and Halff Associates, Inc., which is on file in the office of the Purchasing Agent, in the amount of Sixty-Two Thousand and 0/100 (\$62,000.00) 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 \$1,206,280.00.

SECTION 2. 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 Vicki Byrd. This ordinance was passed and approved by the following vote [6 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vicki Byrd, District 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Beck, District 2:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paul Meltzer, District 3:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Joe Holland, District 4:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brandon Chase McGee, At Large Place 5:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Watts, At Large Place 6:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PASSED AND APPROVED this the 19<sup>th</sup> day of March, 2024.

  
 GERARD HUDSPETH, MAYOR

ATTEST:  
 JESUS SALAZAR, CITY SECRETARY

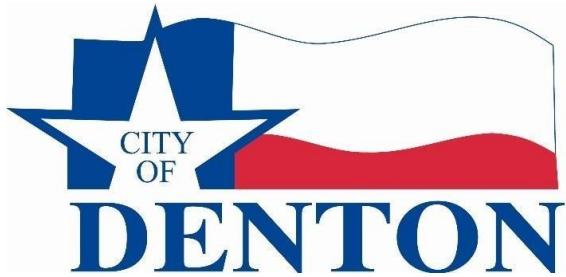
BY: 

APPROVED AS TO LEGAL FORM:  
 MACK REINWAND, CITY ATTORNEY



BY: 

Digitally signed by Marcella Lunn  
 DN: dc=com, dc=cityofdenton,  
 dc=codad, ou=Department Users  
 and Groups, ou=General  
 Government, ou=Legal,  
 cn=Marcella Lunn,  
 email=Marcella.Lunn@cityofdent  
 on.com  
 Date: 2024.02.23 14:29:52 -06'00'



Docusign City Council Transmittal Coversheet

PSA	7599-011
File Name	Westgate Dr. Reconstruction Design Amendment 1
Purchasing Contact	Erica Garcia
City Council Target Date	MARCH 19, 2024
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	24-539

**FIRST AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND HALFF ASSOCIATES, INC.  
PSA 7599-011**

THE STATE OF TEXAS                   §

COUNTY OF DENTON                   §

THIS FIRST AMENDMENT TO CONTRACT 7599-011 (“Amendment”) by and between the City of Denton, Texas (“City”) and Halff Associates, Inc. (“Engineer”); to that certain contract executed on November 15, 2022, in the original not-to-exceed amount of \$1,144,280 (the “Agreement”); for services related to Westgate Drive Reconstruction Project.

WHEREAS, the City deems it necessary to further expand the services provided by Engineer to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount of \$62,000 with this Amendment for an aggregate not-to-exceed amount of \$1,206,280; and

FURTHERMORE, the City deems it necessary to further expand the goods/services provided by Engineer to the City;

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

1. The additional services described in Exhibit “A” of this Amendment, attached hereto and incorporated herein for all purposes, for professional services related to the Westgate Drive Reconstruction Project, are hereby authorized to be performed by Engineer. For and in consideration of the additional services to be performed by Engineer, the City agrees to pay, based on the cost estimate detail attached as Exhibit “A”, a total fee, including reimbursement for non-labor expenses an amount not to exceed \$62,000.
2. This Amendment modifies the Agreement amount to provide an additional \$62,000 for the additional services with a revised aggregate not to exceed total of \$1,206,280.

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 Engineer, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date 03/19/2024.

BY:  
CITY OF DENTON, TEXAS

DocuSigned by:  
Sara Hensley  
5296DD296279429...  
Sara Hensley, City Manager

BY:  
ENGINEER  
HALFF ASSOCIATES, INC.

DocuSigned by:  
Benjamin McGahey  
2B2A715A9AE6447...  
Benjamin McGahey

Date: 02/22/2024

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

DocuSigned by:  
David Chan, PMP  
7B46EEAB11BC4F2...  
Signature

Director of Capital Projects

Title

Capital projects

Department

Date Signed: 02/22/2024

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
By: Marcella Lunn  
49070924B4AA429...

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

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

**EXHIBIT A  
AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT**

**ADDITIONAL SERVICES**

**FEMA CLOMR and LOMR Amendment to  
Westgate Drive Reconstruction Project  
FILE 7599-011**

As per the meeting had on October 24, 2023, with City of Denton staff, this amendment is to add FEMA Conditional Letter of Map Revision (CLOMR) and Letter of Map Revision (LOMR) services to the original contract File 7599-011, which was executed on November 15, 2022. The scope for the CLOMR and LOMR is stated below:

**I. FEMA Conditional Letter of Map Revision (CLOMR)**

The Engineer shall develop a FEMA CLOMR based on the results of the Westgate Drive Floodplain Analysis. The approved 90% design plans will be the basis of the CLOMR. Any deviations in design or construction from that study will require additional services and fees. The following task will be performed to support a CLOMR application submittal to FEMA:

**1. Hydraulic Modeling for Proposed Conditions**

The floodplain analysis for proposed conditions FEMA model shall be used for the CLOMR submittal; therefore, no additional proposed conditions hydraulic modeling will be required.

- Utilize hydraulic modeling, utilizing FEMA effective discharges, for the floodplain analysis to compute revised existing and proposed water surface elevations. Compare results to effective conditions.
- Delineate 100-year, 500-year and regulatory floodway boundaries.
- Conduct a Quality Assessment/Quality Control review of the hydraulic models.

**2. Forms and Exhibits**

- Complete the following forms, and include attachments and exhibits as required by FEMA:
  - Form 1- Overview and Concurrence Form
  - Form 2 - Riverine Hydraulics and Hydrology Form
  - Form 3 - Riverine Structures Form.
  - Payment Information Form



- Compile comparison tables, including but not limited to, a 1-percent-annual-chance flood elevation (100-year) comparison table and floodway comparison table.
- Prepare FEMA required workmap showing existing and proposed topography, proposed site plan, existing and proposed floodplains, and floodway.
- Prepare a scaled revised DFIRM exhibit and annotate.

### 3. Compliance with the Endangered Species Act (ESA)

- Perform a desktop review of listed species and limited field work to confirm that no endangered species will be harmed.
- Apply for an Incidental Take Permit (ITP) from the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) if necessary.
- Obtain a letter from the NMFS and the USFWS indicating their determination that the project is "not likely to adversely affect" any endangered species.

### 4. CLOMR Application Report

- Update the floodplains analysis report to a CLOMR Report to be submitted to the City of Denton and FEMA.
- Submit and present the report to the City of Denton for review, approval, and signatures. This scope of work includes one (1) meeting with the City of Denton for the purpose of review and signature of the CLOMR report.
- Prepare newspaper publication floodway notice if needed.
- Prepare documentation and notification letters to affected property owners.
- Digital CLOMR submittal to FEMA LOMC Depot via online submittal.
- Online FEMA fee for CLOMR review is \$6,500 (subject to change) as of November 2023 and is to be paid by CLIENT. The fee in this proposal does not include the submittal fee for the CLOMR application.
- Coordination with City of Denton during review.
- Coordination with FEMA during the review stage, modifications to analysis and report as required by FEMA.

## **II. FEMA Letter of Map Revision (LOMR)**

The Engineer shall develop a FEMA LOMR based on the above developed CLOMR.

Any deviations in design or construction from that study will require additional services and fees.

## 1. Hydraulic Modeling for As-Built Conditions

- Refine the FEMA accepted CLOMR model based on as-built conditions. As-built/Record Drawings from the Design team will be used.
- Modify proposed conditions Pecan Creek above SCS Reservoir #16 model established during CLOMR phase to reflect as-built conditions.
- Perform a Quality Assurance/Quality Control review of the as-built model. Execute and debug.
- Compare water surface elevations from as-built conditions to FEMA effective conditions.
- If any discrepancies result from the model review, adjust modeling as necessary based upon existing topography and record drawings to adhere to City of Denton and FEMA standards as necessary.
- Perform floodway analysis.
- Delineate 100- and 500-year floodplain and generate regulatory floodway boundaries.

## 2. Forms and Exhibits

- Prepare exhibits and prepare forms for a report to FEMA pertaining to existing land use conditions.
- Complete the following forms, and include attachments and exhibits as required by FEMA:
  - Form 1- Overview and Concurrence Form
  - Form 2 - Riverine Hydraulics and Hydrology Form
  - Form 3 - Riverine Structures Form.
  - Payment Information Form
- Compile comparison tables, including but not limited to, a 1-percent-annual-chance flood elevation (100-year) comparison table and floodway comparison table.
- Prepare FEMA required workmap showing existing and proposed topography, proposed site plan, existing and proposed floodplains, and floodway.
- Prepare a scaled revised DFIRM exhibit and annotate.

- Prepare documentation and notification letters to affected property owners (if needed).
- Prepare newspaper publication floodway notice if needed.

3. LOMR Application Report

- Prepare LOMR Report to be submitted to the City of Denton.
- Submit and present the report to the City of Denton for review, approval, and signatures. This scope of work includes one (1) meeting with the City of Denton for the purpose of review and signature of the LOMR report.
- Digital LOMR submittal to FEMA LOMC Depot via online submittal.
- Online FEMA fee for LOMR review is \$8,000 (subject to change) as of November 2023 and is to be paid by CLIENT. The fee in this proposal does not include the submittal fee for the CLOMR application.
- Coordination with City of Denton during FEMA review.
- Coordination with FEMA during the review stage, including modifications to analysis and report as required by FEMA.

III. **Schedule**

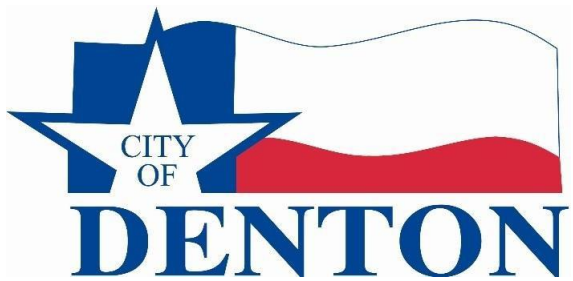
1. Completion of FEMA Conditional Letter of Map Revision (CLOMR): 120 calendar days from date of written authorization to begin work.
2. Completion of FEMA Letter of Map Revision (LOMR): 120 calendar days from date of receipt of Contractor Redlines/As-Built Drawings upon completion of construction.

IV. **AMENDMENT NO. 1 FEE SUMMARY**

FEMA Conditional Letter of Map Revision	\$42,000
FEMA Letter of Map Revision	\$20,000
<b>Total Contract Amendment No. 1</b>	<b>\$62,000</b>

**SUMMARY OF THE AMMENDED CONTRACT**

Original Contract	\$1,144,280
Amendment No. 1	\$62,000
Amended Contract Amount	\$1,206,280



Docusign Transmittal Coversheet

File Name	7599-011 - westgate Drive Reconstruction Amendment 2
Purchasing Contact	Cori Power
Contract Expiration	N/A

**AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN  
CITY AND HALFF ASSOCIATES, INC.**

**Phase Reallocation Amendment to  
Westgate Drive Reconstruction Project  
FILE 7599-011**

This is Amendment number 02 dated May 22, 2024 to the agreement between the City of Denton, Texas (“City”) and Halff Associates, Inc. (“Engineer”) dated November 15, 2022 (“the Agreement”) concerning the Westgate Drive Reconstruction Project (“the Project”).

Our additional services understanding, schedule and fee summary are presented below.

**I. ADDITIONAL SERVICES UNDERSTANDING**

As per correspondence between City staff and the Engineer between April 4, 2024 and May 3, 2024, the Engineer is proposing to reallocate unused funds from the XIV. Traffic Signal Design Task under Special Services to supplement the Final Design Phase, Task XV. Environmental Services, and Task XVI. Illumination Study as detailed in the Fee Summary below. The scope for the Traffic Signal Design task shall be removed from the original contract. This amendment is a net zero change to the current contract amount.

**II. SCHEDULE**

The original design deliverable schedule shall not be changed under this amendment.

**III. AMENDMENT NO. 2 FEE SUMMARY**

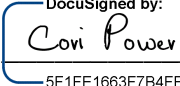
XIV. Traffic Signal Design	(\$30,620)
XV. Environmental Services	\$3,500
XVI. Illumination Study	\$6,120
Final Design Phase (100% Submittal)	\$21,000
<b>Total Contract Amendment No. 2</b>	<b>\$0.00</b>

**SUMMARY OF THE AMENDED CONTRACT**

Original Contract	\$1,144,280
Amendment No. 1	\$62,000
Amendment No. 2	\$0
<b>Amended Contract Amount</b>	<b>\$1,206,280</b>

CITY:

CITY OF DENTON, TEXAS

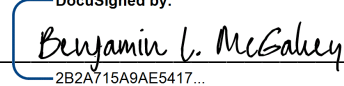
By:   
5F1FE1663F7B4FE...

Title: Purchasing Supervisor

Date: 6/5/2024

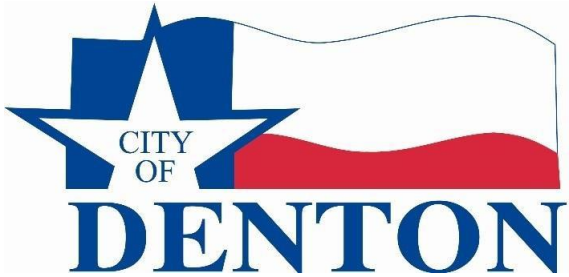
ENGINEER:

HALFF ASSOCIATES, INC.

By:   
2B2A715A9AE5417...

Title: Vice President

Date: 6/5/2024



DocuSign Transmittal Coversheet

File Name	7599-011 Westgate Dr Design WA Amendment 3
Purchasing Contact	Cori Power

**AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN  
CITY AND HALFF ASSOCIATES, INC.**

**Westgate Drive East-West Construction Plans Repackage  
Westgate Drive Reconstruction Project  
FILE 7599-011**

This is Amendment number 03 dated 1/6/2025 to the agreement between the City of Denton, Texas ("City") and Halff Associates, Inc. ("Engineer") dated November 15, 2022 ("the Agreement") concerning the Westgate Drive Reconstruction Project ("the Project").

Our description of additional services understanding, assumptions, schedule and fee summary are presented below.

**I. DESCRIPTION OF ADDITIONAL SERVICES UNDERSTANDING**

As per correspondence between City staff and the Engineer between November 13, 2024 and November 26, 2024, the Engineer is proposing to reallocate funds from the XII. Bidding and Construction Engineering Task under Special Services to supplement a new XVII. Westgate Drive East-West Plans Repackage Task as detailed in the Fee Summary below. At the request of City staff and the City Manager's Office, it is desired for the Westgate Drive East-West section of the improvements to be constructed first, as a separate construction project, and Windsor Drive and Westgate Drive North-South shall be constructed at a later date. This amendment is a net zero change to the current contract amount.

**II. ASSUMPTIONS**

- A. Project limits of the Westgate Drive East-West repackaging shall be from the existing Westgate Drive eastern pavement stubout (Westgate Dr (E&W) STA 12+74.44 in plans) to the western curb return of Kingsview Drive in Bronco Way (Westgate Dr (E&W) STA 25+57.17 in plans) approximately 1,285 LF. Project limits shall also include a portion of Westgate Drive North-South from the existing Westgate Drive East-West and North-South intersection south to approximately 200 linear feet south of the southern curb return of Barrow Drive in Westgate Drive North-South, approximately 670 LF.
- B. Consultant's services shall only include those that are normal and customary and are not represented as special services or those requiring expertise greater than that provided by other providers.
- C. Services not identified, whether specifically noted or implied, in this proposal are considered additional services and may require a modification to the scope and an increase in the budget.



- D. The following items are assumed to be additional services beyond the original contract and prepared as part of the Westgate Drive East-West Repackage Submittal:
  - i. Westgate Drive East-West 100% Final Plans
  - ii. Westgate Drive East-West Project Manual, including bidding and contract documents, bid quantities and proposal, and specifications.
  - iii. Westgate Drive East-West Final OPCC (repackaged to include northern-most portion of Westgate Drive North-South)
- E. Separate applications and permitting fees for Texas Department of Licensing and Regulation (TDLR) for code review of sidewalks and ramps (pedestrian facilities). TDLR will require a separate submittal since it will be a stand-alone construction project. TDLR review and inspection fees are included in this fee reallocation summary.
- F. Conduct one (1) City review meeting with City staff after submittal of the 100% Westgate Drive East-West repackaged and address all comments provided prior to or during said meeting.
- G. For this amendment, the task for Bidding and Construction Engineering will be reduced from \$35,290 to \$0. It is assumed that additional funds will be needed for the Bidding and Construction Engineering task in the future, not only for the Westgate Drive East-West construction phase, but also for the Windsor Drive and Westgate Drive North-South construction phase. Halff will intend to prepare a separate amendment for City review and processing, as per discussion during the November 26, 2024 Team meeting between Halff and City staff.

III. **SCHEDULE**

Completion/furnishing of repackaged Westgate Drive East-West 100% final plans, specifications, bid quantities and construction cost estimate: 60 calendar days from date of written authorization to begin.

IV. **AMENDMENT NO. 3 FEE SUMMARY**

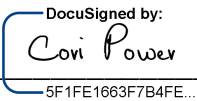
XII. Bidding and Construction Engineering	(\$35,290)
XVII. Westgate Drive East-West Plans Repackage	\$35,290
<b>Total Contract Amendment No. 3</b>	<b>\$0.00</b>

**SUMMARY OF THE AMENDED CONTRACT**

Original Contract	\$1,144,280
Amendment No. 1	\$62,000
Amendment No. 2	\$0
<u>Amendment No. 3</u>	<u>\$0</u>
Amended Contract Amount	\$1,206,280

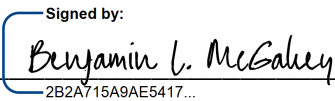
CITY:  
  
CITY OF DENTON, TEXAS

ENGINEER:  
  
HALFF ASSOCIATES, INC.

By: 5F1FE1663F7B4FE...

Title: Purchasing Supervisor

Date: 1/6/2025

Signed by: 2B2A715A9AE5417...

Title: Vice President

Date: 1/6/2025



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FOURTH AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF DENTON AND HALFF ASSOCIATES, INC., AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON NOVEMBER 15, 2022, IN THE NOT-TO-EXCEED AMOUNT OF \$1,144,280.00; AMENDED BY AMENDMENTS 1-3 APPROVED BY THE CITY COUNCIL AND PURCHASING; SAID FOURTH AMENDMENT TO PROVIDE FOR THE DESIGN, BIDDING, CONSTRUCTION ENGINEERING SERVICES AND FEMA APPLICATION FEES FOR A CONDITIONAL LETTER OF MAP REVISION (CLOMR) AND A LETTER OF MAP REVISION (LOMR) IN RELATION TO THE WESTGATE DRIVE RECONSTRUCTION PROJECT FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7599-011 – PROVIDING FOR AN ADDITIONAL FOURTH AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$81,690.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$1,287,970.00).

WHEREAS, on November 15, 2022, by Ordinance No. 22-2303, the City awarded a contract to Halff Associates, Inc., in the amount of \$1,144,280.00, for the design of the Westgate Drive Reconstruction Project for the Capital Improvements Department; and

WHEREAS, on March 19, 2024, City Council awarded a First Amendment to Halff Associates, Inc., in the amount of \$62,000.00, to provide additional engineering and design services for a Conditional Letter of Map Revision and a Letter of Map Revision in relation to the Westgate Drive Reconstruction Project for the Capital Projects Department; and

WHEREAS, on May 22, 2024, Purchasing awarded a Second Amendment to Halff Associates, Inc., to reallocate the funds from the Traffic Signal Design category (XIV) to Environmental Services, Illumination Study, and Final Design of the contract; and

WHEREAS, on January 6, 2025, Purchasing awarded a Third Amendment to Halff Associates, Inc., to split the project into two (2) project phases; and

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

WHEREAS, the additional fees under the proposed Fourth 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 Fourth Amendment, increasing the amount of the contract between the City and Halff Associates, Inc., which is on file in the office of the Purchasing Agent, in the amount of Eighty One Thousand Six Hundred Ninety and 0/100 (\$81,690.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which

shall be attached hereto. The total contract amount increases to \$1,287,970.00.

**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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

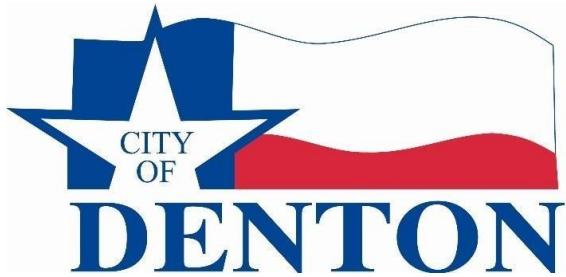
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

PSA	7599-011
File Name	Westgate Drive Reconstruction Design Amendment #4
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	



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 Engineer, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date \_\_\_\_\_.

“Engineer”

HALFF ASSOCIATES, INC.

Signed by:  
By: Benjamin L. McGee President  
AUTHORIZED SIGNATURE, TITLE

“CITY”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

ATTEST:  
LAUREN THODEN, CITY SECRETARY

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

By: \_\_\_\_\_

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

Signed by:  
Seth Garcia Seth Garcia  
SIGNATURE PRINTED NAME  
Interim Director of Capital Projects  
TITLE  
Capital Projects  
DEPARTMENT

## **Exhibit A**

### **AMENDMENT NO. 4 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY AND HALFF ASSOCIATES, INC.**

#### **Westgate Drive East-West Construction Plans Repackage Westgate Drive Reconstruction Project FILE 7599-011**

This is Amendment number 04 dated March 3, 2025 to the agreement between the City of Denton, Texas ("City") and Halff Associates, Inc. ("Engineer") dated November 15, 2022 ("the Agreement") concerning the Westgate Drive Reconstruction Project ("the Project").

Our description of additional services understanding, assumptions, schedule and fee summary are presented below.

#### **I. DESCRIPTION OF ADDITIONAL SERVICES UNDERSTANDING**

As per correspondence between City staff and the Engineer from November 13, 2024 to February 25, 2025, the Engineer is proposing to allocate additional funds to a Phase 1 Bidding and Construction Engineering Task, a Phase 2 Bidding and Construction Engineering Task, and a CLOMR and LOMR FEMA Application Review Fee Task under Special Services detailed in the Fee Summary below.

Bidding and Construction Engineering scope of services shall be per Section 11 of the executed contract dated November 15, 2022.

CLOMR and LOMR FEMA Application Review Fee scope of services shall be per the CLOMR Application Report and LOMR Application Report sections of the executed Contract Amendment #1 dated February 22, 2024 with the additional online submittal details provided below.

#### **II. ASSUMPTIONS**

- A. Consultant's services shall only include those that are normal and customary and are not represented as special services or those requiring expertise greater than that provided by other providers.
- B. Services not identified, whether specifically noted or implied, in this proposal are considered additional services and may require a modification to the scope and an increase in the budget.
- C. Online FEMA fee for CLOMR review is \$6,500 as of February 2025 and shall be paid by the Engineer upon contract amendment approval and pending City approval of the CLOMR and application report. Total fee for this task does include preparation effort for the online application submittal.



D. Online FEMA fee for LOMR review is \$8,000 (subject to change) as of February 2025 and shall be paid by the Engineer upon contract amendment approval and pending City approval of the LOMR and application report. Total fee for this task does include preparation effort for the online application submittal.

III. **SCHEDULE**

For Bidding and Construction Engineering Tasks, the following schedule shall apply:

- Phase 1
  - Bidding services: 60 calendar days from City’s approval of final plans
  - Construction services: In accordance with construction schedule (estimated to be 240 total calendar days)
  - Closure: 60 calendar days from the date of construction completion
- Phase 2
  - Bidding services: 60 calendar days from City’s approval of final plans
  - Construction services: In accordance with construction schedule (estimated to be 480 total calendar days)
  - Closure: 60 calendar days from the date of construction completion

For CLOMR and LOMR FEMA Application Review Fee Task, the schedule of online submittal shall be contingent upon final approval of CLOMR/LOMR application report and online submittal shall occur immediately following City approval.

IV. **AMENDMENT NO. 4 FEE SUMMARY**

XVIII. Phase 1 - Bidding and Construction Engineering	\$27,670
XIX. Phase 2 - Bidding and Construction Engineering	\$37,960
XX. CLOMR and LOMR FEMA Application Review Fee	<u>\$16,060</u>
<b>Total Contract Amendment No. 4</b>	<b>\$81,690</b>

**SUMMARY OF THE AMENDED CONTRACT**

Original Contract	\$1,144,280
Amendment No. 1	\$62,000
Amendment No. 2	\$0
Amendment No. 3	\$0
Amendment No. 4	<u>\$81,690</u>
Amended Contract Amount	\$1,287,970

CITY:

CITY OF DENTON, TEXAS

ENGINEER:

HALFF ASSOCIATES, INC.

By:\_\_\_\_\_

By:\_\_\_\_\_

Title:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

# CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

## For vendor or other person doing business with local governmental entity

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

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

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

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

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

Halff Associates, Inc.

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

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

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

N/A

\_\_\_\_\_  
Name of Officer

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

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

N/A

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

**5** Signed by:

*Benjamin L. McGahey*

3/21/2025

Signature of Vendor doing business with the governmental entity

Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

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

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

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

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

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

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

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

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> 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: C4617A12-885A-421B-A4CB-B5E3AF524153

Subject: Please DocuSign: City Council Contract 7599-011 Westgate Reconstruction Amendment #4

Source Envelope:

Document Pages: 8

Signatures: 4

Certificate Pages: 6

Initials: 1

AutoNav: Enabled

Envelope Stamping: Enabled

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

Status: Sent

Envelope Originator:

Cori Power

901B Texas Street

Denton, TX 76209

cori.power@cityofdenton.com

IP Address: 198.49.140.10

## Record Tracking

Status: Original

3/19/2025 4:24:58 PM

Holder: Cori Power

cori.power@cityofdenton.com

Location: DocuSign

## Signer Events

Cori Power

cori.power@cityofdenton.com

Purchasing Supervisor

City of Denton

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

## Signature

**Completed**

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Lori Hewell

lori.hewell@cityofdenton.com

Purchasing Manager

City of Denton

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign



Signature Adoption: Pre-selected Style

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Marcella Lunn

marcella.lunn@cityofdenton.com

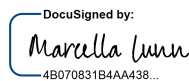
Senior Deputy City Attorney

City of Denton

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

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Signature Adoption: Pre-selected Style

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Signed: 3/20/2025 9:09:24 AM

Benjamin L. McGahey

bmcgahey@half.com

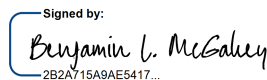
Vice President

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

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Resent: 3/21/2025 9:55:12 AM

Viewed: 3/21/2025 9:59:36 AM

Signed: 3/21/2025 10:19:51 AM

Signer Events	Signature	Timestamp
<p>Seth Garcia</p> <p>Seth.Garcia@cityofdenton.com</p> <p>Interim Director of Capital Projects</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>Signed by:</p>  <p>A13701F6BC954FC...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 107.77.218.5</p> <p>Signed using mobile</p>	<p>Sent: 3/21/2025 10:19:56 AM</p> <p>Viewed: 3/21/2025 11:11:54 AM</p> <p>Signed: 3/21/2025 11:12:29 AM</p>

**Electronic Record and Signature Disclosure:**  
Accepted: 3/21/2025 11:11:54 AM  
ID: 44b11174-e07a-4eba-8514-970362d03b52

<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	Sent: 3/21/2025 11:12:32 AM
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**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sara Hensley

sara.hensley@cityofdenton.com

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lauren Thoden

lauren.thoden@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

<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div>COPIED</div>	<p>Sent: 3/19/2025 4:29:45 PM</p>
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<p>Gretna Jones</p> <p>gretna.jones@cityofdenton.com</p> <p>Legal Secretary</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<div>COPIED</div>	<p>Sent: 3/21/2025 11:12:32 AM</p> <p>Viewed: 3/24/2025 1:33:05 PM</p>
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Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Jesus Perez Jesus.Perez@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 10/14/2024 4:55:51 PM ID: a551fc67-1a5a-41c0-90fa-4257476b487c		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/19/2025 4:29:12 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](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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

**Acknowledging your access and consent to receive materials electronically**

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

By checking the 'I Agree' box, I confirm that:

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



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB25-049, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute Change Order No. 3 to the contract between the City of Denton and Sundt Construction, Inc., for the Bonnie Brae Phase 3 Widening and Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8094-1 - Change Order No. 3 in the not-to-exceed amount of \$2,388,362.16, for a total contract award aggregated to \$42,707,207.63).



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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Christine Taylor  
**DATE:** April 14, 2025

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute Change Order No. 3 to the contract between the City of Denton and Sundt Construction, Inc., for the Bonnie Brae Phase 3 Widening and Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8094-1 – Change Order No. 3 in the not-to-exceed amount of \$2,388,362.16, for a total contract award aggregated to \$42,707,207.63).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The Bonnie Brae Three project is being constructed on a new alignment between Parvin and Roselawn Drive. The new alignment conflicted with an existing gas easement that required the City to compensate the Enlink for relocation, including the purchase of new easements. City Council authorized an agreement between the City of Denton and Enlink for the relocation efforts in December 2023. Enlink relocated the four (4) inch gas line and abandoned the existing gas line in the path of the City's new drainage and paving improvements. Enlink completed the relocation on October 28, 2024, a full year after Sundt was issued a Notice to Proceed for construction.

Council authorized the construction contract with Sundt Construction Inc. on August 15, 2023. City of Denton and Sundt Construction agreed to delay the Notice to Proceed while the City finalized an agreement with Enlink for the gas line relocation. On October 16, 2023, it was decided the project could not be delayed any longer if we were to meet TxDOT's timeline to connect the new Bonnie Brae with the I-35 Merge project. Therefore, City staff issued Sundt Construction a Notice to Proceed.

The Enlink delay impacted the project by 233 working days. The request for equitable adjustment submitted by Sundt Construction includes labor, equipment, material, and subcontractor escalation costs in the total not to exceed amount of \$3,389,100.11. This request also includes 210 calendar days to be added to the project schedule. This change order will be funded by utilizing \$1,000,737.95 of the existing contingency and \$2,388,362.16 as requested. The Enlink gas conflict did not affect the TxDOT project, therefore, was not eligible for any reimbursement funding by TxDOT.

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On August 15, 2023, City Council approved a contract with Sundt Construction, Inc., in the not-to-exceed amount of \$40,318,845.47 (Ordinance 23-1524).

On December 12, 2023, City Council approved an agreement with Enlink for the relocation and abandonment of the existing 4-inch gas line (Ordinance 23-2336).

On June 17, 2024, Purchasing approved Change Order No. 1 with Sundt Construction, Inc., approving the use of contingency in the amount of \$44,157.

On December 9, 2024, Purchasing approved Change Order No. 2 with Sundt Construction, Inc., approving the use of contingency in the amount of \$365,742.

## **RECOMMENDATION**

Award Change Order No. 3 with Sundt Construction, Inc., for the Bonnie Brae Phase 3 Widening and Reconstruction Project for the Capital Projects Department, in a not-to-exceed amount of \$2,388,362.16, for a total amended contract amount of \$42,707,207.63.

## **PRINCIPAL PLACE OF BUSINESS**

Sundt Construction, Inc.  
Irving, TX

## **ESTIMATED SCHEDULE OF PROJECT**

This project is estimated to be completed in November of 2026.

## **FISCAL INFORMATION**

These services will be funded from Streets/Traffic C.O. account 350288402.1360.40100. Purchase Order #205669 will be revised to include the third change order amount of \$2,388,362.16. The total amended amount of this contract is \$42,707,207.63.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Original Ordinance, Contract, and Change Order Nos. 1-2

Exhibit 3: Ordinance and Change Order No. 3

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

For information concerning this acquisition, contact: Robin Davis, 940-349-7713.

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

ORDINANCE NO. 23-1524

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH SUNDT CONSTRUCTION, INC., FOR THE BONNIE BRAE PHASE 3 WIDENING AND RECONSTRUCTION PROJECT FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8094-1 – AWARDED TO SUNDT CONSTRUCTION, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$40,318,845.47).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the Bonnie Brae Phase 3 Widening and Reconstruction Project for the Capital Projects Department; and

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

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

<u>CSP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8094-1	Sundt Construction, Inc.	\$40,318,845.47

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.

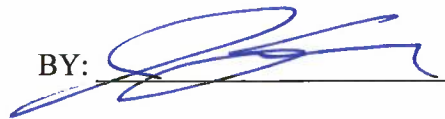
The motion to approve this ordinance was made by Joe Holland and seconded by Vicki Byrd. This ordinance was passed and approved by the following vote [ 6 - 0 ]:

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

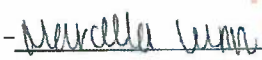
PASSED AND APPROVED this the 15<sup>th</sup> day of August, 2023.

  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

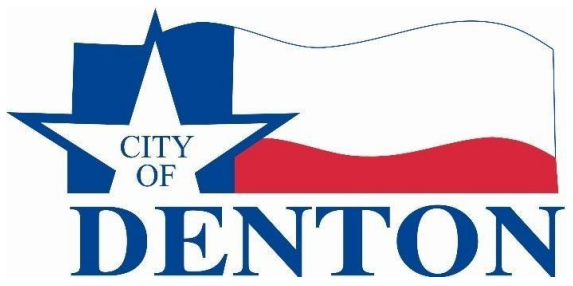
BY:  \_\_\_\_\_

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@cityofde  
nton.com, c=US  
Date: 2023.08.02 11:27:43  
-05'00'







Docusign City Council Transmittal Coversheet

RFP	8094-1
File Name	Bonnie Brae Phase 3 Widening & Reconstruction
Purchasing Contact	Cori Power
City Council Target Date	AUGUST 15, 2023
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	23-1524

**SECTION 00 52 44****AGREEMENT - CSP**

**THIS AGREEMENT**, authorized on 08/15/2023 is made by and between the City of Denton, a Texas home rule municipal corporation, acting by and through its duly authorized City Manager, ("City"), and **Sundt Construction, Inc.**, authorized to do business in Texas, acting by and through its duly authorized representative, ("Contractor").

City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein.

**Article 2. PROJECT**

The project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Bonnie Brae Phase 3 Widening & Reconstruction

CSP 8094-1

**Article 3. CONTRACT PRICE**

City agrees to pay Contractor for performance of the Work in accordance with the Contract Documents an amount, in current funds, of Thirty-Eight Million Three Hundred Ninety-Eight Thousand Nine Hundred Dollars and 45/100 Cents (\$38,398,900.45). At the sole option of the City, five (5) percent contingency in the amount of One Million Nine Hundred Nineteen Thousand Nine Hundred Forty-Five Dollars and 02/100 Cents (\$1,919,945.02) may be used for a total not-to-exceed amount of Forty Million Three Hundred Eighteen Thousand Eight Hundred Forty-Five Dollars and 47/100 Cents (\$40,318,845.47).

**Article 4. CONTRACT TIME****4.1 Time is of the essence.**

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

**4.2 Substantial Completion.**

The Work will be Substantially Complete, as defined in the Supplementary Conditions, within 730 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

**4.3 Final Acceptance.**

The Work will be complete for Final Acceptance within 912 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

## 4.4 Liquidated Damages:

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

1. *Substantial Completion*: If the Contractor neglects, refuses, or fails to achieve Substantial Completion, as defined in the Supplementary Conditions, within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2, Contractor shall pay City One Thousand Dollars and 00/100 Cents (\$1,000.00) for each day that expires after such time, until Substantial Completion is achieved.
2. *Final Acceptance*: If Contractor neglects, refuse, or fails to complete the Work within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.3, for completion and readiness for Final Payment, Contractor shall pay City One Thousand Five Hundred Dollars and 00/100 Cents (\$1,500.00) for each day that expires after such time, until the date determined by City as stated in the City-issued Letter of Final Acceptance.

**Article 5. CONTRACT DOCUMENTS**

## 5.1 CONTENTS:

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

1. Attachments to this Agreement:
  - a. Proposal Form
    - 1) Proposal Form
    - 2) Unit Price Proposal Form
    - 3) Vendor Compliance to State Law Non-Resident Offeror
    - 4) State and Federal documents (*project specific*)
  - b. Current Prevailing Wage Rate Table
  - c. Worker's Compensation Affidavit
  - d. General Conditions.
  - e. Supplementary Conditions.
2. The following located in File 8094-1 at:
 

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

  - a. Specifications described in the Table of Contents (Section 00 00 00) of the Project's Contract Documents.
  - b. Drawings.
  - c. Addenda.
  - d. Documentation submitted by Contractor prior to Notice of Award.

3. The following which shall be issued after the Effective Date of this Agreement and delivered to the City within ten (10) days of the Effective Date and before beginning Work:
  - a. Payment Bond
  - b. Performance Bond
  - c. Maintenance Bond
  - d. Power of Attorney for the Bonds
  - e. Form 1295 – Certificate of Interested Parties (email to City's Materials Management department)
  - f. Insurance Certificate
4. Specifications specifically made a part of the Contract Documents by attachment or, if not attached, as incorporated by reference and described in the Table of Contents of the Project's Contract Documents.
5. The following which may be delivered or issued after the Effective Date of the Agreement and, if issued, become an incorporated part of the Contract Documents:
  - a. Notice to Proceed.
  - b. Field Orders.
  - c. Change Orders.
  - d. Letter of Final Acceptance.

## Article 6. INDEMNIFICATION

**6.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION SHALL ONLY APPLY TO THE EXTENT THE ABOVE ARE CAUSED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**

6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION SHALL ONLY APPLY TO THE EXTENT THE ABOVE ARE CAUSED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.

## Article 7. MISCELLANEOUS

### 7.1 Capitalized Terms.

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

### 7.2 Assignment of Contract.

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

### 7.3 Successors and Assigns.

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

### 7.4 Severability.

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

### 7.5 Venue and Waiver of Sovereign Immunity.

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

### 7.6 Authority to Sign.

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

### 7.7 Prohibition on Contracts with Companies Boycotting Israel.

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

#### 7.8 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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

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

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

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

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

#### 7.11 Prohibition on Contracts with Companies Boycotting Certain Energy Companies



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

7.12 Immigration Nationality Act.

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

7.13 No Third-Party Beneficiaries.

This Agreement gives no rights or benefits to anyone other than the City and the Contractor and there are no third-party beneficiaries.

7.14 No Cause of Action Against Engineer.

Contractor, its subcontractors and equipment and materials suppliers on the Project or their sureties, shall maintain no direct action against the Engineer, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the City will be the beneficiary of any undertaking by the Engineer. The presence or duties of the Engineer's personnel at a construction site, whether as on-site representatives or otherwise, do not make the Engineer or its personnel in any way responsible to Contractor or any other entity for those duties that belong to the City, and do not relieve Contractor or any other entity of its obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for performing, coordinating and completing all portions of the Work in accordance with the Contract Documents and any health or safety precautions required by such Work. The Engineer and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

SIGNATURE PAGE TO FOLLOW

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

CITY OF DENTON

DocuSigned by:  
BY: Sara Hensley  
5236DB296270423...  
TITLE: City Manager  
DATE: 08/15/2023

CONTRACTOR  
SUNDT CONSTRUCTION, INC.

DocuSigned by:  
BY: Jeff Williamson  
AB37F04872970402...  
AUTHORIZED AGENT

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

DocuSigned by:  
Trevor Crain Trevor Crain  
SIGNATURE PRINTED NAME  
1048EAB01B0CF2...  
Director of Capital Projects  
TITLE  
Engineering Services  
DEPARTMENT

Jeff williamson  
NAME  
President - Transportation  
TITLE  
602 531-4255  
PHONE NUMBER  
jjwilliams@sundt.com  
EMAIL ADDRESS

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

DocuSigned by:  
Jesus Salazar  
2437C77B897541D...

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
Marcella Lunn  
4B070831B4AA438...

51  
52  
53 2023-1044386  
54 TEXAS ETHICS COMMISSION  
55 1295 CERTIFICATE NUMBER



**SECTION 00 41 01**  
**PROPOSAL FORM - CSP**

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

FOR: **CSP 8094-1 – Bonnie Brae Phase 3 Widening & Reconstruction**

**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 OFFERORS and INSTRUCTIONS TO OFFERORS, including without limitation those dealing with the disposition of Offeror's Bond.

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

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

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

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

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

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

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

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

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

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

### 3 Time of Completion

3.1 The Work will be Substantially Complete as defined in the Supplementary Conditions within **730 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 **912 Days** after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

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

### 4 Attached to this Proposal

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

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

### 5 Total Proposal Amount

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

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

1 5.3 Evaluation of Alternate Proposal Items:

2 Base Proposal Amount: \$ 38,240,172.90

3 Alternate Proposal Amount (if any): \$ 158,727.55

4 Total Proposal Amount: \$ 38,398,900.45

5 **6 Proposal Submittal**

6 6.1 It is understood by Offeror that submission of the total proposal amount is only one of the  
7 factors for the City's evaluation process, and that any award of contract will be based on  
8 the complete evaluation of the Proposal and Offeror by City under the terms provided in  
9 the Instructions to Offerors or any validly issued amendments or addenda.

10 6.2 This Proposal is submitted on May 24, 2023 by the entity  
11 named below.

12 Respectfully submitted,

13  
14  
15  
16 By:   
17 (Signature)

18 Jeff Williamson

19 (Printed Name)

20 Title: Group President

21 Company: Sundt Construction, Inc.

22 Address: 8445 Freeport Pky, Suite 240

23 Irving, TX 75063

24 State of Incorporation: Arizona

25 Email: jjwilliams@sundt.com

26 Phone: 480.293.3263

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

27 **END OF SECTION**

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



City of Denton Capital Projects

From Sundt Construction, Inc.

901-B Texas Street

8445 Freeport Parkway Suite 240

Denton, TX 76209

Irving, TX 75063

Attn: Cori Power/Purchasing Dept.

Jeff Williamson

PROJ.: Bonnie Brae Phase 3 Widening &amp; Reconstruction

480.293.3263

CSP: 8094-1

jjwilliams@sundt.com

## OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL

Item No.	SPEC	Description of work	BID QTY	UOM	Unit Price	Extended Price
SECTION I - PAVING						
1	01 70 00	MOBILIZATION	1	LS	\$ 3,750,000.00	\$ 3,750,000.00
2	01 58 13	CAPITAL IMPROVEMENT SIGNS	5	EA	\$ 500.00	\$ 2,500.00
3	01 57 13	EROSION CONTROL SWPPP	1	LS	\$ 225,000.00	\$ 225,000.00
4	32 93 00	TOPSOIL IMPORTED	14,510	SY	\$ 4.00	\$ 58,040.00
5	32 93 00	TOPSOIL NATIVE	28,566	SY	\$ 3.25	\$ 92,839.50
6	32 93 00	BLOCK SODDING	17,718	SY	\$ 6.50	\$ 115,167.00
7	TxDOT 164	HYDROMULCH WITH SEEDS	31,315	SY	\$ 2.00	\$ 62,630.00
8	31 10 00	PREPARING ROW	1	LS	\$ 1,312,000.00	\$ 1,312,000.00
9	31 23 16	EXCAVATION	42,773	CY	\$ 20.00	\$ 855,460.00
10	02 41 15	REMOVE EXISTING CONCRETE PAVING	5,759	SY	\$ 20.00	\$ 115,180.00
11	02 41 15	REMOVE EXISTING ASPHALT PAVING	19,834	SY	\$ 6.00	\$ 119,004.00
12	31 24 00	EMBANKMENT	57,093	CY	\$ 15.00	\$ 856,395.00
13	TxDOT 134.6001	BACKFILL	99	STA	\$ 600.00	\$ 59,400.00
14	32 11 29	12" LIME SLURRY (54LBS/SY)	1,975.9	TON	\$ 325.00	\$ 642,167.50
15	32 11 29	12" LIME TREATED SUBGRADE	73,180	SY	\$ 5.00	\$ 365,900.00
16	32 11 23	ROADBED BASE	195	SY	\$ 40.00	\$ 7,800.00
17	32 13 13	CONCRETE PAVEMENT 6-INCH	890	SY	\$ 95.00	\$ 84,550.00
18	32 13 13	CONCRETE PAVEMENT 8-INCH	3,224	SY	\$ 105.00	\$ 338,520.00
19	32 13 13	CONCRETE PAVEMENT 10-INCH	2,825	SY	\$ 115.00	\$ 324,875.00
20	32 13 13	CONCRETE PAVEMENT 11-INCH	59,272	SY	\$ 130.00	\$ 7,705,360.00
21	32 12 16	ASPHALT PAVEMENT, TY C, SAC-A, PG64-22, 2"	3,548	SY	\$ 30.00	\$ 106,440.00
22	32 12 16	ASPHALT PAVEMENT, TY B, PG64-22, 4"	145	SY	\$ 40.00	\$ 5,800.00
23	32 12 16	ASPHALT PAVEMENT, TY B, PG64-22, 7"	1,704	SY	\$ 70.00	\$ 119,280.00
24	32 12 16	ASPHALT PAVEMENT, TY B, PG64-22, 10"	1,699	SY	\$ 85.00	\$ 144,415.00
25	32 16 00	CONCRETE CURB & GUTTER 30-INCH	1,492	LF	\$ 45.00	\$ 67,140.00
26	32 16 00	CONCRETE RIBBON CURB	662	LF	\$ 50.00	\$ 33,100.00
27	32 16 00	MONOLITHIC CURB	29,790	LF	\$ 7.50	\$ 223,425.00
28	32 16 00	5-FOOT SIDEWALK 4-INCH	3,119	SY	\$ 105.00	\$ 327,495.00
29	32 16 00	10-FOOT SHARED USE PATH 5-INCH	12,946	SY	\$ 85.00	\$ 1,100,410.00
30	32 16 00	CURB RAMPS TYPE I	4	EA	\$ 4,250.00	\$ 17,000.00
31	32 16 00	CURB RAMPS TYPE II	22	EA	\$ 2,775.00	\$ 61,050.00
32	32 16 00	CURB RAMPS TYPE III	6	EA	\$ 4,950.00	\$ 29,700.00
33	32 13 13	CONCRETE STREET HEADER	349	LF	\$ 60.00	\$ 20,940.00
34	34 71 13	TRAFFIC CONTROL	30	MO	\$ 25,000.00	\$ 750,000.00
35	32 12 16	TEMPORARY ASPHALT PAVEMENT, TY B, PG64-22, 6"	4,910	SY	\$ 58.50	\$ 287,235.00
36	34 71 13	PORTABLE MESSAGE SIGNS (2 Count)	90	WK	\$ 280.00	\$ 25,200.00
37		OMITTED				
38		OMITTED				
39	32 32 00	RETAINING WALL (SPREAD FOOTING) W/TRAFFIC RAIL TY SSTR	546	SF	\$ 160.00	\$ 87,360.00
40		OMITTED				
41	32 13 16	4-INCH STAMPED & STAINED CONCRETE	2,755	SY	\$ 170.00	\$ 468,350.00
42	32 32 00	SIDEWALK RETAINING WALL	337	LF	\$ 160.00	\$ 53,920.00
43	TxDOT SS5112	REMOVABLE BOLLARD	2	EA	\$ 2,750.00	\$ 5,500.00
*44	TS-1	HAUL OFF UNSUITABLE MATERIAL	100	LOAD	\$ 105.00	\$ 10,500.00
*45	TS-2	HAUL OFF LANDFILL QUALITY MATERIAL	100	LOAD	\$ 520.00	\$ 52,000.00
**46	32 31 00	SMOOTH OR BARBED WIRE FENCE	1,427	LF	\$ 22.00	\$ 31,394.00
47	01 35 13	KCS RAILROAD COORDINATION & FLAGGING	1	LS	\$ 165,000.00	\$ 165,000.00
*UNSUITABLE MATERIALS ARE CLASSIFIED AS NON-TRASH MATERIALS - CANNOT BE COMPACTED TO PROPER DENSITIES.						
1 LOAD = 27 CY SEMI TRAILER.						
**DISCUSS WITH OWNER WHICH TYPE OF FENCING THEY PREFER						
END SECTION I - PAVING ITEMS						SUBTOTAL \$21,285,442.00

Item No.	SPEC	Description of work	BID QTY	UOM	Unit Price	Extended Price
<b>SECTION II - DRAINAGE IMPROVEMENTS</b>						
48	31 23 16	Channel Excavation	1,947	CY	\$ 15.00	\$ 29,205.00
49	32 01 29	Concrete Pavement Repair	327	SY	\$ 300.00	\$ 98,100.00
50	33 42 11	18" RCP (CL III)	3,025	LF	\$ 120.00	\$ 363,000.00
51		OMITTED				
52	33 42 11	24" RCP (CL III)	1,401	LF	\$ 111.00	\$ 155,511.00
53	33 42 11	24" RCP (CL V)	130	LF	\$ 150.00	\$ 19,500.00
54		OMITTED				
55	33 42 11	30" RCP (CL III)	784	LF	\$ 160.00	\$ 125,440.00
56	33 42 11	30" RCP (CL V)	148	LF	\$ 190.00	\$ 28,120.00
57	33 42 11	36" RCP (CL III)	526	LF	\$ 260.00	\$ 136,760.00
58	33 42 11	42" RCP (CL III)	93	LF	\$ 280.00	\$ 26,040.00
59	33 42 11	48" RCP (CL III)	1,145	LF	\$ 325.00	\$ 372,125.00
60		OMITTED				
61	33 42 11	60" RCP (CL III)	851	LF	\$ 500.00	\$ 425,500.00
61A	33 01 30	Post CCTV Inspecton	9,775	LF	\$ 4.00	\$ 39,100.00
62	33 42 11	6' X 4' RCB	874	LF	\$ 650.00	\$ 568,100.00
63	33 42 11	8' X 5' RCB	690	LF	\$ 700.00	\$ 483,000.00
64	33 42 11	9' X 7' RCB	106	LF	\$ 1,200.00	\$ 127,200.00
65	33 42 11	6" HDPE Pipe	120	LF	\$ 120.00	\$ 14,400.00
66	33 42 33	10' Standard Curb Inlet	1	EA	\$ 8,500.00	\$ 8,500.00
67	33 42 33	10' Recessed Curb Inlet	39	EA	\$ 8,750.00	\$ 341,250.00
68	33 42 33	20' Channel Inlet	1	EA	\$ 25,000.00	\$ 25,000.00
69	33 42 33	3' x 3' "Y" Inlet	1	EA	\$ 7,000.00	\$ 7,000.00
70	33 42 33	4' x 4' "Y" Inlet	2	EA	\$ 8,500.00	\$ 17,000.00
71	33 42 33	Drop Inlet Type 1	1	EA	\$ 7,000.00	\$ 7,000.00
72	TxDOT 465	Type M Manhole	21	EA	\$ 13,000.00	\$ 273,000.00
73	33 42 30	Manhole Type 1-C	2	EA	\$ 9,000.00	\$ 18,000.00
74	33 42 30	Junction Box Type 1	2	EA	\$ 18,000.00	\$ 36,000.00
75	33 42 23	"PW" Wingwalls	4	EA	\$ 44,750.00	\$ 179,000.00
76		OMITTED				
77	33 05 05	Trench Safety	9,268	LF	\$ 3.00	\$ 27,804.00
78	33 05 05	Cement Stabilized Sand CSS)	77	CY	\$ 200.00	\$ 15,400.00
79	33 42 23	Connect RCP to Headwall	3	EA	\$ 2,500.00	\$ 7,500.00
80	31 37 00	5" Class "A" Concrete Rip-Rap	2,026	SY	\$ 86.00	\$ 174,236.00
81	31 37 00	12" Grouted Rock Rip-Rap	92	SY	\$ 275.00	\$ 25,300.00
82	31 37 00	18" Grouted Rock Rip-Rap	416	SY	\$ 300.00	\$ 124,800.00
83	33 42 23	18" Safety End Treatment Type II (4:1) (C)	1	EA	\$ 2,500.00	\$ 2,500.00
84	33 42 23	24" Safety End Treatment Type II (4:1) (C)	2	EA	\$ 3,000.00	\$ 6,000.00
85	33 42 23	30" Safety End Treatment Type II (4:1) (C)	1	EA	\$ 3,200.00	\$ 3,200.00
86		OMITTED				
87		OMITTED				
88	02 41 14	Remove Existing Inlet	1	EA	\$ 1,800.00	\$ 1,800.00
89	02 41 14	Remove Existing Headwall	5	EA	\$ 2,500.00	\$ 12,500.00
90	02 41 14	Remove Existing Storm Pipe	1,598	LF	\$ 45.00	\$ 71,910.00
91	02625	Flexamat	13,735	SF	\$ 8.75	\$ 120,181.25
92	02 41 14	Plug	1	LS	\$ 2,000.00	\$ 2,000.00
93	32 16 00	4" Concrete Flume	552	SY	\$ 150.00	\$ 82,800.00
94		OMITTED				
95	02 41 13	Remove Existing Traffic Rail from Headwall	66	LF	\$ 12.00	\$ 792.00
96	33 42 23	Reconstruct 3 foot Headwall on Exist. Box Culvert	66	LF	\$ 225.00	\$ 14,850.00
97	TxDOT 450	Type PR1 Handrail	342	LF	\$ 120.00	\$ 41,040.00
98	33 42 11	Box Culvert Transition	1	LS	\$ 55,000.00	\$ 55,000.00
<b>END SECTION II - DRAINAGE ITEMS</b>					<b>SUBTOTAL</b>	<b>\$4,712,464.25</b>
<b>SECTION III - WATER IMPROVEMENTS</b>						
99		OMITTED				
100	33 14 11	8" C-900 PVC DR-14, C-900 WATER LINE	47	LF	\$ 150.00	\$ 7,050.00
101	33 14 11	12" C-900 PVC DR-14,C-900 WATER LINE	4,664	LF	\$ 195.00	\$ 909,480.00
102		OMITTED				
103	33 14 40	STANDARD FIRE HYDRANT ASSEMBLY	13	EA	\$ 18,000.00	\$ 234,000.00
104	33 14 30	2" AIR RELEASE VALVE	4	EA	\$ 18,000.00	\$ 72,000.00
105	33 14 25	CONNECTION TO EXISTING WATER LINE WITH MAIN	8	EA	\$ 5,000.00	\$ 40,000.00
106		OMITTED				
107	33 14 20	8" GATE VALVE	1	EA	\$ 4,200.00	\$ 4,200.00
108	33 14 20	12" GATE VALVE	6	EA	\$ 6,600.00	\$ 39,600.00
109	33 14 17	WATER SERVICE	11	EA	\$ 5,400.00	\$ 59,400.00
110		OMITTED				

Item No.	SPEC	Description of work	BID QTY	UOM	Unit Price	Extended Price
111	33 14 20	8" X 8" TAPPING SLEEVE & VALVE (City to Furnish & Install)	1	EA	\$ 6,000.00	\$ 6,000.00
112	33 14 20	16" X 12" TAPPING SLEEVE & VALVE (City to Furnish & Install)	1	EA	\$ 9,600.00	\$ 9,600.00
113	33 14 17	RELOCATE WATER METER	20	EA	\$ 600.00	\$ 12,000.00
114	02 41 14	CUT AND PLUG EXISTING WATER LINE	1	LS	\$ 25,000.00	\$ 25,000.00
115	02 41 14	REMOVE & SALVAGE EXISTING GATE VALVE	4	EA	\$ 600.00	\$ 2,400.00
116	02 41 14	REMOVE & SALVAGE EXISTING FIRE HYDRANT	3	EA	\$ 1,200.00	\$ 3,600.00
117	33 05 07	18" STEEL CASING BY OPEN CUT 1/2" THICK	50	LF	\$ 575.00	\$ 28,750.00
118	33 05 05	TRENCH SAFETY	4,711	LF	\$ 6.00	\$ 28,266.00
119	32 01 17	TEMPORARY ASPHALT PAVEMENT REPAIR	503	SY	\$ 240.00	\$ 120,720.00
120	COG 504.5.2	ROCK CUSHION *	100	CY	\$ 50.00	\$ 5,000.00
121	33 14 17	RELOCATE WATER SERVICE AT KCS R.R.	1	EA	\$ 3,600.00	\$ 3,600.00
122	32 84 00	RELOCATE SPRINKLER SERVICE AT KCS R.R.	1	EA	\$ 4,200.00	\$ 4,200.00
*ROCK CUSHION IS FOR STABILITY UNDER CULVERT IF MATERIAL IS TOO SANDY FOR BEARING. NEEDS TO BE APPROVED BY CITY PRIOR TO PLACEMENT.						
END SECTION III - WATER ITEMS					SUBTOTAL	\$1,614,866.00
SECTION IV - WASTEWATER IMPROVEMENTS						
123	33 05 05	TRENCH SAFETY (DEPTH 0-10 FT)	3,131	LF	\$ 6.00	\$ 18,786.00
124	33 05 05	TRENCH SAFETY (DEPTH 10-20 FT)	3,976	LF	\$ 12.00	\$ 47,712.00
125	02 41 14	ABANDON EXIST. MANHOLE	3	EA	\$ 1,200.00	\$ 3,600.00
126	02 41 14	REMOVE EXIST. MANHOLE	13	EA	\$ 2,400.00	\$ 31,200.00
127	32 01 17	TEMPORARY ASPHALT PAVEMENT REPAIR	428	SY	\$ 240.00	\$ 102,720.00
128	33 31 14	8" SDR 26 SEWER LINE	835	LF	\$ 195.00	\$ 162,825.00
129	33 31 14	10" SDR 26 SEWER LINE	13	LF	\$ 225.00	\$ 2,925.00
129A	33 31 14	12" SDR 26 SEWER LINE	98	LF	\$ 255.00	\$ 24,990.00
130	33 31 14	21" SDR 26 SEWER LINE	1,653	LF	\$ 345.00	\$ 570,285.00
131	33 31 14	24" SDR 26 SEWER LINE	4,200	LF	\$ 405.00	\$ 1,701,000.00
131A	33 01 30	Post CCTV Inspecton	6,800	LF	\$ 2.50	\$ 17,000.00
132	33 31 16	4" SEWER SERVICE	9	EA	\$ 8,400.00	\$ 75,600.00
133	33 05 62	4' DIA. STANDARD MANHOLE (PRE-CAST)	3	EA	\$ 19,500.00	\$ 58,500.00
134	33 05 62	4' DIA. DROP MANHOLE (PRE-CAST)	3	EA	\$ 21,500.00	\$ 64,500.00
135	33 05 62	5' DIA. STANDARD MANHOLE (PRE-CAST)	19	EA	\$ 26,000.00	\$ 494,000.00
136	33 05 62	5' DIA. MANHOLE OVER EXIST. SEWER LINE (PRE-CAST)	2	EA	\$ 26,000.00	\$ 52,000.00
137	33 05 62	5' DIA. DROP MANHOLE (PRE-CAST)	2	EA	\$ 30,000.00	\$ 60,000.00
138		OMITTED				
139	33 05 07	36" STEEL CASING BY BORE (5/8" THICK)	110	LF	\$ 3,200.00	\$ 352,000.00
140	33 05 07	20" STEEL CASING BY OPEN CUT (1/2" THICK)	40	LF	\$ 630.00	\$ 25,200.00
141	33 05 62	4' EXTRA DEPTH MANHOLE	49	VF	\$ 420.00	\$ 20,580.00
142	33 05 62	5' EXTRA DEPTH MANHOLE	194	VF	\$ 660.00	\$ 128,040.00
143	02 41 14	PLUG	1	LS	\$ 36,000.00	\$ 36,000.00
END SECTION IV - WASTEWATER ITEMS					SUBTOTAL	\$4,049,463.00
SECTION V - SIGNALS (CITY)						
144	34 41 24	DRILL SHAFT 30 IN (TY A)	36	LF	\$ 462.00	\$ 16,632.00
145	34 41 24	DRILL SHAFT 36 IN (TY A OR TY B)	136	LF	\$ 600.00	\$ 81,600.00
146	34 41 24	DRILL SHAFT 48 IN (TY A)	88	LF	\$ 955.00	\$ 84,040.00
147	26 05 33	CONDUIT 2" PVC	689	LF	\$ 25.50	\$ 17,569.50
148	26 05 33	CONDUIT 3" PVC	2451	LF	\$ 28.50	\$ 69,853.50
149	26 05 33	CONDUIT 4" PVC	1126	LF	\$ 31.50	\$ 35,469.00
150	26 05 19	ELEC CONDR #4 POWER	1050	LF	\$ 3.60	\$ 3,780.00
151	26 05 19	ELEC CONDR #6 POWER	86	LF	\$ 2.55	\$ 219.30
152	26 05 35	GROUND BOXES TY CBX	18	EA	\$ 2,200.00	\$ 39,600.00
153	26 05 00	ELEC SERVICE	3	EA	\$ 9,000.00	\$ 27,000.00
154	34 41 50	ALUM SIGNS 18" X 18" LANE USE	14	EA	\$ 372.00	\$ 5,208.00
155	34 41 21	INST HWY TRAF SIG	3	EA	\$ 22,000.00	\$ 66,000.00
156	34 41 10	SIGNAL HEADS BK PLT - 3 SEC	26	EA	\$ 168.00	\$ 4,368.00
157	34 41 10	SIGNAL HEADS BK PLT - 4 SEC	8	EA	\$ 183.00	\$ 1,464.00
158	34 41 10	SIGNAL HEADS BK PLT - 5 SEC	1	EA	\$ 202.00	\$ 202.00
159	26 05 19	TRAF SIG CABLES 3C#12 ILLUM & ILSN	2818	LF	\$ 3.50	\$ 9,863.00
160	26 05 19	TRAF SIG CABLES 21C #14 AWG	7253	LF	\$ 7.50	\$ 54,397.50
161	26 05 19	TRAF SIG CABLES 7C #14 AWG	2338	LF	\$ 3.15	\$ 7,364.70
162	26 05 19	TRAF SIG CABLES 5C #14 AWG	2494	LF	\$ 2.50	\$ 6,235.00
163	26 05 19	TRAF SIG CABLES 3C #16 CCTV	246	LF	\$ 3.50	\$ 861.00
164	34 41 21	STEEL POLE STR ASSEMBLY 34' TY D	8	EA	\$ 14,000.00	\$ 112,000.00
165	34 41 21	STEEL POLE ASSEMBLY W/ 25' ARM, LUM & ILSN	3	EA	\$ 31,000.00	\$ 93,000.00
166	34 41 21	STEEL POLE ASSEMBLY W/ 40' ARM, LUM & ILSN	1	EA	\$ 34,000.00	\$ 34,000.00
167	34 41 21	STEEL POLE ASSEMBLY W/ 50' ARM, LUM & ILSN	2	EA	\$ 37,000.00	\$ 74,000.00
168	34 41 21	STEEL POLE ASSEMBLY W/ 55' ARM, LUM & ILSN	1	EA	\$ 38,000.00	\$ 38,000.00
169	34 41 21	STEEL POLE ASSEMBLY W/ 60' ARM, LUM & ILSN	1	EA	\$ 40,000.00	\$ 40,000.00
170	34 41 10	12" LED TRAF SIG LAMPS YEL ARROW (FLASHING)	4	EA	\$ 366.00	\$ 1,464.00



Item No.	SPEC	Description of work	BID QTY	UOM	Unit Price	Extended Price
171	34 41 11	PED PB POLE ASSEMBLY	15	EA	\$ 2,600.00	\$ 39,000.00
172	34 41 10	ACC PED SIG UNITS (APS PUSH BUT)	16	EA	\$ 920.00	\$ 14,720.00
173	34 41 26	ALUM SIGNS ILLUM STREET NAME (ILSN)	8	EA	\$ 4,300.00	\$ 34,400.00
174	34 41 27	CONTROLLER, CABINET, BASE, & FDN	3	EA	\$ 27,500.00	\$ 82,500.00
175		OMITTED				
176	34 41 10	12" LED TRAF SIG LAMPS GRN BALL	27	EA	\$ 370.00	\$ 9,990.00
177	34 41 10	12" LED TRAF SIG LAMPS YEL BALL	27	EA	\$ 370.00	\$ 9,990.00
178	34 41 10	12" LED TRAF SIG LAMPS RED BALL	37	EA	\$ 370.00	\$ 13,690.00
179	34 41 10	12" LED TRAF SIG LAMPS GRN ARROW	9	EA	\$ 370.00	\$ 3,330.00
180	34 41 10	12" LED TRAF SIG LAMPS YEL ARROW (STEDY)	9	EA	\$ 370.00	\$ 3,330.00
181	34 41 10	LED PED SIGNAL SIG SEC (COUNTDOWN)	16	EA	\$ 700.00	\$ 11,200.00
182	34 41 15	BI-DIR PREPT (OPTICOM) UNIT	4	EA	\$ 4,200.00	\$ 16,800.00
183	34 41 15	EMER VEH DET (OPTICOM) CABLE	697	LF	\$ 3.10	\$ 2,160.70
184	34 41 29	COHYU 4260 SERIES IP CAMERA	2	EA	\$ 9,500.00	\$ 19,000.00
185	34 41 12	CCTV CABLE CAT 5E	190	LF	\$ 3.10	\$ 589.00
186	34 41 29	GRIDSMART CAMERA	2	EA	\$ 33,400.00	\$ 66,800.00
187	34 41 12	GRIDSMART CABLE CAT 5E	190	LF	\$ 3.10	\$ 589.00
188		OMITTED				
189	26 05 33	CONDUIT 2" RIGID METAL	40	LF	\$ 42.00	\$ 1,680.00
190	34 41 12	APS CABLE	1,907	LF	\$ 2.00	\$ 3,814.00
191	34 41 10	LANE USE SIGNAL 16" X 16" 2 IND	5	EA	\$ 6,500.00	\$ 32,500.00
192	34 41 10	LANE USE SIGNAL 16" X 16" 3 IND	17	EA	\$ 7,900.00	\$ 134,300.00
193	34 41 10	LANE USE SIGNAL 30" X 30" 1 IND	5	EA	\$ 6,700.00	\$ 33,500.00
194	34 41 10	LANE USE SIGNAL 30" X 30" 2 IND	4	EA	\$ 4,300.00	\$ 17,200.00
END SECTION V - SIGNALS (CITY) ITEMS					SUBTOTAL	\$1,475,273.20
SECTION VI - SIGNALS (TXDOT)						
195	416.6031	DRILL SHAFT (TRF SIG POLE) (30 IN)	11	LF	\$ 465.00	\$ 5,115.00
196	416.6032	DRILL SHAFT (TRF SIG POLE) (48 IN)	66	LF	\$ 955.00	\$ 63,030.00
197	618.6023	CONDUIT 2" PVC SCHD 40	174	LF	\$ 25.50	\$ 4,437.00
198	618.6029	CONDUIT 3" PVC SCHD 40	607	LF	\$ 28.50	\$ 17,299.50
199	618.6033	CONDUIT 4" PVC SCHD 40	601	LF	\$ 31.50	\$ 18,931.50
200		OMITTED				
201		OMITTED				
202		OMITTED				
203	620.6008	ELEC CONDR (#8) INSULATED	1,494	LF	\$ 2.15	\$ 3,212.10
204	620.6009	ELEC CONDR (#6) BARE	899	LF	\$ 2.55	\$ 2,292.45
205	620.6010	ELEC CONDR (#6) INSULATED	30	LF	\$ 2.55	\$ 76.50
206	621.6012	TRAY CABLE (3 CONDR)(14 AWG)	664	LF	\$ 3.35	\$ 2,224.40
207	624.6008	GROUND BOXES TY C (162911) W/ APRON	5	EA	\$ 2,200.00	\$ 11,000.00
208	628.6115	ELEC SERVICE TY D 120/240 060 (NS)AL(E)PS(U)	1	EA	\$ 9,000.00	\$ 9,000.00
209	680.6005	INST HWY TRAF SIG (DPT SUP CNT & CAB)(ISO)	1	EA	\$ 23,000.00	\$ 23,000.00
210	681.6001	TEMP TRAF SIGNALS	1	EA	\$ 120,000.00	\$ 120,000.00
211	682.6001	VEH SIG SEC (12") LED (GRN)	9	EA	\$ 370.00	\$ 3,330.00
212	682.6002	VEH SIG SEC (12") LED (GRN ARW)	2	EA	\$ 370.00	\$ 740.00
213	682.6003	VEH SIG SEC (12") LED (YEL)	9	EA	\$ 370.00	\$ 3,330.00
214	682.6004	VEH SIG SEC (12") LED (YEL ARW)	4	EA	\$ 370.00	\$ 1,480.00
215	682.6005	VEH SIG SEC (12") LED (RED)	9	EA	\$ 370.00	\$ 3,330.00
216	682.6006	VEH SIG SEC (12") LED (RED ARW)	4	EA	\$ 370.00	\$ 1,480.00
217	682.6018	PED SIG SEC (LED) (COUNTDOWN)	6	EA	\$ 700.00	\$ 4,200.00
218	682.6029	BACK PLATE (12 IN)(3 SEC) ALUM	9	EA	\$ 168.00	\$ 1,512.00
219	682.6031	BACK PLATE (12 IN)(5 SEC) ALUM	2	EA	\$ 202.00	\$ 404.00
220	684.6033	TRAF SIG CABLES (TY A) (14 AWG) (7 CONDR)	664	LF	\$ 3.15	\$ 2,091.60
221		OMITTED				
222	684.6046	TRAF SIG CABLES (TY A) (14 AWG) (20 CONDR)	681	LF	\$ 7.40	\$ 5,039.40
223	684.6079	TRAF SIG CABLES (TY C) (12 AWG) (2 CONDR)	952	LF	\$ 2.00	\$ 1,904.00
224	686.6006	INS TRF SIG PL AM(S) STR (TY A)	1	EA	\$ 13,500.00	\$ 13,500.00
225	686.6060	INS TRF SIG PL AM (S) 1 ARM (55') LUM & ILSN	1	EA	\$ 38,000.00	\$ 38,000.00
226	686.6064	INS TRF SIG PL AM (S) 1 ARM (60') LUM & ILSN	1	EA	\$ 40,000.00	\$ 40,000.00
227	686.6068	INS TRF SIG PL AM (S) 1 ARM (65') LUM & ILSN	1	EA	\$ 42,000.00	\$ 42,000.00
228	687.6002	PED PB POLE ASMBLY	6	EA	\$ 2,600.00	\$ 15,600.00
229	6186.6002	ITS GND BOX (PCAST) TY 1 (243636) W/APRON	1	EA	\$ 4,600.00	\$ 4,600.00
230	6058.6002	BBU SYSTEM (EXTERNAL BATT CABINET)	1	EA	\$ 9,300.00	\$ 9,300.00
231	6292.6003	RVDS (PRESENCE & ADVANCE DET)	6	EA	\$ 10,000.00	\$ 60,000.00
END SECTION VI - SIGNALS (TXDOT) ITEMS					SUBTOTAL	\$531,459.45

Item No.	SPEC	Description of work	BID QTY	UOM	Unit Price	Extended Price
<b>SECTION VII - STRIPING</b>						
232	32 17 23	TYPE IB DOUBLE LINE	3,126	LF	\$ 2.60	\$ 8,127.60
233	32 17 23	TYPE IB EDGELINE	493	LF	\$ 1.25	\$ 616.25
234	32 17 23	TYPE IIIA BARRIER LINE	2,627	LF	\$ 3.20	\$ 8,406.40
235	32 17 23	TYPE IA BROKEN LINE *	2,980	LF	\$ 1.35	\$ 4,023.00
236	32 17 23	TYPE VA STOP BAR	488	LF	\$ 12.00	\$ 5,856.00
237	32 17 23	TYPE IA BROKEN LINE C/R RPM	287	EA	\$ 5.00	\$ 1,435.00
238	32 17 23	TYPE IIIA BARRIER LINE C/R RPM	197	EA	\$ 5.00	\$ 985.00
239	32 17 23	TYPE IB DOUBLE LINE A/A RPM	164	EA	\$ 5.00	\$ 820.00
240	32 17 23	YIELD LINE	40	EA	\$ 50.00	\$ 2,000.00
241	32 17 23	TYPE IB DOUBLE BROKEN LINE *	1,760	LF	\$ 2.50	\$ 4,400.00
242	32 17 23	TYPE IA EDGELINE	663	LF	\$ 1.25	\$ 828.75
243	32 17 23	TYPE IB DOTTED LINE	10,303	LF	\$ 1.35	\$ 13,909.05
244	32 17 23	TYPE VB DIAGONAL MARKING	65	LF	\$ 12.00	\$ 780.00
245	32 17 23	WORD, WHITE, PER LETTER	16	EA	\$ 160.00	\$ 2,560.00
246	32 17 23	SYMBOL, WHITE, ARROW	2	EA	\$ 160.00	\$ 320.00
247	32 17 23	SYMBOL, WHITE, RR CROSSING	4	EA	\$ 800.00	\$ 3,200.00
248	666-2001	REFL PAV MRK TY I (W) 4" (BRK)	804	LF	\$ 1.35	\$ 1,085.40
249	666-2005	REFL PAV MRK TY I (W) 4" (DOT)	959	LF	\$ 3.20	\$ 3,068.80
250	666-2010	REFL PAV MRK TY I (W) 4" (SLD)	1,154	LF	\$ 1.25	\$ 1,442.50
251	666-2034	REFL PAV MRK TY I (W) 8" (SLD)	877	LF	\$ 2.70	\$ 2,367.90
252	666-2046	REFL PAV MRK TY I (W) 24" (SLD)	105	LF	\$ 12.00	\$ 1,260.00
253	666-2052	REFL PAV MRK TY I (W) (ARROW)	5	EA	\$ 175.00	\$ 875.00
254	666-2067	REFL PAV MRK TY I (W) (DBL ARROW)	1	EA	\$ 200.00	\$ 200.00
255	666-2094	REFL PAV MRK TY I (W) (WORD)	5	EA	\$ 175.00	\$ 875.00
256	666-2109	REFL PAV MRK TY I (Y) (SLD)	1,336	LF	\$ 1.25	\$ 1,670.00
257	666-XXXX	REFL PAV MRK TY I (Y) (DBL SLD)	84	LF	\$ 2.50	\$ 210.00
258	672-6007	REFL PAV MRKR TY I-C	66	EA	\$ 5.00	\$ 330.00
259	672-6009	REFL PAV MRKR TY II-A-A	4	EA	\$ 5.00	\$ 20.00
260	672-6010	REFL PAV MRKR TY II-C-R	20	EA	\$ 5.00	\$ 100.00
261		OMITTED				
262	34 41 50	SMALL SIGN ASSEMBLY	96	EA	\$ 675.00	\$ 64,800.00
263	34 41 50	LARGE SIGN ASSEMBLY	4	EA	\$ 1,800.00	\$ 7,200.00
264	34 41 50	RELOCATE SMALL SIGN ASSEMBLY	6	EA	\$ 750.00	\$ 4,500.00
265		OMITTED				
*SUMMARY QUANTITY FOR LINES ARE ACTUAL LENGTHS AS LAID ON THE GROUND						
<b>END SECTION VII - STRIPING ITEMS</b>						<b>SUBTOTAL \$148,271.65</b>
<b>SECTION VIII - STREET LIGHTS</b>						
266	26 05 35	PULL BOX	29	EA.	\$ 1,100.00	\$ 31,900.00
267	26 56 00	35' WHITE CONCRETE STREET LIGHT POLE	54	EA	\$ 3,000.00	\$ 162,000.00
268	26 05 33	2" P.V.C. CONDUIT	10,554	LF	\$ 25.00	\$ 263,850.00
269	26 56 00	160W LED FIXTURE	54	EA	\$ 900.00	\$ 48,600.00
270	26 05 13	#2 DX WIRE	989	LF	\$ 5.25	\$ 5,192.25
271	26 05 13	#4 DX WIRE	1,091	LF	\$ 5.75	\$ 6,273.25
272	26 05 13	#6 DX WIRE	8,909	LF	\$ 4.50	\$ 40,090.50
273	26 05 00	ELECTRIC SERVICE	3	EA	\$ 10,000.00	\$ 30,000.00
274	26 05 35	12"X12" ELECTRIC BOX	54	EA	\$ 1,100.00	\$ 59,400.00
<b>END SECTION VIII - STREET LIGHTS ITEMS</b>						<b>SUBTOTAL \$647,306.00</b>
<b>SECTION IX - CONDUIT</b>						
275	26 05 35	GROUND BOX	64	EA	\$ 3,000.00	\$ 192,000.00
276	26 05 33	4" PVC 90° SWOOPING BEND, RISER & PLUG	208	EA	\$ 360.00	\$ 74,880.00
277	26 05 33	4" PVC 90° SWOOPING BEND	76	EA	\$ 340.00	\$ 25,840.00
278	26 05 33	4" PVC	7,659	LF	\$ 34.00	\$ 260,406.00
<b>END SECTION IX - CONDUIT ITEMS</b>						<b>SUBTOTAL \$553,126.00</b>
<b>SECTION X - UNT DUCT BANK IMPROVEMENTS (SHEETS DB1 - DB29)</b>						
279	02 41 15	SIDEWALK REMOVAL	189	SF	\$ 7.00	\$ 1,323.00
280	32 01 17	ASPHALT PAVEMENT REPAIR (TEMPORARY)	150	SY	\$ 203.00	\$ 30,450.00
281	32 01 29	CONCRETE PAVEMENT REPAIR (PERMANENT)	267	SY	\$ 375.00	\$ 100,125.00
282	33 01 29	CONCRETE PAVEMENT REPAIR (TEMPORARY)	51	SY	\$ 356.00	\$ 18,156.00
283	32 16 00	CONCRETE SIDEWALK	189	SF	\$ 22.25	\$ 4,205.25
284	32 01 29	CONCRETE SPEED BUMP REPAIR	3	EA	\$ 350.00	\$ 1,050.00
285	32 32 00	PAVE STONE RETAINING WALL REPAIR	8	LF	\$ 385.00	\$ 3,080.00
286	32 93 00	4" TOPSOIL	490	CY	\$ 43.00	\$ 21,070.00
287	32 93 00	BLOCK SODDING	4,407	SY	\$ 6.30	\$ 27,764.10



Item No.	SPEC	Description of work	BID QTY	UOM	Unit Price	Extended Price
288	33 05 05	TRENCH SAFETY PROTECTION	5,877	LF	\$ 5.00	\$ 29,385.00
289	33 01 50	ADJUST SSCO TO GRADE	1	EA	\$ 350.00	\$ 350.00
290	51 05 05	DEMO ELECTRIC SWITCHGEAR	2	EA	\$ 6,000.00	\$ 12,000.00
291	51 05 05	DEMO ELECTRIC PULL BOX	2	EA	\$ 1,000.00	\$ 2,000.00
292	51 05 05	DEMO DATA PULL BOX	2	EA	\$ 1,000.00	\$ 2,000.00
293	51 05 05	DEMO ELECTRICAL DUCT BANK	2,800	LF	\$ 40.00	\$ 112,000.00
294	51 05 05	DEMO DATA DUCT BANK	2,900	LF	\$ 40.00	\$ 116,000.00
295	51 05 05	LOCATING AND EXCAVATING EXISTING DUCT BANK	10	EA	\$ 750.00	\$ 7,500.00
296	51 05 13	500 KCMIL MV-105, EPR, 15KV	8,352	LF	\$ 39.00	\$ 325,728.00
297	51 05 13	#2 MV-105, EPR, 15KV	2,440	LF	\$ 11.00	\$ 26,840.00
298	51 05 26	#2 BARE COPPER	100	LF	\$ 140.00	\$ 14,000.00
299	51 05 26	#4/0 BARE COPPER	100	LF	\$ 16.00	\$ 1,600.00
300	51 13 29	SWITCHGEAR PME-9	2	EA	\$ 70,000.00	\$ 140,000.00
301	51 05 13	TERMINATIONS AT TRANSFORMERS	18	EA	\$ 700.00	\$ 12,600.00
302	51 05 43	ELECTRICAL MANHOLE	7	EA	\$ 38,000.00	\$ 266,000.00
303	51 05 43	ELECTRICAL DUCT BANK - PRIMARY 4 CELL	167	LF	\$ 325.00	\$ 54,275.00
304	51 05 43	ELECTRICAL DUCT BANK - PRIMARY 2 CELL	2,450	LF	\$ 300.00	\$ 735,000.00
305	51 05 43	ELECTRICAL DUCT BANK (TO TRANSFORMERS)	185	LF	\$ 300.00	\$ 55,500.00
306	51 05 43	DATA PULLBOX	9	EA	\$ 20,000.00	\$ 180,000.00
307	51 05 43	DATA DUCTBANK - TELECOM 4 CELL	3,075	LF	\$ 300.00	\$ 922,500.00
END SECTION X - UNT DUCT BANK IMPROVEMENTS					SUBTOTAL	\$3,222,501.35
END BASE PROPOSAL ITEMS						
PROJECT BASE PROPOSAL AMOUNT (SECTIONS I through X):						\$38,240,172.90

ALTERNATE 1 - ALIGNMENT 5 (EMPTY UNT DUCT BANK - SHEETS DB13 & DB24)						
A1- 1	32 01 17	ASPHALT PAVEMENT REPAIR (TEMPORARY)	68	SY	\$ 203.00	\$ 13,804.00
A1- 2	32 93 00	4" TOPSOIL	33	CY	\$ 51.00	\$ 1,683.00
A1- 3	32 93 00	BLOCK SOD	293	SY	\$ 6.35	\$ 1,860.55
A1- 4	33 05 05	TRENCH SAFETY PROTECTION	380	LF	\$ 1.00	\$ 380.00
A1- 5	51 05 43	ELECTRICAL MANHOLE	1	EA	\$ 35,000.00	\$ 35,000.00
A1- 6	51 05 43	ELECTRICAL DUCTBANK - PRIMARY 2 CELL	200	LF	\$ 225.00	\$ 45,000.00
A1- 7	51 05 43	DATA PULLBOX	1	EA	\$ 16,000.00	\$ 16,000.00
A1- 8	51 05 43	DATA DUCTBANK - TELECOM 4 CELL	180	LF	\$ 250.00	\$ 45,000.00
END ALTERNATE 1 - UNT EMPTY DUCT BANK IMPROVEMENTS					SUBTOTAL	\$158,727.55
END ALTERNATE PROPOSAL ITEMS						
ALTERNATE 1-ALIGNMENT 5 PROPOSAL AMOUNT :						\$158,727.55
TOTAL PROJECT PROPOSAL AMOUNT (SECTIONS I through X + ALTERNATE 1):						
						\$38,398,900.45

Bonnie Brae Phase 3 Widening & Reconstruction  
CSP 8094-1

Sundt Construction, Inc.

**SECTION 00 43 39****VENDOR COMPLIANCE TO STATE LAW NON-RESIDENT OFFEROR - CSP**

Texas Government Code Chapter 2252 was adopted for the award of contracts to nonresident offerors. This law provides that, in order to be awarded a best value contract where the offeror also offered the lowest proposal price, nonresident offerors (out-of-state contractors whose corporate offices or principal place of business are outside the State of Texas) propose on projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident offeror by the same amount that a Texas resident offeror would be required to underbid a nonresident offeror in order to obtain a comparable contract in the State which the nonresident's principal place of business is located.

The appropriate blanks in Section A must be filled out by all nonresident offerors in order for your proposal to meet specifications. The failure of nonresident offerors to do so will automatically disqualify that offeror. Resident offerors must check the box in Section B.

A. Nonresident offerors in the State of \_\_\_\_\_, our principal place of business, are required to be \_\_\_\_\_ percent lower than resident offerors by State Law. A copy of the statute is attached.

Nonresident offerors in the State of Arizona, our principal place of business, are not required to underbid resident Offerors.

B. The principal place of business of our company or our parent company or majority owner is in the State of Texas. ☐

**OFFEROR:**

Sundt Construction, Inc.

Company

8445 Freeport Pky, Suite 240

Address

Irving, TX 75063

City/State/Zip

By: 

(Signature)

Name: Jeff Williamson

(Please Print)

Title: Group President

(Please Print)

Date: 5.24.2023

**END OF SECTION**

"General Decision Number: TX20230025 01/06/2023

Superseded General Decision Number: TX20220025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

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

Modification Number      Publication Date  
0                              01/06/2023

SUTX2011-007 08/03/2011

Rates                              Fringes

CONCRETE FINISHER (Paving and  
Structures).....\$ 14.12 \*\*

ELECTRICIAN.....\$ 19.80

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 13.16 \*\*

Structures.....\$ 13.84 \*\*

LABORER

Asphalt Raker.....\$ 12.69 \*\*

Flagger.....\$ 10.06 \*\*

Laborer, Common.....\$ 10.72 \*\*

Laborer, Utility.....\$ 12.32 \*\*

Pipelayer.....\$ 13.24 \*\*

Work Zone Barricade

Servicer.....\$ 11.68 \*\*

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 15.32 \*\*

Asphalt Paving Machine.....\$ 13.99 \*\*

Broom or Sweeper.....\$ 11.74 \*\*

Concrete Pavement

Finishing Machine.....\$ 16.05 \*\*

Concrete Saw.....\$ 14.48 \*\*

Crane Operator, Lattice

Boom 80 Tons or Less.....\$ 17.27

Crane Operator, Lattice

Boom over 80 Tons.....\$ 20.52

Crane, Hydraulic 80 Tons

or Less.....\$ 18.12

Crawler Tractor.....\$ 14.07 \*\*

Excavator, 50,000 pounds

or less.....\$ 17.19

Excavator, over 50,000

pounds.....\$ 16.99

Foundation Drill , Truck

Mounted.....\$ 21.07

Foundation Drill, Crawler

Mounted.....\$ 17.99

Front End Loader 3 CY or

Less.....\$ 13.69 \*\*

Front End Loader, over 3 CY.\$ 14.72 \*\*

Loader/Backhoe.....\$ 15.18 \*\*

Mechanic.....\$ 17.68

Milling Machine.....\$ 14.32 \*\*

Motor Grader, Fine Grade....\$ 17.19

Motor Grader, Rough.....\$ 16.02 \*\*

Pavement Marking Machine....\$ 13.63 \*\*

Reclaimer/Pulverizer.....\$ 11.01 \*\*

Roller, Asphalt.....\$ 13.08 \*\*

Roller, Other.....\$ 11.51 \*\*

Scraper.....\$ 12.96 \*\*

Small Slipform Machine.....\$ 15.96 \*\*

Spreader Box.....\$ 14.73 \*\*

Servicer.....\$ 14.58 \*\*  
Steel Worker (Reinforcing).....\$ 16.18 \*\*  
TRUCK DRIVER  
Lowboy-Float.....\$ 16.24  
Off Road Hauler.....\$ 12.25 \*\*  
Single Axle.....\$ 12.31 \*\*  
Single or Tandem Axle Dump  
Truck.....\$ 12.62 \*\*  
Tandem Axle Tractor with  
Semi Trailer.....\$ 12.86 \*\*  
Transit-Mix.....\$ 14.14 \*\*  
  
WELDER.....\$ 14.84 \*\*

-----  
WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

=====  
\*\* Workers in this classification may be entitled to a higher  
minimum wage under Executive Order 14026 (\$16.20) or 13658  
(\$12.15). Please see the Note at the top of the wage  
determination for more information.

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

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

-----  
The body of each wage determination lists the classification  
and wage rates that have been found to be prevailing for the  
cited type(s) of construction in the area covered by the wage  
determination. The classifications are listed in alphabetical  
order of ""identifiers"" that indicate whether the particular  
rate is a union rate (current union negotiated rate for local),  
a survey rate (weighted average rate) or a union average rate  
(weighted union average rate).

### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

---

### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

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

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"

"General Decision Number: TX20230018 04/14/2023

Superseded General Decision Number: TX20220018

State: Texas

Construction Type: Heavy

Counties: Collin, Dallas, Denton, Ellis, Kaufman and Rockwall  
Counties in Texas.

Water and Sewer Lines/Utilities (Including Related Tunneling  
Where the Tunnel is 48" or Less in Diameter)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date



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

\* PLUM0100-002 11/01/2022

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 35.73	13.07

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\* SUTX1991-004 09/23/1991

	Rates	Fringes
Laborers:		
Common.....	\$ 7.25 **	
Utility.....	\$ 7.467 **	
Pipelayer.....	\$ 7.828 **	
Power equipment operators:		
Backhoe.....	\$ 10.804 **	
Crane.....	\$ 10.942 **	
Front End Loader.....	\$ 9.163 **	
Tunneling Machine (48" or less).....	\$ 9.163 **	
TRUCK DRIVER.....	\$ 8.528 **	

-----

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

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

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

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

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A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

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

negotiated/CBA rate of the union locals from which the rate is based.

-----  
WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

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With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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U.S. Department of Labor  
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2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

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

4.) All decisions by the Administrative Review Board are final.

=====  
END OF GENERAL DECISIO"

**SECTION 00 45 27**

**CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW - CSP**

Pursuant to Texas Labor Code Section 406.096(a), as amended, Contractor certifies that it provides worker's compensation insurance coverage for all of its employees employed on *Bonnie Brae Phase 3 Widening & Reconstruction*. Contractor further certifies that, pursuant to Texas Labor Code, Section 406.096(b), as amended, it will provide to City its subcontractor's certificates of compliance with worker's compensation coverage.

**CONTRACTOR:**

Sundt Construction, Inc.

Company

8445 Freeport Pky, Suite 240

Address

Irving, TX 75063

City/State/Zip

By: 

(Signature)

Name: Jeff Williamson

(Please Print)

Title: Group President

(Please Print)

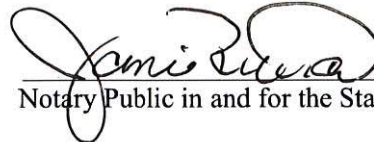
THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of Sundt Construction, Inc. for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10<sup>th</sup> day of May, 2023.



  
 Notary Public in and for the State of Texas

**END OF SECTION**

# **STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

**STANDARD GENERAL CONDITIONS  
OF THE CONSTRUCTION CONTRACT**  
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**ARTICLE 1 – DEFINITIONS AND TERMINOLOGY****1.01 *Defined Terms***

- A. Wherever used in the Contract or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument titled “Agreement”, “Agreement – CSP”, or “Agreement – Unit Price Bid” executed by the City and Contractor for the Work, setting forth the name of the Project, Contract Price, Contract Time and the items included in the Contract.
  3. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Award*—Authorization by the City Council for the City to enter into an Agreement.
  6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. The term “Bid” shall be defined to include the term “Proposal” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  7. *Bidder*—The individual or entity that submits a Bid directly to City. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda). The term “Bidding Documents” shall be defined to include the terms “Proposal Documents” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  9. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. The term “Bidding Requirements” shall be defined to include the terms “Proposal Requirements” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and will include the Request for Proposal or Invitation to Offerors, Instructions to Offerors, Offerors Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

10. *Business Day*—A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
11. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.
12. *Change Order*—A document which is prepared by the Contractor or City, approved by the City, and signed by Contractor and City, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*—The City of Denton is, a Texas home-rule municipal corporation acting by its City Council through its City Manager or his or her designee.
14. *City Attorney*—The officially appointed City Attorney of the City of Denton or his or her designee.
15. *City Council*—The duly elected and qualified governing body of the City of Denton.
16. *City Manager*—The officially appointed authorized City Manager of the City of Denton.
17. *Contract*—The entire and integrated set of written instruments between the City and Contractor concerning the Work comprised of the Agreement and all Contract Documents, which written instruments supersede all prior negotiations, representations, or agreements, whether written or oral, concerning the Work.
18. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
19. *Contract Documents*—Those items so designated as “Contract Documents.” in the Agreement at Paragraph 5.1.A. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 12.03 in the case of Unit Price Work). The Contract Price does not include any “Incentive”, if applicable.
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (a) achieve Milestones, if any and (bb) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 12.01 of these General Conditions for definition.
24. *Damage Claims*—A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day*—A day, unless otherwise defined, shall mean a Calendar Day.
26. *Drawings*—The part of the Contract Documents prepared or approved by an Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals, as defined, are not considered Drawings as so defined here.

27. *Effective Date of the Agreement*—The date, indicated in the Agreement, on which it becomes effective,, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the City.
28. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, text, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
29. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by the Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
30. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
31. *Extra Work*—Additional work made necessary by City-approved changes or alterations to the Contract Documents. Extra Work shall be part of the Work.
32. *Field Order*—A written directive issued by City that requires changes in the Work but does not involve a change to the Contract Price, Contract Time, or Drawings, Plan, or Shop Drawings.
33. *Final Acceptance*—The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.
34. *Final Inspection*—The inspection performed by the City to determine whether the Contractor has completed each and every part or appurtenance of the Work fully, entirely, and in conformance with the Contract Documents.
35. *General Requirements*—Sections of The information set forth in “Division 101 – General Requirements” of the Standard Construction Specification Documents.
36. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, P C B s , Petroleum, Hazardous Waste, Radioactive Material, or any other substance, product, waste or materials, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
37. *Hazardous Waste*—Any solid waste listed as hazardous or which possesses one or more hazardous characteristics as defined in applicable Laws and Regulations.
38. *Incidental or incidental*—Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.
39. *Laws and Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all

governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or any portion or part of the Work to be performed.

40. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
41. *Major Item*—An item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price.
42. *Milestone*—A principal event specified in the Contract Documents relating to the performance of an identified portion of the Work by an intermediate Contract Time prior to Final Acceptance of the Work.
43. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
44. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
45. *PCBs*—Polychlorinated biphenyls.
46. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
47. *Plans*—This term will have the same definition of as “Drawings”.
48. *Project* —The Work to be performed under the Contract.
49. *Project Manager*—The authorized representative of the City who will be assigned to the Project.
50. *Project Manual*—The documentary information prepared for bidding or proposing and furnishing the Work.
51. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising Contractor’s plan to achieve each Milestone and accomplish the Work within the Contract Time.
52. *Public Meeting*—An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
53. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
54. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

55. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
56. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
57. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
58. *Specifications or Technical Specifications* —The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Section 00 00 00) of the Project.
59. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
60. *Submittal*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to the City to illustrate some portion of the Work.
61. *Subsidiary or subsidiary*—*These terms will have the same* definition as "Incidental. or incidental".
62. *Successful Bidder*—The Bidder to whom City issues a Notice of Award. The term "Bidder" shall be defined to include the terms "Proposer" or "Offeror" in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and is the Proposer or Offeror submitting the proposal or offer that provides the best value to the City and to whom the City issues a Notice of Award.
63. *Superintendent*—The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
64. *Supplementary Conditions*—The part of the Contract set forth at Division 00 73 00 that amends or supplements these General Conditions.
65. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
66. *Underground Facilities*—All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid



petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

67. *Unit Price Work*—Work for which the Contract Price is determined by multiplying the unit price for the item by the estimated quantity of the item.
68. *Weekend Working Hours*—Those hours between 8:00 a.m. and 8:30 p.m. on Saturday, and between 1:00 p.m. and 8:30 p.m. on Sunday or on a federal or state holiday observed by the City, as approved in advance by the City for performing Work.
69. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
70. *Working Day*—Defined as a Business Day but excluding any days that weather or other conditions beyond the reasonable control of the Contractor prevents the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7:00 a.m. and 8:00 p.m.

#### 1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract includes the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by CityCity. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of judgment, action, or determination will be to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).
- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  1. does not conform to the Contract Documents; or
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. has been damaged prior to City’s written notice of Final Acceptance.
- D. *Furnish, Install, Perform, Provide*
  1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.



2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to execute, carry out, furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance***

- A. Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City the performance bond, payment bond and maintenance bond that comply with the provisions of Chapter 2253 of the Texas Government Code. Work will not be allowed to begin until the performance and payment bonds have been provided by the Contractor to the City.
- B. Evidence of Contractor’s Insurance: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6. Work will not be allowed to begin until the evidence of insurance has been provided by the Contractor to the City.

### **2.02 *Copies of Documents***

- A. City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract, and three (3) additional copies of the Drawings. Additional printed copies will be furnished upon request at the cost of reproduction.

### **2.03 *Before Starting Construction***

Baseline starting Work, Contractor shall submit for review by City the following in accordance with the Contract Documents:

- A. Baseline Schedules in accordance with General Requirements, Section 01 32 16.
- B. Preliminary Schedule of Submittals.
- C. Preliminary Schedule of Values: For lump sum contracts, a Schedule of Values for all of the Work that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.04 *Preconstruction Meeting*

- A. Before any Work at the Site is started, the Contractor shall attend a Preconstruction Meeting as specified in Section 01 31 19.

#### 2.05 *Public Meeting*

- A. Contractor may not mobilize any equipment, materials, or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

#### 2.06 *Initial Acceptance of Schedules*

- A. No progress payment shall be made to Contractor until acceptable Project Schedules are submitted to City in accordance with the Contract Documents.

#### 2.07 *Electronic Submittals and Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then City and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. City will issue clarifications and interpretations of the Contract Documents as provided herein.
- D. The Specifications may vary in form, forma and style. Some Specification sections may be written in varying degrees of streamlined or declarative style, and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims or Damage Claims.

- E. The cross-referencing of Specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross-referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not cross-referencing is provided in each section or whether the cross-referencing is complete or accurate.

### 3.02 *Reference Standards*

#### A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of City, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. Reporting Discrepancies

1. *Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements, and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.1717) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by City, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

**B. Resolving Discrepancies**

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier; or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

**3.04 Requirements of the Contract Documents**

- A. During the performance of the Work and until final payment, Contractor shall submit to the City in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. City will be the interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. City will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. City's written clarification, interpretation, or decision will be final and binding on Contractor, unless Contractor appeals by filing a Contract Claim.

**3.05 Reuse of Documents**

- A. Contractor and its Subcontractors and Suppliers shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of CityCity and specific written verification or adaptation by Engineer; or
  2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without City's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

**ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK****4.01** *Commencement of Contract Time; Notice to Proceed*

- A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

**4.02** *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work may be done at the Site prior to the date on which the Contract Time commences to run.

**4.03** *Delays in Contractor's Progress*

- A. If Contractor is delayed, City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. The City shall be liable only to the extent allowed by the provisions of the Contract and as allowed by Subchapter I, Chapter 271 of the Texas Local Government Code.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, that the Contract specifies is to be furnished by the City.
- D. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of City, Contractor, and those for whom they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Time. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph 4.03. D. The Contractor is responsible for the prompt submission of a request for an adjustment to the Contract Time under this Paragraph to the City. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this Paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with City, as contemplated in Article 8); and

4. Acts of war or terrorism.
- E. Contractor's entitlement to an adjustment of Contract Time or Contract Price is limited as follows:
  1. Contractor's entitlement to an adjustment of the Contract Time is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Time to which Contractor is otherwise entitled.
  3. Adjustments of Contract Time or Contract Price are subject to the provisions of Article 11.
- F. Each Contractor request or Change Order seeking an increase in Contract Time or Contract Price must be supplemented by supporting data that sets forth in detail the following:
  1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Time claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.08.
  6. Contractor shall also furnish such additional supporting documentation as City may require including, where appropriate, a revised Project Schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- G. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from undisclosed Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.03.F and 4.03.G.

## **ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. City shall furnish the Site. City shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which



Contractor must comply in performing the Work. City will be responsible for obtaining any necessary easements for permanent structures or permanent changes in existing facilities.

1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
  2. Unless otherwise specified in the Contract Documents, the City has or anticipates moving and/or relocating utilities, and obstructions to the Site. Any outstanding movement or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be moved and/or relocated by others.
- B. Upon reasonable written request of Contractor, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for any additional lands and access thereto not included in the Site that may be required for construction facilities or storage of materials and equipment. The cost of such shall be part of the Contract Price.

#### 5.02 *Use of Site and Other Areas*

##### A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, worker car parking and the operations of workers to the Site, to adjacent areas that Contractor has arranged to use through construction easements or otherwise, and to other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with worker car parking, construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries, including death, and damage to or losses of property sustained by the owners or occupants of any such land or areas; provided that such damage, losses, injuries or deaths arose out of or result from the performance of the Work or arose out of or resulted from any other actions or conduct of the Contractor or those for whom Contractor is responsible.
2. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to reduce the area impacted to only that necessary for proper execution of the Work and/or to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
  4. Should any Damage Claim be made by any such owner or occupant adversely impacted because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
  5. ***PURSUANT TO PARAGRAPH 7.21, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH ADVERSELY IMPACTED OWNER OR OCCUPANT AGAINST CITY.***
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
  - C. *Site Maintenance Cleaning:* If 24 hours after written notice is given to the Contractor that the clean-up at the Site is insufficient or occurring in a manner unsatisfactory to the City, the Contractor fails to correct the unsatisfactory condition and/or procedures, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice, and the costs of such direct corrective action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor under the Contract.
  - D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City and any adjacent property owners, if applicable. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, surplus materials, waste materials, rubbish and other debris and shall restore to original condition or better all areas impacted or disturbed by the Work.
  - E. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  1. Those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and
  2. Those drawings known to City of existing physical conditions at or contiguous to the Site, including those drawings known to City depicting existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities.).
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.



Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as technical data.

- C. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of their officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any "technical data" is materially inaccurate; or
  2. is of such a nature as to require a change in the Contract Documents; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), notify City in writing about such condition.

- B. *Possible Price and Time Adjustments*
1. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under the Contract; or

- b. The existence of such condition reasonably could have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- C. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions::
- 1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
  - 2. the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data;
    - b. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
    - c. coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
- 1. If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.
  - 2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 11.
  - 3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

#### 5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports known to City relating to Hazardous Environmental Conditions that have been identified at the Site; or
  2. drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Reliance by Contractor on Technical Data*: Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for a Hazardous Environmental Condition uncovered or revealed at the Site if such Hazardous Environmental Condition was not shown or indicated in Drawings or Specifications or identified if the removal or remediation of such Hazardous Environmental Condition was not identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created by the actions of or with any materials brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible and the costs associated with the same.
- D. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.17); and (3) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. Contractor shall not be required to resume Work in connection with a Hazardous Environmental Condition identified pursuant to Paragraph 5.06.D or in any affected area until after City has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed.
- F. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work and the Contract Price. City may have such deleted portion of the Work performed by City's own forces or others.
- G. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.CityG OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.***
- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 6 – BONDS AND INSURANCE

### 6.01 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 6.02 *Performance, Payment, and Maintenance Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, in accordance with the provisions of the Texas Government Code Chapter 2253 or successor statute and as required by the City, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The performance and payment bonds must be provided by the Contractor to the City prior to the Contractor beginning any Work.

- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City. The maintenance bond(s) shall be provided as directed by the City as part of the close-out of the Contract and shall be provided prior to the final payment being made.
- C. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, or its right to do business is terminated in the State of Texas, then Contractor shall promptly notify City in writing and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, City may refuse to allow the Contractor to begin Work, exclude the Contractor from the Site and exercise City’s termination rights under Article 15.
- F. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

### 6.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance and endorsements (and other evidence of insurance requested by City or any other additional insured) establishing that Contractor has obtained and is maintaining the policies and coverages required by these General Conditions and the Supplementary Conditions prior to beginning any Work.
  - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as “additional insureds” on all liability policies.
  - 2. The Contractor’s general liability insurance shall include a “per project” or “per location” endorsement, that shall be identified in the certificate of insurance provided to the City.
  - 3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
  - 4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent

financial strength and solvency to the satisfaction City. If the rating is below that required, written approval of City is required.

5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage or to provide such certificates or other evidence of full compliance with the insurance requirements.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If If City agrees in writing that coverage is underwritten may be written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance or for the warranty period provided for under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements that either nullify or amend the required lines of coverage, nor or decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Notice of an Award has been issued or the Agreement executed, and the policy exclusions are determined to be unacceptable or the City desires that the Contractor obtain additional insurance coverage the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. For any proposed self-insured retention (SIR,) in excess of \$25,000.00, affecting insurance coverage, Contractor must obtain the written approval of the City in regard to asset value and stockholders' equity. In lieu of traditional insurance, proposed alternative coverage maintained through insurance pools or, risk retention groups, or self-funding will also require the written approval of the City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis must be acceptable to and approved in writing by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City will provide prior notice of 90 days and the insurance adjustments shall be incorporated into the Work by Change Order.



13. City shall be entitled, upon written request to Contractor and without expense to City, to receive copies of policies and endorsements thereto and. City may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

#### 6.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability:* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury, including death, or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury including death, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The Commercial General Liability policy shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, that are normally contained with the policy, unless the City approves such exclusions in writing.  
  
For construction projects that present a substantial completed operation exposure, the City may require the Contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions)).
- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because of bodily injury or death of any person and/or property damage arising out of or related to the work, maintenance or use of any motor vehicle by the Contractor, any

Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

- D. *Railroad Protective Liability.* If any of the Work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop Work until replacement insurance has been procured. There shall be no time credit for delays or days not worked pursuant to this section.

#### 6.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 6 or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Such failure to provide bonds or insurance as required by the Contract Documents is a breach of the terms of the Contract and the City may terminate the Contractor in accordance with the provisions of the Contract Documents.

### **ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES**

#### 7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not City-delegated professional design services under this Contract, and neither City nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

#### 7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall identify and assign a competent superintendent, who is proficient in English, and who shall not be replaced without written



notice to City of the name of the replacement superintendent. If at any time the superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the superintendent with another satisfactory to City.

- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

#### 7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to City for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours on Business Days. Contractor will not permit the performance of Work outside of regular working hours on Business Days without City's prior written consent (which will not be unreasonably withheld)). Contractor's written request (by letter or electronic communication) for City's written consent must be made as follows:
  - 1. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;
  - 2. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and
  - 3. for Work on state or federal holidays observed by the City, request must be made sufficiently in advance of the holiday, to satisfy requirements for City Council approval.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work, and must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with

instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

7.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.06 and the General Requirements as it may be adjusted from time to time as provided below.
1. Contractor shall submit to the City for acceptance (to the extent indicated in Paragraph 2.06 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments must comply with any provisions of the General Requirements applicable thereto.
  2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment request for the duration of the Contract in accordance with the Construction Progress Schedule, General Requirements 01 32 16.
  3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 11. Adjustments in Contract Time may only be made by a Change Order.

7.06 *“Or Equals”*

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that City permit the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If City in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an “or equal” item. For the purposes of this Paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. the City determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to City.

- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
    - 1) there will be no increase in cost to the City or increase in Contract Time; and
    - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *City's Evaluation and Determination*: City will be allowed a reasonable time to evaluate each "or-equal" request. City may require Contractor to furnish additional data about the proposed "or-equal" item. City will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an "or-equal." City." City will advise Contractor in writing of its determination.
- D. *Effect of City's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The City's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If City determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that City consider the item a proposed substitution pursuant to Paragraph 7.07.

#### 7.07 Substitutions

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that City permit the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related Work at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitution therefor. City will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  - 2. The requirements for review by City will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as City may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to City for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
    - a. will certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design;
      - 2) be substantially similar in substance to the item specified; and

- 3) be well-suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will adversely impact Contractor's achievement of Final Acceptance on or before the Contract Time;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and Damage Claims of other contractors affected by any resulting change.
- B. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each substitution request. City may require Contractor to furnish additional data about the proposed substitute item. City will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an acceptable substitution. City's approval determination will be evidenced by a Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Time. City will advise Contractor in writing of any denial determination.
- C. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitution. ***Contractor shall indemnify and hold harmless City and its officers, elected and appointed officials, employees, agents, consultants and subcontractors and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorney's fees) arising out of or relateds to the use of substituted materials or equipment.***
- D. *Reimbursement of City's Cost:* City will record City's costs in evaluating a substitution proposed or submitted by Contractor. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse City for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

- F. *City Substitution Reimbursement:* Cost savings attributable to acceptance of a substitution shall be paid to City by Contractor by an appropriate Change Order decreasing the Contract Price.
- G. *Effect of City's Determination:* If City approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The City's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.07.D, by timely submittal of a Change Order.

#### 7.08 *Concerning Subcontractors and Suppliers*

- A. Contractor shall perform with its own organization, and with the assistance of workmen under its immediate superintendence, work of a value not less than 35% of the Contract Price, unless otherwise approved by the City.
- B. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.C. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- C. The City may require the use of specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work , and will provide such requirements in the Supplementary Conditions.
- D. Contractor shall provide to City as part of the Bid, the identity of all proposed Subcontractors and Suppliers. Such proposed Subcontractor or Supplier shall be deemed acceptable to City unless City raises a substantive, reasonable objection prior to execution of the Agreement.
- E. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City and any such Subcontractor, Supplier or other individual or entity; nor
  - 2. shall create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- F. No acceptance by City of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of City to the completion of the Work in accordance with the Contract Documents, Contract Price and Contract Time.
- G. Contractor shall be solely responsible for scheduling and coordinating the tasks of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

- H. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of City. Contractor must comply with all applicable federal, state, and local laws, statutes, ordinances or regulations, including but not limited to immigration laws, workers compensation laws and wage laws, in the hiring of any Subcontractor or Supplier and shall ensure that each Subcontractor or Supplier has the same obligations.
- I. Contractor shall restrict all Subcontractors and Suppliers from communicating with City, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.09 *Wage Rates*

- A. *Duty to pay Prevailing Wage Rates:* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. The then current prevailing wage rates at the time of execution of the Agreement are included in these Contract Documents.
- B. *Penalty for Violation:* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code Section 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause:* On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being retained from successive progress payments pending a final determination of the violation.
- D. *Arbitration Required if Violation Not Resolved:* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph 7.09.C. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.



- E. *Records to be Maintained:* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of Final Acceptance, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be available in Denton County, Texas at all reasonable hours for inspection by the City. The provisions of Paragraph 7.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments:* With each progress payment request or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates:* The Contractor shall post prevailing wage rates in a conspicuous place at the Site at all times.
- H. *Subcontractor Compliance:* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs 7.09.A through 7.09.G.

#### 7.10 *Patent Fees and Royalties*

- A. Contractor shall pay all patent or license fees and royalties and pay all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any patent or license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay said fees or, royalties or costs to others.
- B. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.***

#### 7.11 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Unless otherwise expressly provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. City shall provide reasonable assistance to Contractor, if necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work applicable at the time the Notice of Award is issued, except for permits provided by the City as specified in Paragraph 7.11.B. City shall pay the charges of utility service providers for connections for providing permanent service to the Work.

- B. *City obtained permits and licenses.* City will obtain and pay for those permits and licenses identified as City's responsibility in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to comply with and carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency, relating to the changes. The City will not reimburse the Contractor for any cost associated with the requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
  2. U.S. Army Corps of Engineers Permits
  3. Texas Commission on Environmental Quality Permits
  4. Railroad Company Permits
  5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

#### 7.12 *Taxes*

- A. On issuance of a Notice of Award by the City, an organization which qualifying for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to hisits Supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas tax permits and information may be obtained from:
1. Comptroller of Public Accounts  
Sales Tax Division  
Capitol Station  
Austin, TX 78711; or
  2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

#### 7.13 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, City shall not be responsible for monitoring Contractor's compliance with any Laws and Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall be liable for all resulting claims, costs losses, and damages, and shall indemnify and hold harmless City, and its officers, elected



and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

- C. Changes in Laws and Regulations not known at the time of the City's issuance of a Notice of Award having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

#### 7.14 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. Contractor shall include accurate locations for buried and imbedded items. These record documents, together with all approved Samples, will be available to City for reference. Upon completion of the Work, Contractor shall deliver these record documents to City prior to Final Inspection.

#### 7.15 *Safety and Protection*

- A. As between City and Contractor, Contractor shall be responsible for the safety of persons and property in the performance of the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. Contractor shall inform the City in writing of Contractor's designated safety representative at the Site.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.1515.C.2 or 7.1515.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of and remedied by Contractor at its expense.
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss;

and shall implement, erect and maintain all necessary safeguards for such safety and protection.

- F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- H. Contractor shall inform City in advance in writing of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed and City has issued a Letter of Final Acceptance.
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

#### 7.17 *Emergencies and/or Rectification*

- A. In the event of threatened or actual emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to immediately act to prevent damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If City determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take proper action within 24 hours to fulfill this written request or fails to show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire cost for such remedial action, plus 25% from any funds due or to become due the Contractor on the Project.

### 7.18 Submittals

- A. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.03).
1. Contractor shall submit the Submittals in accordance with Section 01 33 00 of the General Requirements.
  2. Data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 7.18.C.
  3. Submittals reviewed and accepted by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
  4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
  5. For-Information-Only submittals upon which the City is not expected to conduct a review or take responsive action may be so identified in the Contract Documents.
  6. Contractor shall submit the required number of Samples specified in the Specifications.
  7. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data as City may require to enable City to review the Submittal for the limited purposes set forth in Paragraph 7.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole risk, expense and responsibility of Contractor.
- C. City's Review
1. City will provide timely review of Submittals in accordance with the accepted Schedule of Submittals. City's review and acceptance will be to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents), or to safety precautions or programs incident thereto.
  3. City's review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 of the General

Requirements, and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

5. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.
6. City's review and acceptance of a Submittal, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Time or Contract Price, unless such changes are included in a Change Order.
7. Neither City's receipt, review, or acceptance of a Submittal will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in accepted Submittals, subject to the provisions of Section 01 33 00 of the General Requirements.

7.19 *Continuing the Work*

- A. Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

7.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Contractor's warranty and guarantee under this Paragraph 7.20:
  1. Observations by Engineer or City;
  2. Recommendation by Engineer or payment by City of any progress or final payment;
  3. The issuance of a letter or certificate of Final Acceptance by City or any payment related thereto by City;
  4. Use or occupancy of the Work or any part thereof by City;
  5. Any review and acceptance of a Submittal by City;

6. Any inspection, test, or acceptance by others; or
  7. Any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.

#### 7.21 *Indemnification*

- A. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM , FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL OR BODILY INJURY OR DEATH, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THESE CONTRACT DOCUMENTS. THIS INDEMNIFICATION PROVISION SHALL ONLY APPLY TO THE EXTENT THE ABOVE ARE CAUSED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR COSTS, EXPENSES AND LEGAL FEES INCURRED IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**
- B. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM FROM AND AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF PROPERTY OF THE CITY, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION SHALL ONLY APPLY TO THE EXTENT THE ABOVE ARE CAUSED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT.**

## 7.22 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Submittal related to the requirements indicated in Paragraph 7.22.B is prepared by Contractor, a Subcontractor, or others for submittal to City, then such Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to City.
- D. City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under the conditions indicated in Paragraph 7.22.B, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, City's review, acceptance, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to the conditions indicated in Paragraph 7.22.B, will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.22;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

## 7.23 *Right to Audit*

- A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract during the term of the Contract and for five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be made available, in Denton County, Texas within ten (10) Business Days of City's written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within Denton County, Texas. Except as otherwise provided herein, the cost of the audit will be borne by the City



unless the audit reveals an overpayment of 1% or greater. If the City is undertaking an audit or inspection pursuant to Paragraph 7.09 or if an overpayment of 1% or greater occurs, the City's reasonable cost of the audit, including any travel costs, must be paid by the Contractor within five (5) Business Days of receipt of City's invoice for such costs.

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

#### 7.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. Contractor shall comply with the requirements of *Title VI, Civil Rights Act of 1964 as amended* and the regulations promulgated thereunder, as may be further defined in the Supplementary Conditions, for any project receiving Federal assistance.

### **ARTICLE 8 – OTHER WORK AT THE SITE**

#### 8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work, if such other work is not noted in the Contract Documents.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and City, if City is performing other work with City's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with

Contractor's Work except for latent defects and deficiencies in such other work that could not have been discovered through a proper inspection.

- F. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with City, or that is performed without having been arranged by City. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.D.3.

#### 8.02 *Coordination*

- A. If City intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with City's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

#### 8.03 *Legal Relationships*

- A. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. When City is performing other work at or adjacent to the Site with City's employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work.
- B. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any Damage Claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, City, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, defend and hold harmless City and Engineer, and the officers, elected and appointed officials, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.



**ARTICLE 9 – CITY’S RESPONSIBILITIES****9.01**    *Communications to Contractor*

- A. Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

**9.02**    *Furnish Data*

- A. City shall promptly furnish the data required of City under the Contract Documents.

**9.03**    *Pay When Due*

- A. City shall make payments to Contractor when they are due in accordance with and subject to the provisions of Article 14.

**9.04**    *Lands and Easements; Reports, Tests, and Drawings*

- A. City’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Article 5 refers to City’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

**9.05**    *Change Orders*

- A. City’s responsibilities with respect to Change Orders are set forth in Article 11.

**9.06**    *Inspections, Tests, and Approvals*

- A. City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.02.DD.

**9.07**    *Limitations on City’s Responsibilities*

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

**9.08**    *Undisclosed Hazardous Environmental Condition*

- A. City’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

**9.09**    *Compliance with Safety Program*

- A. While at the Site, City’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which City has been informed in advance in writing pursuant to Paragraph 7.15.

**ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION****10.01** *City’s Project Manager or Duly Authorized Representative*

- A. City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City’s Project Manager or duly appointed representative during construction are set forth in the Contract Documents.
- B. City’s Project Manager for these Contract Documents is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19 of the General Requirements.

**10.02** *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City’s efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City’s visits and observations are subject to all the limitations on City’s responsibility set forth in Paragraph 99.07. Particularly, but without limitation, during or as a result of City’s visits or observations of Contractor’s Work, City will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

**10.03** *Determinations for Work Performed*

- A. As applicable, Contractor will determine the actual quantities and classifications of Work performed.. City’s Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City’s written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

**10.04** *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. City will be the interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City’s written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 11.07.

**ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK****11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including in the Contract Price or Contract Time, but such amendment will be made by Change Order only.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one of the following ways:
  - 1. A Field Order; or
  - 2. City's review of a Submittal (subject to the provisions of Paragraph 7.18.C); or
  - 3. City's written interpretation or clarification.

**11.02 *Execution of Change Orders***

- A. City and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed..
  - 2. Changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.04, (b) required because of City's acceptance of defective Work under Paragraph 13.05 or City's correction of defective Work under Paragraph 13.08, or (c) as otherwise agreed to by the parties.

**11.03 *Field Orders***

- A. City may authorize minor variations and deviations in changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on both the City and Contractor, which shall perform the Work involved promptly.

**11.04 *Authorized Changes in the Work – Extra Work***

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra Work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by City.

**11.05 *Unauthorized Changes in the Work***

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract

Documents, as amended, modified, or supplemented as allowed herein, except in certain cases of an emergency as provided in Paragraph 7.17.A.

11.06 *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment for such Extra Work, and the City requires its performance, the Contractor shall proceed with the Extra Work after making written request for a Change Order and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 11.07.
- B. The Contractor shall furnish the City such records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual work performed.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be the full, complete and final payment for all charges, fees and costs Contractor incurs as a result of or relating to the Extra Work, whether said charges, fees or costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any charges, fees or costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the Extra Work.

11.07 *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
  - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
  - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City no later than 45 days after the start of the event giving rise thereto (unless the City notifies Contractor in writing that City will allow additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
  - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.08.
  - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 11.09.
  - 5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.

6. The City shall submit any response to the Contractor within 30 days after receipt of the Contractor's last submittal (unless in connection with the Contract Claim (unless Contractor allows the City additional time to submit a response).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor unless action by City's Council is required, take one of the following actions in writing:
  1. deny the Contract Claim in whole or in part;
  2. approve the Contract Claim; or
  3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under this Paragraph 11.07 will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 11.07.
- F. If the City fails to take any action pursuant to this Paragraph 11.07, the Contract Claim is considered to have been denied by the City.

#### 11.08 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. TheThe value of any Work covered by a Change Order will be determined as follows:
  1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.08.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum or unit price, then on the basis of the Cost of the Work (determined as provided in Paragraph 12.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.08.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit will be determined as follows:
  1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3, the Contractor's fee will be 15 percent except for:
  - 1) rental fees for Contractor's own equipment; and
  - 2) bonds and insurance;
- b. For costs incurred under Paragraph 12.01.B.4, the Contractor's fee will be 5 percent;
  - 1) Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.08.C.2.a and 11.08.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, in no case shall the cumulative total of fees paid be in excess of 25% of the Cost of the Work;
- c. No fee will be payable on the basis of costs itemized under Paragraphs 12.01.B.5, 12.01.B.6, and 12.01.C;
- d. The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

#### 11.09 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed under a Change Order for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.
- C. Delay, disruption, and interference in the Work, and any related changes in Contract Time, are addressed in and governed by Paragraph 4.03.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.



**ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT****12.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work:* The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 12.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. When needed to determine the value of a Change Order. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* The term, “Cost of the Work” means the sum of all costs, except those excluded in Paragraph 12.01.C, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall be in amounts no higher than those calculated based on the prevailing wage rates contained in the Contract Documents, shall not include any of the costs itemized in Paragraph 12.01.C, and may include as applicable, but not be limited to the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs shall include, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours on Business Days, during Weekend Working Hours, or on a state or federal holiday observed by the City, shall be included in the above to the extent authorized by City.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith.
  3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved in writing by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. and the Contract Documents. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City. Contractor shall deliver such bids to City, which will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 12.01 and Paragraph 11.08.C.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work and specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically included in the Contract.
6. Supplemental costs consisting of the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and temporary office or facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations, excluding those taxes for which an exemption is available as described in Paragraph 7.12.
  - d. Deposits lost for causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of CityCity. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - f. The cost of utilities, fuel, and sanitary facilities at the Site.
  - g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - h. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:



1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically covered in the Contract. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the acts, omissions, negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Agreement will be determined as set forth in the Contract.
  - b. for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as set forth in Paragraph 11.08.C.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.08.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 12, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices, and submit in a form acceptable to City an itemized cost breakdown together with supporting data. Subject to prior written notice, City will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by City. Contractor will be responsible for ensuring that pertinent Subcontractors will afford such access to City, and preserve such documents, to the same extent as is required of Contractor.

## 12.02 Allowances

- A. *Specified Allowance*: It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to City.
- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances, have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

## 12.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 10.03.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to Unit Price Work listed and the cost of incidental work included as part of the unit price.
- D. Adjustments in Contract Price
  - 1. City may make an adjustment in the Contract Price in accordance with Paragraph 11.08 if:
    - a. the quantity of the item of Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. there is no corresponding adjustment with respect to any other item of Work.
  - 2. Adjusted unit prices will apply to all units of that item.

- E. Increased or Decreased Quantities: The City reserves the right to order Extra Work in accordance with Paragraph 11.04.
1. If the changes in quantities or the alterations do not significantly change the character of the Work under the Contract Documents, the altered Work will be paid for at the Contract unit price.
  2. If the changes in quantities or alterations materially and significantly change the character of the Work, the Contract will be amended by a Change Order.
  3. If no unit prices exist, this any increase or decrease in quantities will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 11.
  4. A significant change in the character of Work occurs when:
    - a. the character of work for any Item as altered differs materially or significantly in kind or nature from that in the Contract; or
    - b. a Major Item of work varies by more than 25% from the original Contract quantity.
  5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
  6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

12.04 *Plans Quantity Measurement for Unclassified Excavation or Embankment*

- A. Plans quantities may or may not represent the exact quantity of Work performed or material moved, handled, or placed during the term of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised in accordance with the Contract.
- B. If the total actual quantity measured for an individual item varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized Work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 11.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount identified in the approved change, and the 25% variance provisions of Paragraph 12.04.B will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.

- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

### **13.01 *Access to Work***

- A. City and its Engineer, consultants, representatives, employees, and independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

### **13.02 *Tests and Inspections***

- A. Contractor shall give City timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. If the Contract Documents or any Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection, testing or approval, except that those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall will be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections, tests, re-tests, and approvals required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to City;
  - 2. to attain City's acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to City.

- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
  - 1. City will coordinate such Testing to the extent possible, with Contractor;

2. Should any Testing under this Section 13.03.D result in a “fail”, “did not pass” or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor’s cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
  3. Any amounts owed for any retest under this Section 13.02.D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
  4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If the Contract Documents require the Work (or part thereof) to be approved by City or another designated individual or entity, then Contractor shall assume full responsibility for seeking and obtaining such approvals.
  - F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without the written approval of City, Contractor shall, if requested by City, uncover such Work for observation. Such uncovering and the recovering of such Work will be at Contractor’s expense.

### 13.03 *Defective Work*

- A. *Contractor’s Obligation:* It is Contractor’s obligation to assure that the Work is not defective.
- B. *City’s Authority:* City has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Written notice of all defective Work of which City has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if City has rejected the defective Work, shall remove the defective Work from the Project and replace it with Work that is not defective. Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair City’s warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Contractor or City by governmental authorities because the Work is defective, and the costs of repair, replacement or reconstruction of work of others resulting from defective Work.

### 13.04 *Rejecting Defective Work*

- A. City will have authority to reject Work which City believes to be defective or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing

of the Work as provided in this Article 13, whether or not the Work is fabricated, installed, or completed.

#### 13.05 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted.

#### 13.06 *Uncovering Work*

- A. City has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the Contract Documents or specific instructions of City and if requested by City, Contractor shall uncover such Work for City's observation, inspection or testing and then replace the covering, all at Contractor's expense.
- C. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, then Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). City shall be entitled to accept defective Work in accordance with Paragraph 13.05 and in such case Contractor shall still be responsible for all costs associated with exposing, observing, and testing defective Work.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

#### 13.07 *City May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or Contractor fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or any employee or agent of, any of them.



**13.08 City May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace defective Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then City may, after providing 7 days' advance written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, and City's other contractors access to the Site to enable City to exercise the rights and remedies under this Paragraph 13.08.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court, or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.08 will be the responsibility of and will be charged against Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.08.

**ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD****14.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.03 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 12.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
  - 1. Contractor is responsible for providing all information as required to become a vendor of the City.
  - 2. At least 20 days before the date established in the General Requirements for each progress payment (but not more often than once a month), Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) bill of sale, invoice, or purchase order payments, copies of cancelled checks or other documentation establishing full payment by Contractor for the materials and equipment; (b) at City's request, documentation warranting that City has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received on account of the Work by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.

C. Review of Applications

1. City will, after receipt of each Application for Payment, either indicate in writing it will proceed to process the Application for Payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that based City's actual knowledge:
  - a. the Work has progressed to the point indicated; and
  - b. the quality and/or quantity of the Work is generally in accordance with the Contract Documents (subject to any subsequent evaluations of the Work, an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests or inspections called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraphs 10.05 and 12.03, and any other qualifications stated).
3. Processing any such payment will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
  - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
  - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process or pay the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and



may revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:

- a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
- b. there are discrepancies in quantities contained in previous applications for payment;
- c. the Contract Price has been reduced by Change Orders;
- d. City has been required to correct defective Work in accordance with Paragraph 1313.08, or has accepted defective Work pursuant to Paragraph 13.05;
- e. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- f. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Retainage:

1. For all contracts, retainage shall be five percent (5%).

E. *Liquidated Damages*: For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be paid by the Contractor to the City, not as a penalty, but as liquidated damages suffered by the City. If feasible, the parties may agree to have the liquidated damages deducted from any amounts owned to Contractor by City instead of being paid directly to City by Contractor.

F. *Payment*: Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

G. Reduction in Payment

1. City may refuse to make payment of the of the amount requested because:
  - a. Claims have been made against City based on Contractor's performance or furnishing of the Work, or City has incurred costs, losses, or damages resulting from Contractor's performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. City has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;

- g. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones or Final Acceptance of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
  - l. Other items entitle City to a set-off against the payment amount requested; or
  - m. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, within a reasonable time after Contractor remedies the reasons for such action to the satisfaction of City and City has confirmed such action.

#### 14.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

#### 14.03 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to of any such part of the Work which City determines to be ready for its intended use. In addition, City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete, subject to the following conditions:
- 1. At any time, Contractor may notify City that Contractor considers any such part of the Work ready for its intended use.
  - 2. Within a reasonable time after notification as enumerated in Paragraph 14.03, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
  - 3. Partial Utilization by City will not constitute Final Acceptance by City.

#### 14.04 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
  - 1. City will promptly schedule a Final Inspection with Contractor.
  - 2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

#### 14.05 *Final Acceptance*

- A. Upon completion by Contractor to City's satisfaction, of any and all Work in accordance with the Contract Documents, including any corrections or additional Work identified in the Final Inspection and delivery of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurances, certificates of inspection, annotated record documents and other required documents in accordance with the Contract Documents, City will issue to Contractor a letter of Final Acceptance.

#### 14.06 *Final Payment*

- A. Application for Payment
  - 1. Upon receipt of a letter of Final Acceptance from City, Contractor may make application for Final Payment following the procedures for requesting payments in accordance with the Contract Documents.
  - 2. The final Application for Payment must be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 6.03;
    - b. consent of the surety, if any, to final payment;
    - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any Liens or other title defects or will so pass upon final payment.
    - d. a list of all Contract Claims or Damage Claims against City that Contractor believes are unsettled; and
    - e. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- B. Payment Becomes Due: The final payment requested by Contractor, less previous payments made and less any sum to which City is entitled, including but not limited to liquidated damages, will become due and payable:
  - 1. After City's acceptance of the Application for Payment and accompanying documentation; and

2. After all Damage Claims have been resolved:

- a. directly by the Contractor; or
- b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.

The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract that continue thereafter.

14.07 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.01.D, and if bonds have been furnished as required in Paragraph 6.02, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.
- B. *Partial Retainage Release.* If the Contract provides for separate establishment and maintenance periods and/or test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

14.08 *Waiver of Claims*

- A. The acceptance of final payment will constitute a waiver and release by Contractor of all claims, rights, causes of action, or liabilities, including Contract Claims, against City arising out of, related to or under the Contract or for any act, omission or neglect of City.

14.09 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the Contract Documents) any Work has been found to be defective, or Contractor's repair of any damages to the Site, adjacent areas, or areas made available for Contractor's use by City has been found to be defective, then after receipt of City's written notice of defect, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
  1. correct the defective repairs to the Site or such adjacent areas, or areas made available for Contractor's use by City;
  2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by City, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected, repaired or removed and replaced under this Paragraph 14.09, the correction period hereunder with respect to such Work may be extended for an additional period of one year after the end of the initial correction period.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this Paragraph 14.09 are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

### 15.01 *City May Suspend Work*

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor. City may fix the date on which Work will be resumed in such notice, and Contractor shall resume the Work on the date so fixed. During a temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way; Contractor shall take every precaution to prevent damage or deterioration of the work performed; and Contractor shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the

equipment and no profit or overhead will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

15.02 *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Project Schedule established under Paragraph 2.06 as adjusted from time to time pursuant to Paragraph 7.05);
  2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract; or
  3. Contractor's disregard of Laws and Regulations of any public body having jurisdiction; or
  4. Contractor's repeated disregard of the authority of City; or
  5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
  6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
  7. Substantial indication that the Contractor has become insolvent or bankrupt, or otherwise financially unable to perform the Work satisfactorily; or
  8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. The conference shall be held not later than 15 days after receipt of notice. by both Contractor and surety.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of the conference to address Contractor's failure to perform the Work.
  2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
    - a. If City completes the Work, City may exclude Contractor and Surety from the Site and take possession of the Work, and all materials and equipment stored at the Site



or for which City has paid Contractor, but which are stored elsewhere, and the Work as City may deem expedient.

3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by City, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph 15.02, City shall not be required to obtain the lowest price for the Work performed.
  4. Neither City, nor any of its respective consultants, agents, officers, elected or appointed officials, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
  5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim, counterclaim or offset on account of the method used by City in completing the Contract.
  6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise under the Contract or prescribed by law.
- C. Notwithstanding Paragraph 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or Surety. Any retention or payment of money due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.02, the termination procedures of that bond shall not supersede the provisions of this Article 15.

#### 15.03 *City May Terminate for Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract, in whole or in part. Any termination shall be affected by giving notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Notice shall be deemed validly given if given in accordance with Paragraph 17.01.A.

- B. After a notice of termination, has been given, and except as otherwise directed by the City, the Contractor shall:
1. stop work under the Contract on the date and to the extent specified in the notice of termination;
  2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
  3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
  4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
    - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
    - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
  5. complete performance of such Work as shall not have been terminated by the notice of termination; and
  6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the City has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of in accordance with the Contract, exclusive of items the disposition of which has been directed or authorized by City.
- D. Not later than 15 days after Contractor's submission of the certified list to City pursuant to Paragraph 15.03.C, the City shall accept title to such items, subject to verification of the list by the City upon removal of the items or, If the items are stored, then City shall have 45 days after submission of the list, to verify the list submitted and accept title to such items. Any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination has been given, the Contractor shall submit his termination claim to the City in the form and with the certification prescribed by the City. Unless an extension request is made in writing within such 60-day period by the Contractor, and granted by the City, any and all such claims of Contractor that are not submitted to City within such 60-day period shall be conclusively deemed waived.
- F. Should a termination claim be timely submitted to the City, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead



- and profit on such Work calculated and determined in accordance with the Contract Documents;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses calculated and determined in accordance with the Contract Documents; and
  3. reasonable expenses directly attributable to reasonable and necessary wind-down and termination activities, without any overhead or profit.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information submitted and available to it, the amount, if any, due to the Contractor by reason of the termination and City shall pay to the Contractor the amounts so determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, related to or resulting from such termination.

## ARTICLE 16 – RESOLUTION OF DISPUTES

### 16.01 *Methods and Procedures*

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 11.07 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 11.07.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 calendar days of filing of the request.
- C. The parties shall agree on a mediator; however, if they cannot agree within 14 calendar days then the Denton County Alternative Dispute Resolution Program (“DCAP”) shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party, or the mediator, states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. All costs of mediation shall be borne equally by the parties.
- D. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.
- E. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

- F. If the Contract Claim is not resolved by mediation, City's action under Paragraph 11.07.C or a denial pursuant to Paragraphs 11.07.C.3 or 11.07.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction as set forth within the Contract Documents.

## **ARTICLE 17 – MISCELLANEOUS**

### **17.01 *Giving Notice***

- A. Whenever any provision of the Contract requires the giving of written notice, it will be deemed to have been validly given if delivered:
1. in person, by a commercial courier service or otherwise, if to City, to the duly authorized representative of City identified in the Contract Documents or to City's Project Manager or, if to Contractor, to a member of the firm or to an officer of the corporation for whom it is intended; or
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient.

### **17.02 *Computation of Time***

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a state or federal holiday observed by the City, the next Business Day shall become the last day of the period.

### **17.03 *Cumulative Remedies***

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, in equity, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph 17.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### **17.04 *Limitation of Damages***

- A. With respect to any and all claims, disputes subject to final resolution, and other matters at issue, neither City, nor any of its officers, directors, elected or appointed officials, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project. Further, the Contractor may only claim and the City may only be liable for those damages that are set forth in Subchapter I, Chapter 271 of the Texas

Local Government Code and the City shall not be liable for any consequential damages, exemplary damages or damages for unabsorbed home office overhead.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- B. The City has not waived its sovereign immunity except as expressly set forth in Subchapter I, Chapter 271 of the Texas Local Government Code or as expressly waived by other statute.

17.06 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and Final Acceptance of the Work or termination of the Contract or of the services of Contractor.

17.07 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

17.08 *Successors and Assigns*

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

17.09 *Governing Law*

- A. The Contract shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

17.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**SECTION 00 73 01**  
**SUPPLEMENTARY CONDITIONS - CSP**  
**TO**  
**GENERAL CONDITIONS**

**Supplementary Conditions**

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

**Defined Terms**

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

**Modifications and Supplements**

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

**SC-1.01 "Defined Terms"**

The following Terms listed in the General Conditions are modified as follows:

Bid – See Proposal.

Bidder – See Offeror.

Bidding Documents – See Proposal Documents.

Bidding Requirements – See Proposal Requirements.

The following Terms are added to the General Conditions as follows:

Competitive Sealed Proposals – A procurement method by which a governmental entity requests proposals, evaluates and ranks the Offerors, and negotiates a contract with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

Daily Value – The City-determined value in dollars as indicated in the Proposal Form as the value of one Day for the purposes of determining the Incentive (if applicable) for Substantial Completion relative to the Contract Time and achievement of Substantial Completion.

Offeror – The individual or entity that submits a Proposal directly to City.

Proposal – The offer or proposal of an Offeror submitted in accordance with the requirements set forth in the Instructions to Offerors.

Proposal Documents – The Proposal Requirements and the Proposed Contract Documents.

Proposal Requirements – The Advertisement or Invitation to Offerors, Instructions to Offerors, Offeror’s Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

Substantial Completion – The completion of the Work necessary for the project to function as it was intended pursuant to the Contract Documents and as specified below, to the reasonable satisfaction of the City. The date of Substantial Completion shall be memorialized by written notice given by the City to the Contractor.

#### SC-5.01A, “Availability of Lands”

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

#### 5.01A., City Property Available for a Concrete Batch Plant

The following location is available for a Concrete Batch Plant:

PARCEL NUMBER	ADDRESS	LOCATION
334545	4111 Vintage Blvd	Behind Denton PD Substation Accessible from Bonnie Brae (see exhibit APPENDIX GC 5.01A)

The Contractor understands and agrees that use of the existing batch plant pad site, owned by the City of Denton is subject to the requirements of City Specifications 41 14 00 – Batching Equipment, as well as the following:

Pre-construction video of site	No project spoil piles
Maintain clean access area (street sweeping as needed)	Lock/Secure site when not in use

Prohibit fully loaded trucks on Old Bonnie Brae Rd (see exhibit APPENDIX GC 5.01A)

#### 5.01A.1, Outstanding Right-Of-Way, and/or Easements to Be Acquired

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of April 10, 2023:

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
None		

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

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

**SC-5.01A.2, Utilities or obstructions to be removed, adjusted, and/or relocated**

The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of April 10, 2023:

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
KCS Railroad	At Grade Panels & Signals	TBD-Will coordinate w/road work
En-Link Gas	Lowering/relocations of 3 & 4 inch gas lines	Q3-2023

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

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

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

A Geotechnical Report No. 1703; dated February 22, 2012, prepared by Landtec Engineers, a sub-consultant of Graham Associates, Inc., a consultant of the City, providing additional information on the pavement design and geotechnical borings and report for the project. (see APPENDIX)

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

**SC-5.05 A., "Underground Facilities"**

The following are additional resources for identification of Underground Facilities which are at or contiguous to the site of the Work, and which are not necessarily shown in the Drawings:

Atmos gas construction plans designed by Half Truex	Enlink Gas Construction Plans
Oncor Electric Pole relocations	Grande Communications near FM 1515
DME Underground construction near UNT	
North South Water Phase 2 – 36 & 42-Inch Water Transmission Main	

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

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

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

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

**SC-6.03A., "Certificates of Insurance"**

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

- (1) City
- (2) Consultant: None

(3) Other: KSC Railroad; University of North Texas (UNT) specifically the portion of work related to the Electrical Duct Bank installation on UNT property

**SC-6.04A., “Contractor’s Insurance”**

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

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

*Statutory limits*

*Employer's liability*

*\$500,000 each accident/occurrence*

*\$500,000 Disease - each employee*

*\$500,000 Disease - policy limit*

**SC-6.04B., “Contractor’s Insurance”**

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

*\$2,000,000 each occurrence*

*\$4,000,000 aggregate limit*

The policy shall include endorsement CG2503 Amendment of limits (designated project or premises) in order to extend the policy’s limits specifically to the project in question.

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

The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with the City of Denton.

**SC 6.04C., “Contractor’s Insurance”**

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

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

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

**SC-6.04E., “Contractor’s Insurance”**

The Contractor’s construction activities will require its employees, agents, subcontractors, equipment, and material deliveries to cross railroad properties and tracks, or perform work within 25 feet of the center line of tracks owned and operated by KSC Railroad.

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

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

(1) General Aggregate: \$6,000,000

(2) Each Occurrence: \$2,000,000

X Required for this Contract                      \_\_\_ Not required for this Contract

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

1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.
2. Where more than one railroad company is operating on the same right-of-way or where several railroad companies are involved and operated on their own separate rights-of-way, the Contractor may be required to provide separate insurance policies in the name of each railroad company.
3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a railroad company's right-of-way at a location entirely separate from the grade separation or at-grade crossing, insurance coverage for this work must be included in the policy covering the grade separation.
4. If no grade separation is involved but other work is proposed on a railroad company's right-of-way, all such other work may be covered in a single policy for that railroad, even though the work may be at two or more separate locations.

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

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



**SC 6.04F., “Environmental Impairment/Pollution”**

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

**SC-7.08C., “Concerning Subcontractors and Suppliers”**

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

**Required Subcontractors**

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
----------------------------	-------------------------------------

None	
------	--

**SC-7.11., “Permits and Utilities”****SC-7.11A., “Contractor obtained permits and licenses”**

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

**KCS Railroad:**

1. A Right of Entry (ROE) will be required prior to the Contractor performing any of its work within 50 feet of the nearest rail. Information and ROE application can be obtained by contacting:

Denise Case

Jones Lang LaSalle Americas, Inc.

(817) 230-2614 – Office

[Denise.case@am.jll.com](mailto:Denise.case@am.jll.com)

David Miller

Jones Lang LaSalle Americas, Inc.

(817) 554-5057 - Office

[David.Miller@jll.com](mailto:David.Miller@jll.com)[https://jllrpg.360works.com/fmi/webd/rpo\\_web\\_kcs.fmp12](https://jllrpg.360works.com/fmi/webd/rpo_web_kcs.fmp12)

2. Whenever the Contractor or its personnel or equipment are within fifty feet (50') on either side of the centerline of track, their activities shall be attended by an approved railroad flagman. Work within the KSC ROW shall be performed as required by the KSC permit.

**SC-7.11B. “City obtained permits and licenses”**

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

1. Permit for FEMA CLOMR for 2 stream crossings
2. Permit for USACE for project 2 stream crossings
3. Permit for KCS Railroad Street Crossing
4. Permit for KCS Railroad Sanitary Sewer Crossing and grading on Tributary stream

**SC-7.11C. “Outstanding permits and licenses”**

The following is a list of known outstanding permits and/or licenses to be acquired, if any as of April 10, 2023:

**Outstanding Permits and/or Licenses to Be Acquired**

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
None		

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

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

1. **Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive proposals or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by City or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the City, or the Texas Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, City shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:
  - a. withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
  - b. cancellation, termination or suspension of the Contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as City or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request City to enter into

such litigation to protect the interests of City, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Additional Title VI requirements can be found in the Appendix.

#### **SC-8.02., “Coordination”**

The individuals or entities listed below have contracts with the City for the performance of other work at the Site:

<b>Vendor</b>	<b>Scope of Work</b>	<b>Coordination Authority</b>
<i>ENLINK GAS and/or their assigns</i>	<i>Lowering &amp; relocation of gas lines</i>	<i>Justin Bolles</i>
<i>KCS Railroad</i>	<i>Widening tracks at crossing</i>	<i>Chris Ashley</i>

#### **SC-9.01, “Communications to Contractor”**

None

#### **SC-10.01B., “City’s Project Manager”**

The City’s Project Manager for this Contract is Robin Davis, or her successor pursuant to **written notification from the City Engineer.**

#### **SC-13.02B., “Tests and Inspections”**

None

#### **SC-14.01G, “Reduction in Payment”**

Add Paragraph 14.01G.3:

3. *City may reduce payments to the Contractor, if the number of Days that have passed after the date listed on the Notice to Proceed exceeds the Contract Time for Substantial Completion.*

#### **SC-16.01C.1, “Methods and Procedures”**

None

#### **SC – 17.01, “Documents”**

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

**END OF SECTION**



1  
2**SECTION 00 35 14**  
**CONFLICT OF INTEREST AFFIDAVIT - CSP****CONFLICT OF INTEREST QUESTIONNAIRE -****FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

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

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

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

**1** Name of vendor who has a business relationship with local governmental entity. **Sundt Construction, 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 7<sup>th</sup> 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**



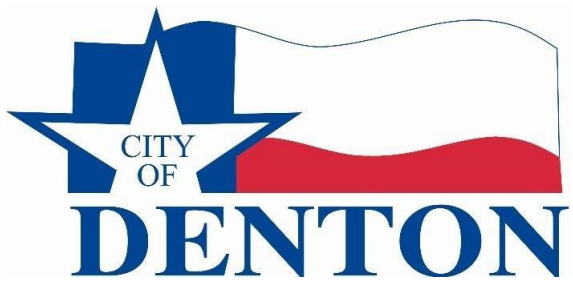
5.24.2023

Signature of vendor doing business with the governmental entity

Date

3

**END OF SECTION**



DocuSign Transmittal Coversheet

File Name	8094 Bonnie Brae 3 Widening CO#1
Purchasing Contact	Cori Power
Contract Expiration	N/A

## CITY OF DENTON CHANGE ORDER FORM



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

Contractor: Sundt Construction, Inc.  
8445 Freeport Pkwy Suite 240  
Irving, TX 75063  
Chris Bailey

Proj: Bonnie Brae Phase 3 Widening & Reconstruction

CHANGE ORDER NO. 1

IFB# 8094-1

ENG/PMO# 880006-3

PO# 205669

Notice To Proceed Issued:

10/16/2023

Current Completion Date:

4/15/2026

New Completion Date:

4/15/2026

Contract BID Amount:	\$ 38,398,900.45	Prior Approved Other Funded CO's:	\$ -
5% Contingency Amount:	\$ 1,919,945.02	Current Contract Amount w CO's:	\$ 38,398,900.45
Total NTE Amount :	\$ 40,318,845.47	This CO Other Funding Request:	\$ -
Prior Approved CAA's:	\$ -	Total Change Request:	\$ 44,157.00
Available Contingency:	\$ 1,919,945.02		
This CAA Request:	\$ 44,157.00	Orig Contract Days:	912
Contingency Remaining:	\$ 1,875,788.02	Approved CO Days:	0
		This CO Days Request:	0
		New Contract Days:	912

## PROJECT SCOPE AND REASON FOR CHANGE

Description of work  
included in Contract:

Widen and reconstruct Bonnie Brae Phase 3 from FM1515/Airport Road to Roselawn Drive from a 2-lane rural roadway to a 4-lane divided urban street section. Includes drainage, water & wastewater improvements.

Reason for Change:

Corrections to quantities vetted through the submittal process  
Removal of Contraflow Equipment

## CONTINGENCY USE ALLOWANCE (CUA) CONTRACT CHANGES

## QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
109	33 14 17	WATER SERVICE	EA	11	9	\$ 5,400.00	\$ 48,600.00
139	33 05 07	36" STEEL CASING BY BORE (5/8" THICK)	LF	110	100	\$ 3,200.00	\$ 320,000.00
136	33 05 62	5' DIA. MANHOLE OVER EXIST. SEWER LINE (P	EA	2	-1	\$ 26,000.00	\$ (26,000.00)
137	33 05 62	5' DIA. DROP MANHOLE (PRE-CAST)	EA	2	1	\$ 30,000.00	\$ 30,000.00
89	02 41 14	REMOVE EXISTING SET's/HEADWALLS	EA	5	8	\$ 2,500.00	\$ 20,000.00
79	33 42 23	Connect RCP to Headwall	EA	3	-3	\$ 2,500.00	\$ (7,500.00)
154	34 41 50	ALUM SIGNS 18" X 18" LANE USE	EA	14	-14	\$ 372.00	\$ (5,208.00)
162	26 05 19	TRAF SIG CABLES 5C #14 AWG	LF	2494	-2494	\$ 2.50	\$ (6,235.00)
164	34 41 21	STEEL POLE STR ASSEMBLY 34' TY D	EA	8	-8	\$ 14,000.00	\$ (112,000.00)
191	34 41 10	LANE USE SIGNAL 16" X 16" 2 IND	EA	5	-5	\$ 6,500.00	\$ (32,500.00)
192	34 41 10	LANE USE SIGNAL 16" X 16" 3 IND	EA	17	-17	\$ 7,900.00	\$ (134,300.00)
193	34 41 10	LANE USE SIGNAL 30" X 30" 1 IND	EA	5	-5	\$ 6,700.00	\$ (33,500.00)
194	34 41 10	LANE USE SIGNAL 30" X 30" 2 IND	EA	4	-4	\$ 4,300.00	\$ (17,200.00)

TOTAL CUA QTY CHANGES:

\$44,157.00

## NEW ITEMS OF WORK - N/A

Contingency funds are used at City's discretion per contract spec language

TOTAL CUA NEW ITEMS:

\$0.00

## OTHER FUNDED CONTRACT CHANGES (CO) - N/A

TOTAL CO AMOUNT:

\$44,157.00

Bonnie Brae Phase 3  
Widening & Reconstruction

Original BID/Contract Amount:	\$ 38,398,900.45
Original Not To Exceed Amount:	\$ 40,318,845.47
Total CUA's:	\$ 44,157.00
Total CO's:	\$ -
<b>Revised Contract Amount:</b>	<b>\$ 38,443,057.45</b>
% of CUA Approved To-Date:	2.30%
<b>Total Changes over Original Bid:</b>	<b>0.11%</b>
Percent Changes over NTE:	0.11%

Signatory Lines will be updated by Purchasing if required

SUBMITTED BY:

DocuSigned by:  
  
1786071EDEE943C  
Robin Davis, Project Manager

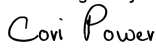
ACCEPTED BY CITY ENGINEER/DIRECTOR OF CAPITAL PROJECTS

DocuSigned by:  
  
7B46EEFAB11BC4F2  
Trevor Crain, Director of Capital Projects

ACCEPTED BY CONTRACTOR: Holly Horsak Sr. Project Manager  
Name, Title

DocuSigned by:  
  
5305226A98C24FF...  
Signature

PURCHASING:

DocuSigned by:  
  
6F1EE1663F7B4FE...  
Signature 6/17/2024



**Certificate Of Completion**

Envelope Id: D3A756DB956F4C85A2F598283E9482D2

Status: Completed

Subject: \*\*\*Purchasing Approval\*\*\* 8094 Bonnie Brae 3 Widening CO#1

Source Envelope:

Document Pages: 3

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Cori Power

Location: DocuSign

5/1/2024 1:17:44 PM

cori.power@cityofdenton.com

**Signer Events****Signature****Timestamp**

Cori Power

**Completed**

Sent: 5/1/2024 1:23:23 PM

cori.power@cityofdenton.com

Viewed: 5/1/2024 1:23:56 PM

Purchasing Supervisor

Signed: 5/1/2024 1:24:08 PM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 5/1/2024 1:24:10 PM

lori.hewell@cityofdenton.com

Viewed: 5/2/2024 7:22:48 AM

Purchasing Manager

Signed: 5/2/2024 7:23:07 AM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Robin Davis



Sent: 5/2/2024 7:23:10 AM

Robin.Davis@cityofdenton.com

Viewed: 5/2/2024 8:15:36 AM

Security Level: Email, Account Authentication  
(None)

Signed: 5/2/2024 8:16:03 AM

Signature Adoption: Uploaded Signature Image

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Accepted: 5/2/2024 8:15:36 AM

ID: 9ef5bc4d-888c-4411-b52e-6120f365af45

Holly Horsak



Sent: 5/2/2024 8:16:04 AM

hkhorsak@sundt.com

Resent: 5/6/2024 12:58:00 PM

Sr. Project Manager

Resent: 5/8/2024 12:05:51 PM

Sundt Construction

Viewed: 6/13/2024 9:39:21 AM

Security Level: Email, Account Authentication  
(None), Login with SSO

Signature Adoption: Pre-selected Style

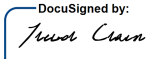

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Signed: 6/14/2024 11:03:46 AM

**Electronic Record and Signature Disclosure:**

Accepted: 6/14/2024 11:03:12 AM

ID: 5ce7e20e-45f5-4040-b5a5-fb9fabcb81a1

Signer Events	Signature	Timestamp
<p>Trevor Crain</p> <p>Trevor.Crain@cityofdenton.com</p> <p>Director of Capital Projects</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 6/14/2024 11:20:09 AM ID: de1e7803-823a-49af-a1cb-b1eff02b968d</p>	<p>DocuSigned by:  7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 6/14/2024 11:03:49 AM</p> <p>Viewed: 6/14/2024 11:20:09 AM</p> <p>Signed: 6/14/2024 11:20:41 AM</p>
<p>Cori Power</p> <p>cori.power@cityofdenton.com</p> <p>Purchasing Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>DocuSigned by:  5F1FE1863F7B4FE...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 6/14/2024 11:20:43 AM</p> <p>Viewed: 6/17/2024 8:00:33 AM</p> <p>Signed: 6/17/2024 8:00:37 AM</p>
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p><b>COPIED</b></p>	<p>Sent: 6/17/2024 8:00:39 AM</p>
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/1/2024 1:23:23 PM
Envelope Updated	Security Checked	5/6/2024 12:58:00 PM
Envelope Updated	Security Checked	5/6/2024 12:58:00 PM
Envelope Updated	Security Checked	5/6/2024 12:58:00 PM
Certified Delivered	Security Checked	6/17/2024 8:00:33 AM
Signing Complete	Security Checked	6/17/2024 8:00:37 AM
Completed	Security Checked	6/17/2024 8:00:39 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

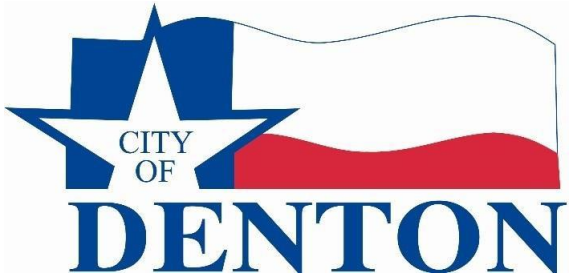
\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw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

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

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DocuSign Transmittal Coversheet

File Name	8094-1 BB Phase 3 Change Order 2
Purchasing Contact	Erica Garcia

## CITY OF DENTON CHANGE ORDER FORM



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

Contractor: Sundt Construction, Inc.  
8445 Freeport Pkwy Suite 240  
Irving, TX 75063  
Chris Bailey

Proj: **Bonnie Brae Phase 3 Widening & Reconstruction**

CHANGE ORDER NO. **2**

IFB# **8094-1**

ENG/PMO# **880006-3**

PO# **205669**

Notice To Proceed Issued:

10/16/2023

Current Completion Date:

4/15/2026

New Completion Date:

4/15/2026

Contract BID Amount: \$ 38,398,900.45

Prior Approved Other Funded CO's: \$ -

5% Contingency Amount: \$ 1,919,945.02

Current Contract Amount: \$ 38,443,057.45

Total NTE Amount: \$ 40,318,845.47

This CO Other Funding Request: \$ -

Prior Approved CUA's: \$ 44,157.00

Total Change Request: \$ **365,742.00**

Available Contingency: \$ 1,875,788.02

This CUA Request: \$ 365,742.00

Orig Contract Days: 912

This CO Days Request: 0

Contingency Remaining: \$ 1,510,046.02

Approved CO Days: 0

New Contract Days: 912

## PROJECT SCOPE AND REASON FOR CHANGE

Description of work included in Contract:

Widen and reconstruct Bonnie Brae Phase 3 from FM1515/Airport Road to Roselawn Drive from a 2-lane rural roadway to a 4-lane divided urban street section. Includes drainage, water & wastewater improvements.

Reason for Change:

Quantities required not included in project plans

Removal of Contraflow Equipment missed in CO#1

Field changes due to utility conflicts including changing location of bore under KSC RR

Additional items & work requested by Water Utilities to tie-in to new work at I-35 widening + 11 days

## CONTINGENCY USE ALLOWANCE (CUA) CONTRACT CHANGES

## QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
5	32 93 00	TOPSOIL NATIVE	SY	28566	600	\$ 3.25	\$ 1,950.00
6	32 93 00	BLOCK SODDING	SY	17718	600	\$ 6.50	\$ 3,900.00
10	02 41 15	REMOVE EXISTING CONCRETE PAVING	SY	5759	44	\$ 20.00	\$ 880.00
148	34 41 24	DRILL SHAFT 36 IN (TY A OR TY B)	LF	136	-122	\$ 600.00	\$ (73,200.00)
150	26 05 33	CONDUIT 2" PVC	LF	689	-94	\$ 25.50	\$ (2,397.00)
151	26 05 33	CONDUIT 3" PVC	LF	2451	-2110	\$ 28.50	\$ (60,135.00)
152	26 05 33	CONDUIT 4" PVC	LF	1126	-818	\$ 31.50	\$ (25,767.00)
153	26 05 19	ELEC CONDR #4 POWER	LF	1050	-231	\$ 3.60	\$ (831.60)
154	26 05 19	ELEC CONDR #6 POW 86	LF	86	-34	\$ 2.55	\$ (86.70)
155	26 05 35	GROUND BOXES TY CBX	EA	18	-6	\$ 2,200.00	\$ (13,200.00)
156	26 05 00	ELEC SERVICE	EA	3	-1	\$ 9,000.00	\$ (9,000.00)
158	34 41 21	INST HWY TRAF SIG	EA	3	-1	\$ 22,000.00	\$ (22,000.00)
163	26 05 19	TRAF SIG CABLES 21C #14 AWG	LF	7253	-6356	\$ 7.50	\$ (47,670.00)
166	26 05 19	TRAF SIG CABLES 3C #16 CCTV	LF	246	-56	\$ 3.50	\$ (196.00)
177	34 41 27	CONTROLLER, CABINET, BASE, & FDN	EA	3	-1	\$ 27,500.00	\$ (27,500.00)
124	33 05 05	TRENCH SAFETY (DEPTH 0-10 FT)	LF	3131	-3	\$ 6.00	\$ (18.00)
133	33 31 14	24" SDR 26 SEWER LINE	LF	4200	-3	\$ 405.00	\$ (1,215.00)
135	33 31 16	4" SEWER SERVICE	EA	9	3	\$ 8,400.00	\$ 25,200.00
142	33 05 07	36" STEEL CASING BY BORE (5/8" THICK)	LF	110	95	\$ 3,200.00	\$ 304,000.00
145	33 05 62	5' EXTRA DEPTH MANHOLE	VF	194	-11	\$ 660.00	\$ (7,260.00)

**TOTAL CUA EXISTING ITEMS:**

**\$45,453.70**

## NEW ITEMS OF WORK

326	32 01 29	High Early Strength Concrete Main Stad Dr.	SY	0	76	\$ 15.93	\$ 1,210.68
327	33 05 62	SS MH Install Temp By-Pass STA 170+32.15	LS	0	1	\$ 24,534.22	\$ 24,534.22
328	33 14 146	Added Bends to avoid exist Water MH (Line E	LS	0	1	\$ 12,568.07	\$ 12,568.07

329		Costs related utility conflict delays	LS	0	1	\$ 78,750.00	\$ 78,750.00
330	33 31 16	SS connection for house not shown on plans	LS	0	1	\$ 13,061.85	\$ 13,061.85
331	02 41 14	Rmv conc. headwall for install of SS Line A STA 203+60	LS	0	1	\$ 19,607.89	\$ 19,607.89
332	32 17 23	4" WH Parking Lot Stripe	LF	0	267	\$ 1.53	\$ 408.51
333	32 17 23	4" Yell Parking Lot Stripe CH	EA	0	2	\$ 202.32	\$ 404.64
334	32 17 23	Handicap Parking Symbol BLU	EA	0	4	\$ 176.41	\$ 705.64
335	32 17 23	6" RD FIRE LANE Parking Lot Stripe	LF	0	600	\$ 1.59	\$ 954.00
336	33 14 10	16" Ductile Iron Pipe, fittings & connections	LS	0	1	\$ 168,082.80	\$ 168,082.80
Contingency funds are used at City's discretion per contract spec language						<b>TOTAL CUA NEW ITEMS:</b>	<b>\$320,288.30</b>
OTHER FUNDED CONTRACT CHANGES (CO) - N/A							
TOTAL CHANGE AMOUNT:							<b>\$365,742.00</b>
<div><div><div><b>Bonnie Brae Phase 3</b> <b>Widening &amp; Reconstruction</b></div></div><div><div>Original BID/Contract Amount: \$ 38,398,900.45</div><div>Original Not To Exceed Amount: \$ 40,318,845.47</div><div>Total CUA's: \$ 409,899.00</div><div>Total CO's: \$ -</div><div><b>Revised Contract Amount: \$ 38,808,799.45</b></div><div>% of CUA Approved To-Date: 21.35%</div><div><b>Total Changes over Original Bid: 1.07%</b></div><div>Percent Changes over NTE: 1.02%</div></div></div>							

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

SUBMITTED BY:

ACCEPTED BY CITY ENGINEER/DIRECTOR OF CAPITAL PROJECTS

ACCEPTED BY CONTRACTOR: Holly Horsak Sr. Project Manager

PURCHASING:

Signed by:

Robin Davis

1786071FDEE947C...

Robin Davis, Project Manager

Signed by:

Trevor Crain

7B46EEAB11BC4F2...

Trevor Crain, Director of Capital Projects

DocuSigned by:

Holly Horsak

B20E226A98C24FF...

Signature

DocuSigned by:

Erica Garcia

CE56114ADB9747A...

Signature

224



## Certificate Of Completion

Envelope Id: 49CBD72F53C54814BCBB30B8151A288B

Status: Completed

Subject: \*\*\*Purchasing Approval\*\*\* 8094-1- BB Phase 3 CO#2

Source Envelope:

Document Pages: 3

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 1

Erica Garcia

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

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erica.garcia@cityofdenton.com

IP Address: 198.49.140.104

## Record Tracking

Status: Original

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erica.garcia@cityofdenton.com

## Signer Events

## Signature

## Timestamp

Erica Garcia

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erica.garcia@cityofdenton.com

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Senior Buyer

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Lori Hewell

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lori.hewell@cityofdenton.com

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Purchasing Manager

Signed: 12/5/2024 8:12:56 AM

City of Denton

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.104

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Robin Davis

Signed by:  
  
1786071FDEE947C...

Sent: 12/5/2024 8:12:57 AM

Robin.Davis@cityofdenton.com

Viewed: 12/5/2024 9:15:52 AM

Project Manager- Capital Projects

Signed: 12/5/2024 9:17:03 AM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Uploaded Signature Image

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ID: 1f62176e-f244-430e-a2fd-38bad13e18e9

Holly Horsak

DocuSigned by:  
  
B20E226A98C24FF...

Sent: 12/5/2024 9:17:05 AM

Hkhorsak@sundt.com

Resent: 12/9/2024 10:10:02 AM

Sr. Project Manager

Viewed: 12/9/2024 12:26:57 PM

Sundt Construction

Signed: 12/9/2024 12:27:08 PM

Security Level: Email, Account Authentication  
(None)

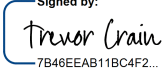


Signature Adoption: Pre-selected Style

Using IP Address: 155.190.7.21

### Electronic Record and Signature Disclosure:

Accepted: 12/5/2024 12:03:27 PM

ID: 0e6690fd-1109-459c-a5a5-ac15a088ae08

Signer Events	Signature	Timestamp
<p>Trevor Crain</p> <p>Trevor.Crain@cityofdenton.com</p> <p>Director of Capital Projects</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Accepted: 12/9/2024 3:34:40 PM  ID: d8de8029-39d7-4ee9-9016-7c77f3ed17ab</p>	<p>Signed by:</p>  <p>7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style  Using IP Address: 70.237.27.78</p>	<p>Sent: 12/9/2024 12:27:10 PM</p> <p>Viewed: 12/9/2024 12:29:38 PM</p> <p>Signed: 12/9/2024 3:35:02 PM</p>
<p>Erica Garcia</p> <p>erica.garcia@cityofdenton.com</p> <p>Senior Buyer</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<p>DocuSigned by:</p>  <p>CE56114ADB9747A...</p> <p>Signature Adoption: Pre-selected Style  Using IP Address: 198.49.140.104</p>	<p>Sent: 12/9/2024 3:35:04 PM</p> <p>Viewed: 12/9/2024 3:36:40 PM</p> <p>Signed: 12/9/2024 9:23:30 PM</p>
In Person Signer Events	Signature	Timestamp
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Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>		<p>Sent: 12/9/2024 9:23:32 PM</p> <p>Viewed: 12/9/2024 9:24:21 PM</p>
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/4/2024 9:31:24 PM
Certified Delivered	Security Checked	12/9/2024 3:36:40 PM
Signing Complete	Security Checked	12/9/2024 9:23:30 PM
Completed	Security Checked	12/9/2024 9:23:32 PM
Payment Events	Status	Timestamps
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- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE CHANGE ORDER NO. 3 TO THE CONTRACT BETWEEN THE CITY OF DENTON AND SUNDT CONSTRUCTION, INC., FOR THE BONNIE BRAE PHASE 3 WIDENING AND RECONSTRUCTION PROJECT FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8094-1 – CHANGE ORDER NO. 3 IN THE NOT-TO-EXCEED AMOUNT OF \$2,388,362.16, FOR A TOTAL CONTRACT AWARD AGGREGATED TO \$42,707,207.63).

WHEREAS, on August 15, 2023, by Ordinance No. 23-1524, the City Council awarded a contract to Sundt Construction, Inc., in the amount of \$40,318,845.47, for the Bonnie Brae Phase 3 Widening and Reconstruction Project for the Capital Projects Department; and

WHEREAS, on June 17, 2024, Purchasing awarded a Change Order No. 1 between the City of Denton and Sundt Construction, Inc., in the amount of \$44,157.00; and

WHEREAS, on December 9, 2024, Purchasing awarded a Change Order No. 2 between the City of Denton and Sundt Construction, Inc., in the amount of \$365,742.00; and

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Change Order No. 3, increasing the amount of the contract between the City and Sundt Construction, Inc., which is on file in the office of the Purchasing Agent, in the amount of Two Million Three Hundred Eighty-Eight Thousand Three Hundred Sixty-Two and 16/100 (\$2,388,362.16) dollars, is hereby approved and the expenditure of funds therefore is hereby authorized in accordance with said change order. The total purchase order amount increases to 42,707,207.63.

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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

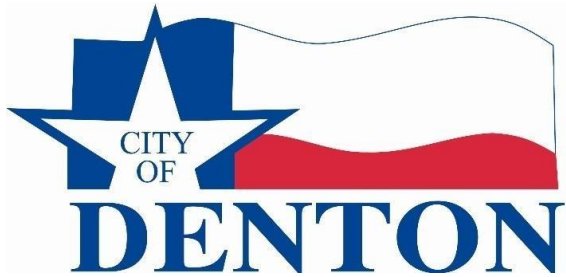
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

RFP	8094-1
File Name	Bonnie Brae Phase 3 CO#3
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	



Contractor: Sundt Construction, Inc.  
8445 Freeport Pkwy Suite 240  
Irving, TX 75063  
Holly Horsak

3

205669

New Completion Date:  
11/11/2026

Approved CO Days: 0      New Contract Days: 1122

Description of work included in Contract:

Widen and reconstruct Bonnie Brae Phase 3 from FM1515/Airport Road to Roselawn Drive from a 2-lane rural roadway to a 4-lane divided urban street section. Includes drainage, water & wastewater improvements.

Costs related to the delay of the Enlink gas line relocation and abandonment of the existing line in the path of the future alignment of Bonnie Brae between Parvin and Roselawn. The City began negotiating with Enlink in 2020. Terms were not agreed upon until after Sundt was issued a Notice To Proceed. Enlink completed their relocation and abandonment efforts on October 28, 2024. The decision to move forward with bidding and NTP for construction of the roadway was based on the city's need to meet TxDOT's I-35 Merge project schedule. Total delay was 377 days from the 10.16.2023 NTP.

### QUANTITY CHANGES TO EXISTING ITEMS

TOTAL CUA EXISTING ITEMS:	\$287,320.00
---------------------------	--------------

347		SWPPP Maintenance	MO	0	11	\$ 8,517.85	\$ 93,696.30
340		Craft Labor & Equip Escalation	LS	0	1	\$ 240,961.57	\$ 240,961.57
341		Material Escalation	LS	0	1	\$ 310,401.96	\$ 310,401.96
342		Subcontractor Escalation	LS	0	1	\$ 10,920.00	\$ 10,920.00
344		Re-Clearing of Culvert A Area	LS	0	1	\$ 6,994.50	\$ 6,994.50
346		Street Sweeping	MO	0	11	\$ 4,585.78	\$ 50,443.62

TOTAL CUA NEW ITEMS:	\$713,417.95
----------------------	--------------

337		General Conditions (Staff/Overhead)	LS	0	1	\$ 2,224,534.14	\$ 2,224,534.14
338		Trucking Escalation	LS	0	1	\$ 13,416.10	\$ 13,416.10
339		Drainage Inefficiencies (Labor, Equip & Sub)	LS	0	1	\$ 42,579.62	\$ 42,579.62
343		Insurance	LS	0	1	\$ 43,683.08	\$ 43,683.08
348		Traffic Control Escalation	MO	0	11	\$ 3,918.00	\$ 43,098.00
349		Dust Control	MO	0	11	\$ 1,913.75	\$ 21,051.22

<b>TOTAL NON CONTINGENCY FUNDED NEW ITEMS:</b>	<b>\$2,388,362.16</b>
--	-----------------------

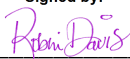
<b>TOTAL CHANGE AMOUNT:</b>	<b>\$3,389,100.11</b>
-----------------------------	-----------------------

Original BID/Contract Amount:	\$	38,398,900.45
Original Not To Exceed Amount:	\$	40,318,845.47
Total CUA's:	\$	1,410,636.95
Total CO's:	\$	2,388,362.16
<b>Revised Contract Amount:</b>	<b>\$</b>	<b>42,197,899.56</b>
% of CUA Approved To-Date:		73.47%
<b>Total Changes over Original Bid:</b>		<b>9.89%</b>
Percent Changes over NTE:		5.92%

Signatory Lines will be updated by Purchasing if required

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

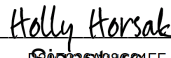
SUBMITTED BY:

Signed by:  
  
Robin Davis, Project Manager

ACCEPTED BY CITY ENGINEER/DIRECTOR OF CAPITAL PROJECTS

Signed by:  
  
Seth Garcia, Interim Director of Capital Projects

ACCEPTED BY CONTRACTOR: Holly Horsak Sr. Project Manager  
Name, Title

DocuSigned by:  
  
Signature

CITY MANAGER:

Signature


ATTEST: CITY SECRETERY

Signature

PURCHASING:

DocuSigned by:  
  
Signature

APPROVED AS TO LEGAL FORM:

DocuSigned by:  
  
Signature

## Certificate Of Completion

Envelope Id: 0799EC5B-FFC3-4B76-A9CB-CE6C0B7BA9E3

Status: Sent

Subject: Please DocuSign: City Council Contract 8094-1 Bonnie Brae Phase 3 CO#3

Source Envelope:

Document Pages: 3

Signatures: 5

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

IP Address: 198.49.140.10

## Record Tracking

Status: Original

Holder: Cori Power

Location: DocuSign

3/24/2025 11:31:18 AM

cori.power@cityofdenton.com

## Signer Events

## Signature

## Timestamp

Cori Power

**Completed**

Sent: 3/24/2025 11:32:34 AM

cori.power@cityofdenton.com

Viewed: 3/24/2025 11:35:29 AM

Purchasing Supervisor

Signed: 3/24/2025 11:35:56 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication (None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Lori Hewell

DocuSigned by:

*Lori Hewell*  
13E1D934887C40F...

Sent: 3/24/2025 11:35:58 AM

lori.hewell@cityofdenton.com

Viewed: 3/24/2025 11:54:50 AM

Purchasing Manager

Signed: 3/24/2025 11:54:55 AM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn

DocuSigned by:

*Marcella Lunn*  
4B070831B4AA43B...

Sent: 3/24/2025 11:54:57 AM

marcella.lunn@cityofdenton.com

Viewed: 3/25/2025 12:39:25 PM

Senior Deputy City Attorney

Signed: 3/25/2025 12:40:46 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 198.49.140.10

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Not Offered via DocuSign

Robin Davis

Signed by:

*Robin Davis*  
1786071FDEE947C...

Sent: 3/25/2025 12:40:48 PM

Robin.Davis@cityofdenton.com

Viewed: 3/25/2025 1:42:05 PM

Project Manager- Capital Projects

Signed: 3/25/2025 1:43:46 PM

Security Level: Email, Account Authentication (None)



Signature Adoption: Uploaded Signature Image

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Accepted: 3/25/2025 1:42:05 PM

ID: e1d27084-84f7-4270-abc0-5b7c7188aef2

Signer Events	Signature	Timestamp
<p>Holly Horsak hkhorsak@sundt.com Sr. Project Manager Sundt Construction Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 3/25/2025 1:45:02 PM ID: e0e3c75d-89d0-413d-8435-e3b55014cf8a</p>	<p>DocuSigned by:  B20E226A98C24FF...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 155.190.17.6</p>	<p>Sent: 3/25/2025 1:43:47 PM Viewed: 3/25/2025 1:45:02 PM Signed: 3/25/2025 4:54:44 PM</p>
<p>Seth Garcia Seth.Garcia@cityofdenton.com Interim Director of Capital Projects Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 3/25/2025 4:57:36 PM ID: edb3568f-f368-46f9-857a-d25d2a4c8698</p>	<p>Signed by:  A13701F6BC954FC...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 3/25/2025 4:54:46 PM Viewed: 3/25/2025 4:57:36 PM Signed: 3/25/2025 4:58:03 PM</p>
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		<p>Sent: 3/25/2025 4:58:07 PM</p>
<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		
<p>Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 3/24/2025 11:35:58 AM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 3/25/2025 4:58:06 PM Viewed: 3/26/2025 4:21:07 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/24/2025 11:32:34 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB25-050, **Version:** 1

---

### **AGENDA CAPTION**

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 Carollo Engineers, Inc., for engineering services at the Lake Lewisville Water Treatment Plant for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8213-004 - Professional Services Agreement for engineering services awarded to Carollo Engineers, Inc., in the not-to-exceed amount of \$958,760.00).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Christine Taylor  
**DATE:** April 14, 2025

### **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 Carollo Engineers, Inc., for engineering services at the Lake Lewisville Water Treatment Plant for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8213-004 – Professional Services Agreement for engineering services awarded to Carollo Engineers, Inc., in the not-to-exceed amount of \$958,760.00).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

At the Lake Lewisville Water Treatment Plant, several ongoing issues are impacting the plant operation's ability to successfully dewater the residual solids that are removed from the raw water during treatment. The ongoing issues are as follows:

- Inconsistent solids feed through the belt press system, and screw conveyor clogs.
- Poor capture efficiency in gravity thickener; solids are flowing over the weir.
- Sludge builds up in the Equalization Basin.
- Limited space for future expansions and modifications at the existing dewatering building.

The engineer will provide preliminary design, final design, and engineering services during construction for improvements to the solids handling system. The scope of services includes:

- Evaluation of the existing solids handling system.
- Separation of backwash water and sedimentation basin flow streams.
- Design of a sludge holding tank to improve the consistency of the solids fed to the belt press system.
- Design of pipe modifications to send backwash water from the equalization basin directly to the recovery basin, bypassing the sludge lagoon.
- Instrumentation and Control improvements by optimizing the residuals and increasing overall efficiency.
- Process improvement recommendations to optimize the plant during the design, construction, and commissioning phases of the project.
- Evaluate the capacity of the existing belt press system to determine if a third belt press is needed.

These services are necessary to address the ongoing issues the City of Denton is experiencing at the Lake Lewisville Water Treatment Plant, facilitating efficient progress on this critical infrastructure project.

Request for Qualifications for an engineering services list for various water and wastewater utilities projects for the Water Utilities Department was solicited using the City's formal solicitation process. City Council approved a pre-qualified list of professional service firms on March 5, 2024 (Ordinance 24-390).

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On March 5, 2024, City Council approved RFQ 8213 for a prequalified list of firms for engineering services for various water and wastewater utilities projects for the Water Utilities Department (Ordinance 24-290).

### **RECOMMENDATION**

Award a contract with Carollo Engineers, Inc., for engineering services at the Lake Lewisville Water Treatment Plant for the Water Utilities Department, in the not-to-exceed amount of \$958,760.

### **PRINCIPAL PLACE OF BUSINESS**

Carollo Engineers, Inc.  
Dallas, TX

### **SUSTAINABILITY MEASURES**

The contract for engineering services will help the City of Denton in improving the solids handling process at the Lake Lewisville Water Treatment Plant. Protect health, safety, and the environment by maintaining a high level of drinking water quality in accordance with all regulatory requirements. The contract addresses the need to improve the solids handling process at the Lake Lewisville Water Treatment Plant as required by the City of Denton's Water Utilities Department.

### **ESTIMATED SCHEDULE OF PROJECT**

The LLWTP Dewatering project will begin design in April 2025. The construction plans are anticipated to be completed in November 2025.

### **FISCAL INFORMATION**

These services will be funded from the bond of the 5-year Capital Improvement Program account 630542523.1365.21100. Requisition #168599 has been entered into the Purchasing software system in the amount of \$500,000 for FY 25/26. The remainder of the funds will be available FY 26/27. The budgeted amount for this item is \$958,760.

### **EXHIBITS**

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

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

For information concerning this acquisition, contact: Nicholas Dampf, (940) 349-8030.

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

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH CAROLLO ENGINEERS, INC., FOR ENGINEERING SERVICES AT THE LAKE LEWISVILLE WATER TREATMENT PLANT FOR THE WATER UTILITIES DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8213-004 – PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES AWARDED TO CAROLLO ENGINEERS, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$958,760.00).

WHEREAS, on March 5, 2024, the City Council approved a pre-qualified engineer list for the Water and Wastewater Utilities Department (Ordinance 24-390), and the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function [Water and sewer service]; and

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Carollo Engineers, Inc., for engineering services at the Lake Lewisville Water Treatment Plant for the Water Utilities Department, a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

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

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

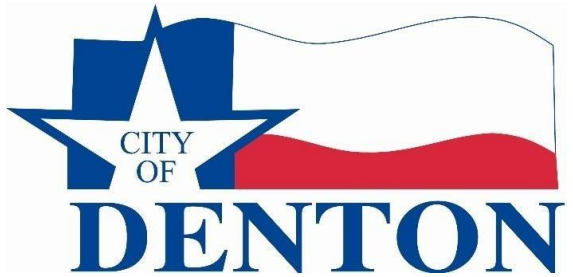
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

PSA	8213-004
File Name	LLWTP Dewatering Project
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

## **CITY OF DENTON, TEXAS**

### **STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES**

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Carollo Engineers, Inc., with its corporate office at 14755 Preston Road, Suite 500, Dallas, Texas 75254 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Lake Lewisville Water Treatment Plant Dewatering Upgrades project (the "PROJECT").

#### **SECTION 1** **Scope of Services**

- A.** The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.
- B.** Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

#### **SECTION 2** **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$958,760 in the manner and in accordance with the fee schedule as set forth in Attachment B. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment C.

#### **SECTION 3** **Terms of Payment**

Payments to the ENGINEER will be made as follows:



## **A. Invoice and Payment**

- (1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment C to reasonably substantiate the invoices.
- (2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.
- (3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.
- (4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.
- (5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

## **SECTION 4 Obligations of the Engineer**

### **A. General**

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

### **B. Standard of Care**

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and
- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

### **C. Subsurface Investigations**

- (1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.
- (2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

### **D. Preparation of Engineering Drawings**

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

### **E. Engineer's Personnel at Construction Site**

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.
- (2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the

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

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

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

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

## **G. Construction Progress Payments**

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

## **H. Record Drawings**

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

## **I. Right to Audit**

- (1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.
- (2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.
- (3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

## J. INSURANCE

### (1) ENGINEER'S INSURANCE

- a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence with a \$2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.
  - i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the CITY. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.
  - ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.
- b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.
  - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.
- c. Workers' Compensation – ENGINEER shall maintain workers compensation and employers liability insurance and, if necessary,

commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.

- i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

## (2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.
- b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
- c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.
- d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- e. A minimum of thirty (30) days notice of cancellation or reduction in coverage shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.
- f. Insurers for all policies must be authorized to do business in the State of

Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.

- g. Any deductible or self insured retention in excess of \$25,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.
- h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.
- i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.
- l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.
- m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

## **K. Independent Consultant**

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.

## **L. Disclosure**

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

## **M. Asbestos or Hazardous Substances**

- (1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.
- (2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

## **N. Permitting Authorities - Design Changes**

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

## **O. Schedule**

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Attachment C to this AGREEMENT.

## **P. Equal Opportunity**

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.
- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and



ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

## **SECTION 5**

### **Obligations of the City**

#### **A. City-Furnished Data**

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

#### **B. Access to Facilities and Property**

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

#### **C. Advertisements, Permits, and Access**

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

#### **D. Timely Review**

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Attachment C.

#### **E. Prompt Notice**

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

#### **F. Asbestos or Hazardous Substances Release.**

(1) CITY acknowledges ENGINEER will perform part of the work at CITY's

facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.

- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

## **G. Contractor Indemnification and Claims**

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

## **H. Contractor Claims and Third-Party Beneficiaries**

- (1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."

- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.
- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

## **I. CITY's Insurance**

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement

cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

## **J. Litigation Assistance**

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

## **K. Changes**

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

# **SECTION 6** **General Legal Provisions**

## **A. Authorization to Proceed**

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

## **B. Reuse of Project Documents**

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

## **C. Force Majeure**

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER's performance of its obligations hereunder.

## **D. Termination**

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.
  - b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.
- (2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:
- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
  - b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
  - c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.
- (3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

## **E. Suspension, Delay, or Interruption to Work**

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

## **F. Indemnification**

**IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.**

## G. Assignment

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

## H. Jurisdiction

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

## I. Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

## J. Observe and Comply

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES.**

## K. Immigration Nationality Act

ENGINEER shall verify the identity and employment eligibility of its employees who perform work under this AGREEMENT, including completing the Employment Eligibility Verification Form (I-9). Upon request by CITY, ENGINEER shall provide CITY with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this AGREEMENT. ENGINEER shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any ENGINEER employee who is not legally eligible to perform such services. **ENGINEER SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY ENGINEER, ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** CITY, upon written notice to ENGINEER, shall have the

right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

#### **L. Prohibition on Contracts with Companies Boycotting Israel**

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

#### **M. Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization**

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

#### **N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

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

#### **O. Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations**

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

#### **P. Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies**

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

#### **Q. Prohibition Against Personal Interest in Contracts**

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City’s Ethic Ordinance 23-1165 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City’s Conflict of Interest Questionnaire.

#### **R. Certificate of Interested Parties Electronic Filing**

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

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](mailto:purchasing@cityofdenton.com) with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

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

## **S. Warranties and Damages**

The ENGINEER shall not be responsible for warranties, guarantees, fitness for a particular purpose, breach of fiduciary duty; except as provided herein. ENGINEER waive loss of anticipated profits or for economic, incidental, liquidated, or consequential damages arising out of breach of contract, delay, termination, or for any other reason whatsoever related to this AGREEMENT. Additionally, The ENGINEER shall not be responsible for acts and decisions of third parties, including governmental agencies, other than anyone under the control or direction of ENGINEER, that impact project completion and/or success.

## **T. Agreement Documents**

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

Attachment A - Scope of Services

Attachment B - Compensation



Attachment C - Project Schedule

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

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

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

BY:  
CITY OF DENTON, TEXAS

\_\_\_\_\_  
Sara Hensley, City Manager

BY:  
ENGINEER  
Carollo Engineers, Inc.

Signed by: Steven Mendoza Project Manager / AVP  
B0A830601448409...  
Authorized Agent, Title

Full Name: Steven Mendoza  
Signed by: \_\_\_\_\_

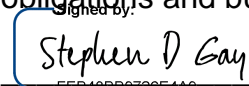
Meera Victor Sr. Vice President  
E8F3D3BE4E8343C...  
Authorized Agent, Title

Full Name: Meera Victor

TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

2025-1272382

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

Signed by:  
  
\_\_\_\_\_  
Signature


General Manager  
\_\_\_\_\_  
Title

Water Utilities and Street Operations  
\_\_\_\_\_  
Department

Date Signed: \_\_\_\_\_

ATTEST:  
LAUREN THODEN, CITY SECRETARY  
  
BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
  
BY: \_\_\_\_\_  
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**ATTACHMENT A**  
**SCOPE OF SERVICES**  
**CITY OF DENTON**

**Lake Lewisville Water Treatment Plant Dewatering Improvements Project**

**BACKGROUND**

This exhibit outlines the scope of services and deliverables for activities performed and/or completed by Carollo Engineers, Inc. (ENGINEER) for the City of Denton (CITY) in conjunction with the Lake Lewisville Water Treatment Plant Dewatering Improvements Project (PROJECT). The PROJECT is intended to address multiple concerns by the CITY regarding their ability to successfully dewater solids residuals at the water treatment plant. Primary issues of concern include:

1. The gravity thickener tank is inadequate for current demand.
2. The necessity to divert excess sludge to a soon-to-be-decommissioned pond.
3. Frequent clogging in the screw auger system for transporting sludge.
4. Limited space for potential expansions or modifications at the existing dewatering building.

**PROJECT DESCRIPTION**

The ENGINEER will provide preliminary design, final design, and Engineering Services During Construction (ESDC) services for improvements to the solids handling system, which will consist of:

1. Review of the existing solids handling system. Both current solids loading capacity and hydraulic capacity will be evaluated.
2. Piping modifications to allow for separation of backwash water and sedimentation basin flow streams such that solids from the sedimentation basins will be routed directly to the sludge thickener and waste backwash water will be routed to the equalization basin.
3. Addition of a thickened sludge holding tank between the gravity thickener and dewatering building to improve the consistency of the solids feed to the belt filter press system.
4. Piping modifications to send backwash wastewater from the equalization basin directly to the recovery basin, bypassing the sludge lagoon.
5. Miscellaneous instrumentation and controls (I&C) improvements associated with the solids handling system aimed at optimizing the residuals system through automation.
6. Proposed interim process improvement recommendations to facilitate dewatering operations during the plant during design, construction, and commissioning phases of the PROJECT.
7. Evaluate the capacity of existing belt press system to determine if a third belt press is needed now, or at what treatment capacity it will be needed in the future. Design of a future belt press system is not currently part of this scope of work.

This estimate of the work is based on a project design duration of up to seven months for design and bid phase activities. ESDC will be based on a project construction duration of up to fourteen months, for a total project duration of twenty-one months.

## **1.0 PROJECT COORDINATION**

Project Manager will manage the efforts of the project team members, including Subconsultant(s), make staffing assignments, review work progress, coordinate the quality assurance / quality review process, and communicate progress to the CITY.

### **1.1. Project Management**

The purpose of this task is to establish and maintain effective project management and communication for the duration of the PROJECT, including ESDC. ENGINEER will provide project management services, including:

1. Manage and coordinate staff and Subconsultant(s).
2. Prepare Subconsultant(s) agreement.
3. Prepare monthly progress reports to be submitted with invoices.
4. Prepare a project schedule for design phase activities.
5. Coordinate the implementation of the ENGINEER's quality management program.

ENGINEER will prepare monthly project progress reports (approximately one page in length) to summarize the project work progress, issues, and scope / budget status.

#### ***Task 1.1 Assumptions***

1. The project schedule created by the ENGINEER will be for design phase activities only. A schedule addressing construction phase activities will be created by the Contractor upon award.
2. Design phase activities are assumed to have a seven-month duration, and construction phase activities are assumed to have a fourteen-month duration.

#### ***Task 1.1 Deliverables by ENGINEER***

1. Monthly progress report (.pdf).
2. Monthly invoice (.pdf).

#### ***Task 1.1 Deliverables by CITY***

1. Monthly invoice remittance.

## 1.2. Design Phase Project Meetings

ENGINEER will lead project meetings to facilitate the collection and sharing of information, as well as discuss design progress and resolution to CITY comments at specific design milestones. Project Meetings include:

Meeting Title / Subject	Meeting Date (Subject to Change)
Kickoff and Site Visit	Month 1
Draft Preliminary Design Report / 30% Design Review Workshop	Month 2
60% Design Review Workshop	Month 3
90% Design Review Workshop	Month 5
Pre-Bid Meeting and Pre-Bid Site Walkthrough	Month 6

ENGINEER's project manager or designee will present a summary of the ongoing work, issues pending, action items, etc. in addition to leading the discussion of the topic at hand. Participants will discuss outstanding or upcoming project issues. An action item list and a decision log will be maintained and updated as needed.

### **Task 1.2 Assumptions**

1. Specific meeting dates will be proposed by the ENGINEER and confirmed by the CITY after Notice to Proceed (NTP) is provided by the CITY.
2. Key members of the ENGINEER's design team will attend meetings in-person, while ancillary team members will attend virtually. The definition of key team members vs. ancillary team members is dependent on the stage of design and may change from meeting to meeting depending on the meeting's subject matter. The Project Manager will attend all meetings in-person on behalf of the ENGINEER.
3. Construction Phase Project Meetings are addressed in Task 4.0 – Engineering Services During Construction.

### **Task 1.2 Deliverables by ENGINEER**

1. Meeting agendas.
2. Draft and final meeting minutes.

### **Task 1.2 Deliverables by CITY**

1. Review draft meeting minutes and provide comments within seven calendar days of receipt.

### **1.3. Quality Management**

ENGINEER will coordinate internal quality management requirements and efforts of the Project Team, including interim deliverable submittals. Each design deliverable will be reviewed prior to delivery to the CITY.

#### ***Task 1.3 Assumptions***

1. None.

#### ***Task 1.3 Deliverables by ENGINEER***

1. None.

#### ***Task 1.3 Deliverables by CITY***

1. None.

## **2.0 DESIGN PHASE SERVICES**

Design phase services include a 30% / Preliminary Design Report (PDR), 60% design plans and specifications, 90% design plans and specifications, and a Bid Set culminating in construction-ready contract documents.

### **2.1. Review of Available Data**

This task will include review of existing information to provide a basis of design.

#### ***Task 2.1 Assumptions***

1. ENGINEER bears no responsibility for the accuracy or completeness of work performed by others and provided by the CITY as a basis of design.

#### ***Task 2.1 Deliverables by ENGINEER***

1. None.

#### ***Task 2.1 Deliverables by CITY (Historical Data Requested by ENGINEER)***

1. Record drawings and subsurface utility engineering (SUE) investigation reports, as available.
2. O&M manuals, approved submittals, and maintenance logs of associated process equipment, as available.
3. Sludge flowrates and chemical dosages related to residuals handling, as available.
4. Existing survey files, as available.
5. Existing geotechnical reports and information, as available.

### **2.2. Preliminary and Final Design**

Preliminary and final design activities encompass:

1. A Preliminary Design Report, which includes:
  - a) A solids and hydraulic capacity analysis of existing pumping systems and solids handling systems.
  - b) Development of up to three preliminary concepts to address current issues.
  - c) Proposed plant modifications grouped by technical discipline.
  - d) Preliminary list of drawings to be advanced throughout the design.
  - e) General drawings as applicable, potentially including General Sheets, Site Layout Sheets, and Process Flow Diagrams (PFDs).
  - f) Preliminary list of specifications to be advanced throughout the design.
  - g) A Class 4 cost estimate, generally as described by the Association for the Advancement of Cost Engineering (AACE).

2. A 60% design phase deliverable, which includes:
  - a) Revised list of drawings.
  - b) General drawings as applicable, potentially including General Sheets, Site Layout Sheets, Motor Control Center (MCC) layouts, One-Line Diagrams, Network Diagrams, Process and Instrumentation (P&ID) Diagrams, Equipment Layout Sheets.
  - c) Draft specifications for Divisions 00, 01, and major equipment.
  - d) A Class 3 cost estimate, generally as described by AACE.
3. A 90% design phase deliverable, which includes:
  - a) 90% detailed drawings and specifications for the entirety of the project.
  - b) A Class 2 cost estimate, generally as described by AACE.
4. A 100% Bid Phase deliverable, which includes:
  - a) Bid-ready drawings and specifications for the entirety of the project.
  - b) A revised Class 2 cost estimate, generally as described by AACE.

***Task 2.2 Assumptions***

1. The Preliminary Design Report will serve as a 30% design phase deliverable.
2. A Final PDR will be created, incorporating CITY comments on the Draft PDR, as appropriate. This Final PDR will be signed and sealed by the ENGINEER. Any unresolved CITY comments will be addressed in subsequent deliverables.
3. Up to 88 design drawings will be created for the 100% Bid Phase deliverable.
4. Design drawings will be presented in 2D, potentially utilizing existing record drawings and/or photographs for drawing backgrounds.
5. CITY will provide Front-End (Divisions 00 and 01) documents. ENGINEER to use ENGINEER's standard Front-End documents when City documents are unavailable.
6. CITY review comments will be returned to the ENGINEER within fourteen calendar days of receipt of the Draft PDR, 60% plans and specifications, and 90% plans and specifications to maintain the PROJECT schedule. CITY comments will be provided to the ENGINEER in Excel (.xls) format. Unresolved CITY comments will be addressed in subsequent deliverables.

***Task 2.2 Deliverables by ENGINEER***

1. Draft and Final PDR (.pdf). Final PDR will be signed and sealed.
2. Responses to Draft PDR comments by the CITY (.pdf).
3. 60% plans and specifications (.pdf).
4. Responses to 60% plans and specifications by the CITY (.pdf).



5. 90% plans and specifications (.pdf).
6. Responses to 90% plans and specifications by the CITY (.pdf).
7. 100% Bid Phase plans and specifications (.pdf). 100% Bid Phase plans and specifications will be signed and sealed.

***Task 2.2 Deliverables by CITY***

1. Review comments for the Draft PDR, 60% plans and specifications, and 90% specifications (.xls) provided within fourteen calendar days of receipt.

**2.3. Regulatory Coordination**

This work element will provide engineering support for regulatory requirements, including:

1. Engineering support in the form of meeting attendance and preparation of exhibits, calculations, design information etc. if required for regulatory approval.
2. Coordination with Texas Commission on Environmental Quality (TCEQ) including submitting letters, plans, and specifications, as required.

***Task 2.3 Assumptions***

1. None.

***Task 2.3 Deliverables by ENGINEER***

1. Provide exhibits, drawings, specifications, application forms, letters, calculations, and design information, as required, for permitting support.

***Task 2.3 Deliverables by CITY***

1. None.

### **3.0 BID PHASE SERVICES**

Bid phase services include responding to bidder questions, incorporating responses into bid addenda as necessary, supporting the CITY in the execution of a Pre-Bid Meeting and/or Pre-Bid Site Walkthrough if necessary, and bid evaluation/recommendation for award.

#### ***Task 3.0 Assumptions***

1. Up to two addenda packages will be created by the ENGINEER.
2. The CITY will lead the Pre-Bid Meeting, with support from the ENGINEER. The CITY will provide agendas, sign-in sheets, and meeting minutes for record keeping purposes.
3. A Pre-Bid Site Walkthrough (if deemed necessary by the CITY) will take place the same day as the Pre-Bid Meeting, be led by the CITY, and will be attended by the ENGINEER.
4. ENGINEER will review Contractor proposals and advise the CITY on their agreement with bid requirements. Once an apparent Contractor of choice has been identified, the ENGINEER will cease additional proposal reviews.
5. Recommendations will be based on Contractor conformance with the project requirements.

#### ***Task 3.0 Deliverables by ENGINEER***

1. Up to two addenda packages responding to potential bidder's questions and/or incorporating contract modifications to the 100% Bid Set (.pdf).
2. Letter recommending acceptance of the selected Contractor's proposal (.pdf).

#### ***Task 3.0 Deliverables by CITY***

1. Agendas, sign-in sheets, and meeting minutes for the Pre-Bid Meeting.

## **4.0 ENGINEERING SERVICES DURING CONSTRUCTION**

ESDC for the PROJECT are comprised of:

1. ESDC Meetings.
  - a) Construction Progress Meetings.
  - b) Issue Resolution Meetings.
2. Submittals, Substitution Requests, and Requests for Information (RFIs).
3. Change Order Review.
4. Record Drawings.

ESDC Project Management activities are addressed in Task 1.1 - Project Management.

### **4.1. ESDC Meetings**

ESDC meetings will include Construction Progress Meetings and Issue Resolution Meetings between the CITY, ENGINEER, and selected Contractor.

#### ***Task 4.1 Assumptions***

1. Monthly Construction Progress Meetings for the duration of the construction phase (fourteen months).
2. Up to two Issue Resolution Meetings to be led by the selected Contractor. The purpose of these meetings will vary, but meetings will generally be held to resolve remaining submittal or RFI questions, address unforeseen construction conditions, or for as-needed coordination between the CITY, ENGINEER, and the selected Contractor. The selected Contractor will create agendas and provide meeting minutes.
3. Key members of the ENGINEER's design team will attend meetings in-person, while ancillary team members will attend virtually. The definition of key team members vs. ancillary team members is dependent on the stage of construction and may change from meeting to meeting depending on the meeting's subject matter. The Project Manager will attend all Construction Progress Meetings in-person on behalf of the ENGINEER.

#### ***Task 4.1 Deliverables by ENGINEER***

1. Construction Progress Meeting agendas.
2. Draft and final Construction Progress Meeting minutes.

#### ***Task 4.1 Deliverables by CITY***

1. Review draft Construction Progress Meeting minutes and provide comments within seven calendar days of receipt.

## **4.2. Submittals, Substitution Requests, and RFIs**

The ENGINEER will review submittals to confirm compliance with contract documents, review substitution requests brought forth by the Contractor for compliance with the design intent, and respond to Contractor RFIs regarding questions on the contract documents and/or any unforeseen conditions.

### ***Task 4.2 Assumptions***

1. Up to 70 submittals will be reviewed by the ENGINEER. This includes resubmittals and review of Operations and Maintenance (O&M) manuals. Front-end submittals such as monthly construction photographs for pay applications, excavation plans, etc. will count towards this number.
2. Up to five substitution requests will be reviewed by the ENGINEER.
3. Up to 30 RFIs will be responded to by the ENGINEER. This includes follow-up responses if additional questions from the Contractor arise out of initial responses.
4. Repeated resubmittals and/or heavily nuanced RFIs by the Contractor may result in Issue Resolution Meetings as described in Task 4.1.
5. Submittal responses, substitution request responses, and RFI responses will be catalogued and distributed via a construction management database provided by the CITY such as EADOC, ProjectWise, or similar.

### ***Task 4.2 Deliverables by ENGINEER***

1. Submittal review responses (including resubmittals and O&M manuals) (.pdf).
2. Substitution request responses (.pdf).
3. RFI responses (.pdf).

### ***Task 4.2 Deliverables by CITY***

1. None.

## **4.3. Change Order Review**

The ENGINEER will assist in reviewing change orders submitted by the Contractor over the course of construction activities and make recommendations for implementation. It is ultimately at the CITY's discretion to move forward with proposed change orders.

### ***Task 4.3 Assumptions***

1. Up to five change order requests will be reviewed by the ENGINEER.
2. The ENGINEER will review change orders to ensure compliance with the PROJECT's design intent.
3. The ENGINEER will not make recommendation on the cost or schedule implications to change orders brought forth by the Contractor.

4. Change order reviews will be catalogued and distributed via a construction management database provided by the CITY such as EADOC, ProjectWise, or similar.

***Task 4.3 Deliverables by ENGINEER***

1. Change order reviews (.pdf).

***Task 4.3 Deliverables by CITY***

1. None.

**4.4. Record Drawings**

The ENGINEER will create a set of record drawings based on as-built conditions as noted by the Contractor. Record drawing creation will only take place upon substantial completion is granted to the Contractor and redline/as-built markups are provided to the ENGINEER by the Contractor.

***Task 4.4 Assumptions***

1. Record drawing accuracy is based upon field condition markups provided by the Contractor.
2. Record drawings will be designated as “As-Built” or “Record Drawings” and not signed or sealed by the ENGINEER.
3. The quantity of record drawing sheets will match the quantity of 100% Bid Set sheets described in Task 2.2 – Preliminary and Final Design.

***Task 4.4 Deliverables by ENGINEER***

1. Record drawings (.pdf).

***Task 4.4 Deliverables by CITY***

1. None.

## **5.0 SPECIAL SERVICES**

Special services will be conducted only upon the written authorization of the CITY.

Subconsultants, such as land surveyors or geotechnical engineers, may be delegated portions of the design phase services at the discretion of the ENGINEER. The need for Special Service Subconsultants will be determined by the ENGINEER based on the quality and thoroughness of historical information provided by the CITY in Task 2.1 – Review of Available Data.

### ***Task 5.0 Assumptions:***

1. Funding allocated to Task 5.0 will not be expended by the ENGINEER or associated Subconsultants without prior written authorization by the CITY.
2. Scope development for necessary Subconsultants will be created by the ENGINEER.
3. Scope of work for Subconsultants will include design phase documents (signed and sealed plans and specifications), as well as tasks related to ESDC such as submittal reviews, RFI responses, meetings/consultations to respond to Contractor inquiries, and the creation of record drawings.

### ***Task 5.0 Deliverables by ENGINEER***

1. None.

### ***Task 5.0 Deliverables by CITY***

1. None.

**ATTACHMENT B  
COMPENSATION  
CITY OF DENTON**

**Lake Lewisville Water Treatment Plant Dewatering Improvements Project**

<b>Fee For The City of Denton Lake Lewisville Water Treatment Plant Dewatering Improvements Project</b>			
<b>Task</b>	<b>Description</b>	<b>Hours</b>	<b>Dollars</b>
<b>1.0</b>	<b>Project Coordination</b>	<b>578</b>	<b>\$147,690.00</b>
1.1	Design Phase Project Management	67	
1.2	Design Phase Project Meetings	151	
1.3	Quality Management	360	
<b>2.0</b>	<b>Design Phase Services</b>	<b>1,833</b>	<b>\$373,900.00</b>
2.1	Review of Available Data	60	
2.2.1	PDR / 30% Design (Draft)	250	
2.2.2	PDR / 30% Design (Final)	60	
2.2.3	60% Design	776	
2.2.4	90% Design	530	
2.2.5	Bid Set Plans and Specifications	133	
2.3	Regulatory Coordination	24	
<b>3.0</b>	<b>Bid Phase Services</b>	<b>202</b>	<b>\$41,790.00</b>
3.0	Bid Phase Services	202	
<b>4.0</b>	<b>Engineering Services During Construction</b>	<b>1,212</b>	<b>\$282,470.00</b>
4.1	Construction Phase Project Management	126	
4.2	ESDC Meetings	363	
4.3	Submittals, Substitution Requests, and RFIs	547	
4.4	Change Order Reviews	36	
4.5	Record Drawings	140	
<b>5.0</b>	<b>Special Services</b>	<b>10</b>	<b>\$112,910.00</b>
5.1	Subconsultants	10	
<b>Note - Special Services includes \$100,000 for subconsultants (geotechnical and survey services) plus consultant hours for administration, negotiation, and subconsultant management. Only the hours associated to Carollo are shown.</b>			
<b>Totals</b>		<b>3,834</b>	<b>\$958,760.00</b>

**ATTACHMENT C  
PROJECT SCHEDULE  
CITY OF DENTON**

**Lake Lewisville Water Treatment Plant Dewatering Improvements Project**

	<b>Dec-24</b>	<b>Jan-25</b>	<b>Feb-25</b>	<b>Mar-25</b>	<b>Apr-25</b>	<b>May-25</b>	<b>Jun-25</b>
<b>Award / Executed Contract</b>	<b>X</b>						
<b>PDR / 30% Design Phase</b>	<b>X</b>	<b>X</b>					
Kickoff Meeting	X						
PDR / 30% Design	X	X					
Survey and Geotechnical	X						
Draft PDR / 30% Design for City of Denton Review and Workshop		X					
Final PDR Issued		X					
Class IV Cost Estimate		X					
<b>60% Design Phase</b>		<b>X</b>	<b>X</b>				
60% Design		X	X				
Front-End Division 00 and 01 Workshop			X				
60% Design - City of Denton Review & Workshop			X				
Class III Cost Estimate			X				
<b>90% Design Phase</b>			<b>X</b>	<b>X</b>	<b>X</b>		
90% Design			X	X	X		
90% Design - City of Denton Review & Workshop					X		
Class II Cost Estimate					X		
<b>Bid Set / TCEQ Design Phase &amp; Advertisement</b>					<b>X</b>	<b>X</b>	<b>X</b>
Draft Bid Set					X		
Bid Set / TCEQ Submission (Signed/Sealed Set)					X		
Class II Cost Estimate (Updated)					X		
TCEQ Review (assume 90 day review)					X	X	X
Advertise						X	X
Pre-Bid Meeting / Site Walk							X
Respond to Bidder's Questions / Addenda if Necessary							X
Award							X
<b>Construction Phase Activities and Sequencing to be Determined by Successful Contractor - Assumed to be 14 month duration</b>							



**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.**

Carollo Engineers, Inc.

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

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

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

\_\_\_\_\_  
Name of Officer

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

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

☐

Yes

☒

No

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

☐

Yes

☒

No

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

☐

Yes

☒

No

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

**4 ☒ I have no Conflict of Interest to disclose.****5** Signed by:

Meera Victor

3/18/2025

Signature of vendor doing business with the governmental entity

Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

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

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

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

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

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

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

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

### **City of Denton Ethics Code Ordinance Number 18-757**

#### **Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> 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: 4A17CA48-5A1B-40EA-A0B1-0B7B3B2E5A29  
 Subject: Please DocuSign: City Council Contract 8213-004 LLWTP Dewatering Project  
 Source Envelope:  
 Document Pages: 36  
 Certificate Pages: 6  
 AutoNav: Enabled  
 Envelopeld Stamping: Enabled  
 Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:  
 Erica Garcia  
 901B Texas Street  
 Denton, TX 76209  
 erica.garcia@cityofdenton.com  
 IP Address: 198.49.140.10

## Record Tracking

Status: Original  
 3/10/2025 1:27:27 PM

Holder: Erica Garcia  
 erica.garcia@cityofdenton.com

Location: DocuSign

## Signer Events

Erica Garcia  
 erica.garcia@cityofdenton.com  
 Senior Buyer  
 City of Denton  
 Security Level: Email, Account Authentication  
 (None)

## Signature

**Completed**

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 Not Offered via DocuSign

Lori Hewell  
 lori.hewell@cityofdenton.com  
 Purchasing Manager  
 City of Denton  
 Security Level: Email, Account Authentication  
 (None)

Signature Adoption: Pre-selected Style  
 Using IP Address: 198.49.140.10

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**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Marcella Lunn  
 marcella.lunn@cityofdenton.com  
 Senior Deputy City Attorney  
 City of Denton  
 Security Level: Email, Account Authentication  
 (None)

DocuSigned by:  
  
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Signature Adoption: Pre-selected Style  
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 Signed: 3/17/2025 4:35:52 PM

**Electronic Record and Signature Disclosure:**  
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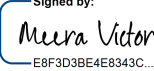
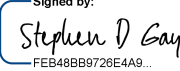
Steven Mendoza  
 smendoza@carollo.com  
 Project Manager / AVP  
 Security Level: Email, Account Authentication  
 (None)

Signed by:  
  
 B0A830601448409...

Signature Adoption: Pre-selected Style  
 Using IP Address: 45.22.244.28

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 Signed: 3/18/2025 9:09:11 AM

**Electronic Record and Signature Disclosure:**  
 Accepted: 3/17/2025 4:37:42 PM  
 ID: cae08c29-ff5c-44d8-ad40-fea254863a3a

Signer Events	Signature	Timestamp
<p>Meera Victor mvictor@carollo.com Sr. Vice President Carollo Engineers Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 3/18/2025 9:15:05 AM ID: 6d1c992d-13d1-42e0-9a75-0f7ab7d5a423</p>	<p>Signed by:  E8F3D3BE4E8343C...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 174.226.7.219 Signed using mobile</p>	<p>Sent: 3/18/2025 9:09:13 AM Viewed: 3/18/2025 9:15:05 AM Signed: 3/18/2025 9:20:01 AM</p>
<p>Stephen D Gay stephen.gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 3/18/2025 10:07:30 AM ID: 0cddca58-858c-4f9d-baec-be889098caf6</p>	<p>Signed by:  FEB48BB9726E4A9...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 3/18/2025 9:20:04 AM Viewed: 3/18/2025 10:07:30 AM Signed: 3/18/2025 10:09:32 AM</p>
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		<p>Sent: 3/18/2025 10:09:35 AM</p>
<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		
<p>Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		

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Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 3/10/2025 1:41:50 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 3/18/2025 10:09:35 AM Viewed: 3/19/2025 9:17:24 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Nicholas Dampf nicholas.dampf@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 12/13/2024 2:45:20 PM ID: b6f51fa1-8c56-4cdc-9e05-9a14b339b1d7		
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Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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### **Getting paper copies**

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

### **Withdrawing your consent**

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

### **Consequences of changing your mind**

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

### **All notices and disclosures will be sent to you electronically**

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

**How to contact City of Denton:**

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

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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

**Acknowledging your access and consent to receive materials electronically**

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

By checking the 'I Agree' box, I confirm that:

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





# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB25-051, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute Change Order No. 1 to the contract between the City of Denton and Texas Materials Group, Inc., for the construction of the Robinwood Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8586 - Change Order No. 1 in the not-to-exceed amount of \$301,421.50, for a total contract award aggregated to \$3,097,446.88).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Christine Taylor  
**DATE:** April 14, 2025

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute Change Order No. 1 to the contract between the City of Denton and Texas Materials Group, Inc., for the construction of the Robinwood Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8586 – Change Order No. 1 in the not-to-exceed amount of \$301,421.50, for a total contract award aggregated to \$3,097,446.88).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The Robinwood Reconstruction project contains full-depth road reconstruction for the following street sections: Robinwood Lane, Clover Lane, Live Oak Street, Shadywood St, and Mistywood Lane, along with drainage improvements. The original project total of \$2,796,025.38 included \$133,144.07 for the Owners' Contingency, which is designated for the sole use of the City in the event of encountering unforeseeable conditions and at the City's discretion.

Geotechnical reports from Raba Kistner in October of 2023 recommended Lime subgrade stabilization of the subgrade. Upon existing pavement removal, Texas Materials found the existing subgrade to be an extremely sandy consistency. City staff then ordered additional testing from Raba Kistner in January 2025, where results recommended using a Cement Stabilizer for the subgrade in lieu of lime. Field visits that included City Street Department representatives confirmed that the best course of action was to remove the newly placed layer of asphalt, allowing cement to be added to the subgrade. Limits for these actions included Robinwood (Emerson – Live Oak), Clover (Robinwood – Glenwood), Live Oak (Robinwood – Crestwood), and remixing the subgrade with a cement stabilizer.

The purpose of Change Order No. 1 will be for the additional milling of Type B asphalt and added cement stabilization, and re-installation of base asphalt pavement for the following project sections: Robinwood (Emerson – Live Oak), Clover (Robinwood – Glenwood), and Live Oak (Robinwood – Crestwood).

The total amount for this change order is \$434,558.46. This includes utilizing \$133,136.96 of the existing contingency allowance, \$101,421.50 of non-contingency funds, and an additional \$200,000.00 for an added

contingency allowance. A contingency allowance, if any, is for the sole use of the City and will be subject to written authorization by the City's Project Manager and Program Manager.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On September 17, 2024, City Council approved a contract with Texas Materials Group, Inc., in the not-to-exceed amount of \$2,796,025.38. (Ordinance 24-1773).

### **RECOMMENDATION**

Award Change Order No. 1 with Texas Materials Group, Inc., for the construction of the Robinwood Reconstruction Project for the Capital Projects Department, in a not-to-exceed amount of \$434,558.46, for a total amended contract amount of \$3,097,446.88.

### **PRINCIPAL PLACE OF BUSINESS**

Texas Materials Group, Inc.  
Irving, TX

### **SUSTAINABILITY MEASURES**

The Robinwood Reconstruction Project aligns with the Sustainability Framework's focus areas of Material Resource Management and Transportation by incorporating environmentally friendly practices and materials. To ensure sustainability, we will utilize cement stabilization instead of traditional lime stabilization, enhancing the durability of roadways and reducing the need for future repairs, which ultimately minimizes resource consumption.

### **ESTIMATED SCHEDULE OF PROJECT**

Construction for Robinwood Reconstruction started December 2, 2024, with a substantial completion date of June 27, 2025, and an estimated final completion in Q3 of 2025.

### **FISCAL INFORMATION**

These services will be funded from Wastewater Projects account 645259.545.40100. Purchase Order #208613 will be revised to include the first amendment amount of \$101,421.50. The total amended amount of this contract is \$3,097,446.88.

### **EXHIBITS**

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

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

For information concerning this acquisition, contact: Sheldon Gatewood, 940-349-7423.

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

ORDINANCE NO. 24-1773

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH TEXAS MATERIALS GROUP, INC., FOR THE CONSTRUCTION OF THE ROBINWOOD RECONSTRUCTION PROJECT WITH THE GEOGRAPHICAL LIMITS AS FOLLOWS: ROBINWOOD LANE, CLOVER LANE, LIVE OAK STREET, SHADYWOOD STREET, AND MISTYWOOD LANE FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8586 – AWARDED TO TEXAS MATERIALS GROUP, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$2,796,025.38).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the construction of the Robinwood Reconstruction Project with the geographical limits as follows: Robinwood Lane, Clover Lane, Live Oak Street, Shadywood Street, and Mistywood Lane for the Capital Projects Department; and

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

WHEREAS, this procurement was undertaken as part of the City's governmental function [Street construction and design]; and

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

<u>CSP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8586	Texas Materials Group, Inc.	\$2,796,025.38

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

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Vicki Byrd, District 1:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brian Beck, District 2:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Paul Meltzer, District 3:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Joe Holland, District 4:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brandon Chase McGee, At Large Place 5:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Jill Jester, At Large Place 6:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

PASSED AND APPROVED this the 17<sup>th</sup> day of September, 2024.

  
GERARD HUDSPETH, MAYOR

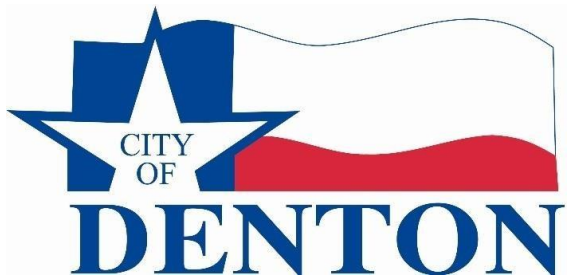
ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: *Lauren Thoden*

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: *Marcella Lunn*





Docusign City Council Transmittal Coversheet

RFP	8586
File Name	Robinwood Reconstruction
Purchasing Contact	Cori Power
City Council Target Date	SEPTEMBER 17, 2024
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	24-1773

# **SECTION 00 52 44**

## **AGREEMENT - CSP**

**THIS AGREEMENT**, authorized on 09/17/2024 is made by and between the City of Denton, a Texas home rule municipal corporation, acting by and through its duly authorized City Manager, (“City”), and Texas Materials Group, Inc., authorized to do business in Delaware, acting by and through its duly authorized representative, (“Contractor”).

City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **Article 1. WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein.

### **Article 2. PROJECT**

The project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Robinwood Reconstruction

8586 / 230016

### **Article 3. CONTRACT PRICE**

City agrees to pay Contractor for performance of the Work in accordance with the Contract Documents an amount, in current funds, of Two Million Six Hundred Sixty-Two Thousand Eight Hundred Eighty-One Dollars and Thirty-One Cents (\$2,662,881.31). At the sole option of the City, five (5) percent contingency in the amount of One Hundred Thirty-Three Thousand One Hundred Forty-Four Dollars and Seven Cents (\$133,144.07) may be used for a total not-to-exceed amount of Two Million Seven Hundred Ninety-Six Thousand Twenty-Five Dollars and Thirty-Eight Cents (\$2,796,025.38).

### **Article 4. CONTRACT TIME**

#### **4.1 Time is of the essence.**

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

#### **4.2 Substantial Completion.**

The Work will be Substantially Complete, as defined in the Supplementary Conditions, within {150} Days the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

#### **4.3 Final Acceptance.**

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



## 4.4 Omitted

## 4.5 Liquidated Damages:

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

1. *Substantial Completion*: If the Contractor neglects, refuses, or fails to achieve Substantial Completion, as defined in the Supplementary Conditions, within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2, Contractor shall pay City Six Hundred Twenty-Five Dollars and 00/100 Cents (\$625.00) for each day that expires after such time, until Substantial Completion is achieved.
2. *Final Acceptance*: If Contractor neglects, refuse, or fails to complete the Work within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.3, for completion and readiness for Final Payment, Contractor shall pay City Six Hundred Twenty-Five Dollars and 00/100 Cents (\$625.00) for each day that expires after such time, until the date determined by City as stated in the City-issued Letter of Final Acceptance.

**Article 5. CONTRACT DOCUMENTS**

## 5.1 CONTENTS:

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

1. Attachments to this Agreement:
  - a. Proposal Form
    - 1) Proposal Form
    - 2) Unit Price Proposal Form
    - 3) Vendor Compliance to State Law Non-Resident Offeror
    - 4) State and Federal documents (*project specific*)
  - b. Current Prevailing Wage Rate Table
  - c. Worker's Compensation Affidavit
  - d. General Conditions.
  - e. Supplementary Conditions.
2. The following located in File 8586 at:
 

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

  - a. Specifications described in the Table of Contents (Section 00 00 00) of the Project's Contract Documents.
  - b. Drawings.
  - c. Addenda.
  - d. Documentation submitted by Contractor prior to Notice of Award.

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3. The following which shall be issued after the Effective Date of this Agreement and delivered to the City within ten (10) days of the Effective Date and before beginning Work:
    - a. Payment Bond
    - b. Performance Bond
    - c. Maintenance Bond
    - d. Power of Attorney for the Bonds
    - e. Form 1295 – Certificate of Interested Parties (email to City’s Materials Management department)
    - f. Insurance Certificate
  4. Specifications specifically made a part of the Contract Documents by attachment or, if not attached, as incorporated by reference and described in the Table of Contents of the Project’s Contract Documents.
  5. The following which may be delivered or issued after the Effective Date of the Agreement and, if issued, become an incorporated part of the Contract Documents:
    - a. Notice to Proceed.
    - b. Field Orders.
    - c. Change Orders.
    - d. Letter of Final Acceptance.

1     **Article 6. INDEMNIFICATION**

2     **6.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own**  
3     **EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS,**  
4     **AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR**  
5     **PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE**  
6     **OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND**  
7     **SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS,**  
8     **AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES**  
9     **UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS**  
10    **SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS**  
11    **ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING**  
12    **SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION**  
13    **OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED**  
14    **TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL**  
15    **COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN**  
16    **DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**

17  
18    **6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD**  
19    **HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS,**  
20    **SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS**  
21    **FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY**  
22    **OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF,**  
23    **RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE**  
24    **PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES,**  
25    **SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT.**  
26    **THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO**  
27    **OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT**  
28    **ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN**  
29    **WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE**  
30    **CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT**  
31    **LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND**  
32    **LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH**  
33    **CLAIMS AND CAUSES OF ACTIONS.**

34  
35    **Article 7. MISCELLANEOUS**

36    **7.1 Capitalized Terms.**

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

40    **7.2 Assignment of Contract.**

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

1 7.3 Successors and Assigns.

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

5 7.4 Severability.

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

9 7.5 Venue and Waiver of Sovereign Immunity.

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

16 7.6 Authority to Sign.

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

19 7.7 Prohibition on Contracts with Companies Boycotting Israel.

20 Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government  
 21 Code, the City is prohibited from entering into a contract with a company for goods or  
 22 services unless the contract contains a written verification from the company that it: (1) does  
 23 not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms  
 24 "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section  
 25 808.001 of the Texas Government Code. By signing this contract, Contractor certifies that  
 26 Contractor's signature provides written verification to the City that Contractor: (1) does not  
 27 boycott Israel; and (2) will not boycott Israel during the term of the contract.

28 7.8 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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

39 7.9 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm  
 40 Trade Associations.

41 Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government  
 42 Code, City is prohibited from entering into a contract with a company for goods or services

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

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

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

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

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

7.12 Immigration Nationality Act.

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

7.13 No Third-Party Beneficiaries.

1 This Agreement gives no rights or benefits to anyone other than the City and the Contractor  
2 and there are no third-party beneficiaries.  
3

4 7.14 No Cause of Action Against Engineer.

5 Contractor, its subcontractors and equipment and materials suppliers on the Project or their  
6 sureties, shall maintain no direct action against the Engineer, its officers, employees, and  
7 subcontractors, for any claim arising out of, in connection with, or resulting from the engineering  
8 services performed. Only the City will be the beneficiary of any undertaking by the Engineer.  
9 The presence or duties of the Engineer's personnel at a construction site, whether as on-site  
10 representatives or otherwise, do not make the Engineer or its personnel in any way  
11 responsible to Contractor or any other entity for those duties that belong to the City, and do  
12 not relieve Contractor or any other entity of its obligations, duties, and responsibilities,  
13 including, but not limited to, all construction methods, means, techniques, sequences, and  
14 procedures necessary for performing, coordinating and completing all portions of the Work  
15 in accordance with the Contract Documents and any health or safety precautions required by  
16 such Work. The Engineer and its personnel have no authority to exercise any control over  
17 any construction contractor or other entity or their employees in connection with their work  
18 or any health or safety precautions.  
19

20 SIGNATURE PAGE TO FOLLOW  
21

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

CITY OF DENTON

DocuSigned by:  
BY: Sara Hensley  
5236DB296270423...  
TITLE: City Manager  
DATE: 09/17/2024

CONTRACTOR  
TEXAS MATERIALS GROUP, INC.

Signed by:  
BY: Ron Stinson  
87E70BDF56894AA...  
AUTHORIZED AGENT

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

Signed by:  
Trevor Crain Trevor Crain  
7B46EEAB11B94F2...  
SIGNATURE PRINTED NAME  
Director of Capital Projects  
TITLE  
Capital Projects  
DEPARTMENT

Ron Stinson NAME  
Estimating Manager  
817-538-1635 PHONE NUMBER  
ronald.stinson@texasmaterials.com EMAIL ADDRESS

ATTEST:  
LAUREN THODEN, CITY SECRETARY

DocuSigned by:  
Lauren Thoden  
D09D09CAD33D487...

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
Marcella Lunn  
4B070831B4AA438...

**SECTION 00 41 01**  
**PROPOSAL FORM - CSP**

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

FOR: <CSP 8586 ROBINWOOD RECONSTRUCTION>

**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 OFFERORS and INSTRUCTIONS TO OFFERORS, including without limitation those dealing with the disposition of Offeror's Bond.
- 2.2 Offeror is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.
- 2.3 Offeror certifies that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- 2.4 Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal.
- 2.5 Offeror has not solicited or induced any individual or entity to refrain from proposing.
- 2.6 Offeror has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:
- a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process.
  - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process to the detriment of City (b) to establish proposal prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.
  - c. "collusive practice" means a scheme or arrangement between two or more Offerors, with or without the knowledge of City, a purpose of which is to establish proposal prices at artificial, non-competitive levels.



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

2.7 The Offeror acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

### 3 Time of Completion

- 3.1 The Work will be Substantially Complete as defined in the Supplementary Conditions within [150] 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 [180] Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.
- 3.3 Offeror accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable), Substantial Completion, and Final Acceptance within the times specified in the Agreement.

### 4 Attached to this Proposal

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

### 5 Total Proposal Amount

- 5.1 Offeror will complete the Work in accordance with the Contract Documents for the following proposal amount. In the space provided below, please enter the total proposed amount for this project. This figure will be read publicly by the City at the proposal opening.
- 5.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Total Proposal Amount: \$ 2,662,881.31

**6 Proposal Submittal**

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

6.2 This Proposal is submitted on July, 17, 2024 by the entity named below.

Respectfully submitted,

By: 

(Signature)

Ronald D. Stinson, Jr.

(Printed Name)

Title: Estimating Manager

Company: Texas Materials Group, Inc.

Address: 420 Decker Dr, Suite 200  
Irving, Texas 75062

State of Incorporation: Deleware

Email: ronald.stinson@texasmaterials.com

Phone: 817-538-1635

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	<i>RSB</i>
Addenda No. 2:	<i>RSB</i>
Addenda No. 3:	
Addenda No. 4:	
Addenda No. 5:	

**END OF SECTION**



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

To:

City of Denton

901-B Texas Street

Denton, TX 76209

Cori Power/Purchasing Dept.

From:

Texas Materials Group, Inc.

420 Decker Dr, Ste 200

Irving, Texas 75062

Ron Stinson

817-538-1635

[ronald.stinson@texasmaterials.com](mailto:ronald.stinson@texasmaterials.com)

PROJ.:

**Robinwood Reconstruction**

CSP: 8586

ENG: 230016

PMO:

### OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
1	01 57 13	SWPPP > 1 acre	LS	1	\$ 1,731.85	\$ 1,731.85
2	01 58 13	Project Signs	EA	2	\$ 577.30	\$ 1,154.60
3	01 70 00	Mobilization	LS	1	\$ 117,391.00	\$ 117,391.00
4	02 41 14	Remove Yard Grate Inlet	EA	1	\$ 3,348.30	\$ 3,348.30
5	02 41 14	Remove Curb Inlet	EA	10	\$ 3,348.30	\$ 33,483.00
6	02 41 14	Remove Curb Inlet (Top Only)	EA	2	\$ 3,117.35	\$ 6,234.70
7	02 41 14	Remove Junction Box (Top Only)	EA	3	\$ 3,117.35	\$ 9,352.05
8	02 41 14	Remove Concrete Drainage Flume	SY	17	\$ 178.95	\$ 3,042.15
9	02 41 15	Surface Milling (2")	SY	340	\$ 6.55	\$ 2,227.00
10	02 41 15	Remove Asphalt Pavement	SY	12,440	\$ 6.55	\$ 81,482.00
11	02 41 15	Remove Concrete Valley Gutter	SY	107	\$ 25.40	\$ 2,717.80
12	02 41 15	Remove Concrete Curb & Gutter	LF	5,771	\$ 5.20	\$ 30,009.20
13	02 41 15	Remove Concrete Driveway	SY	967	\$ 25.40	\$ 24,561.80
14	02 41 15	Remove Curb Ramp	EA	4	\$ 288.65	\$ 1,154.60
15	02 41 15	Remove Concrete Sidewalk	SY	43	\$ 25.40	\$ 1,092.20
16	31 23 16	Unclassified Excavation	CY	1,305	\$ 47.75	\$ 62,313.75
17	31 24 00	Compacted Fill	CY	18	\$ 32.30	\$ 581.40
18	31 25 14	SWPPP Device Installation	LS	1	\$ 2,084.00	\$ 2,084.00
19	31 25 14	SWPPP Device Removal	LS	1	\$ 265.00	\$ 265.00
20	32 01 17	Asphalt Pavement Repair	SY	19	\$ 75.05	\$ 1,425.95
21	32 11 29	Lime Treated Subgrade	SY	14,949	\$ 12.75	\$ 190,599.75
22	32 11 29	Hydrated Lime	TN	565	\$ 352.15	\$ 198,964.75
23	32 12 16	Asphalt Pavement Type B (2")	SY	14,437	\$ 20.23	\$ 292,060.51
24	32 12 16	Asphalt Pavement Type B (4")	SY	12,393	\$ 43.18	\$ 535,129.74
25	32 12 16	Asphalt Pavement Type D (2")	SY	12,393	\$ 21.10	\$ 261,492.30
26	32 12 16	Asphalt Pavement Type D (2" Overlay)	SY	340	\$ 21.96	\$ 7,466.40
27	32 16 00	Concrete Valley Gutter	SY	241	\$ 99.85	\$ 24,063.85
28	32 16 00	Concrete Curb & Gutter	LF	5,771	\$ 52.70	\$ 304,131.70
29	32 16 00	Concrete Driveway	SY	967	\$ 102.40	\$ 99,020.80
30	32 16 00	Curb Ramp (1A - 6')	EA	2	\$ 2,135.95	\$ 4,271.90
31	32 16 00	Curb Ramp (1A - 4')	EA	4	\$ 1,916.60	\$ 7,666.40
32	32 16 00	Concrete Sidewalk (4')	SY	43	\$ 98.90	\$ 4,252.70
33	32 93 00	Sod	SY	1,761	\$ 8.65	\$ 15,232.65
34	33 01 50	Adjust Manhole	EA	12	\$ 1,799.65	\$ 21,595.80
35	33 01 50	Adjust Valve Box	EA	18	\$ 936.60	\$ 16,858.80
36	33 05 05	Excavation Protection	LF	177	\$ 11.55	\$ 2,044.35
37	33 42 11	RCP Storm Box (2' x 3')	LF	168	\$ 450.30	\$ 75,650.40
38	33 42 23	Concrete Headwall	EA	1	\$ 19,223.75	\$ 19,223.75
39	33 42 30	Concrete Junction Box (5')	EA	2	\$ 15,125.00	\$ 30,250.00
40	33 42 30	Concrete Junction Box (Top Only)	EA	3	\$ 8,082.05	\$ 24,246.15
41	33 42 33	Concrete Curb Inlet (10')	EA	10	\$ 11,545.80	\$ 115,458.00
42	33 42 33	Concrete Curb Inlet (Top Only)	EA	2	\$ 9,583.00	\$ 19,166.00
43	34 71 13	Traffic Control Plan	LS	1	\$ 1,731.86	\$ 1,731.86
44	34 71 13	Traffic Control Devices	MO	6	\$ 1,108.40	\$ 6,650.40
<b>TOTAL BASE PROPOSAL:</b>					<b>\$2,662,881.31</b>	

**Robinwood Reconstruction**
**TOTAL PROPOSAL:**
**\$2,662,881.31**

**SECTION 00 43 39****VENDOR COMPLIANCE TO STATE LAW NON-RESIDENT OFFEROR - CSP**

Texas Government Code Chapter 2252 was adopted for the award of contracts to nonresident offerors. This law provides that, in order to be awarded a best value contract where the offeror also offered the lowest proposal price, nonresident offerors (out-of-state contractors whose corporate offices or principal place of business are outside the State of Texas) propose on projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident offeror by the same amount that a Texas resident offeror would be required to underbid a nonresident offeror in order to obtain a comparable contract in the State which the nonresident's principal place of business is located.

The appropriate blanks in Section A must be filled out by all nonresident offerors in order for your proposal to meet specifications. The failure of nonresident offerors to do so will automatically disqualify that offeror. Resident offerors must check the box in Section B.

A. Nonresident offerors in the State of \_\_\_\_\_, our principal place of business, are required to be \_\_\_\_\_ percent lower than resident offerors by State Law. A copy of the statute is attached.

Nonresident offerors in the State of \_\_\_\_\_, our principal place of business, are not required to underbid resident Offerors.

B. The principal place of business of our company or our parent company or majority owner is in the State of Texas. ☒

**OFFEROR:**

Texas Materials Group, Inc.

Company

420 Decker Dr, Suite 200

Address

Irving, Texas 75062

City/State/Zip

By: Ronald D. Stinson, Jr.

(Please Print)

Signature:

Title:

Estimating Manager

(Please Print)

Date: 07/17/2024

**END OF SECTION**

"General Decision Number: TX20240025 01/05/2024

Superseded General Decision Number: TX20230025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 14026 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li></ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 13658 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.</li></ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

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

Modification Number      Publication Date  
0                              01/05/2024

SUTX2011-007 08/03/2011

Rates                              Fringes

CONCRETE FINISHER (Paving and  
Structures).....\$ 14.12 \*\*

ELECTRICIAN.....\$ 19.80

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 13.16 \*\*

Structures.....\$ 13.84 \*\*

LABORER

Asphalt Raker.....\$ 12.69 \*\*

Flagger.....\$ 10.06 \*\*

Laborer, Common.....\$ 10.72 \*\*

Laborer, Utility.....\$ 12.32 \*\*

Pipelayer.....\$ 13.24 \*\*

Work Zone Barricade

Servicer.....\$ 11.68 \*\*

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 15.32 \*\*

Asphalt Paving Machine.....\$ 13.99 \*\*

Broom or Sweeper.....\$ 11.74 \*\*

Concrete Pavement

Finishing Machine.....\$ 16.05 \*\*

Concrete Saw.....\$ 14.48 \*\*

Crane Operator, Lattice

Boom 80 Tons or Less.....\$ 17.27

Crane Operator, Lattice

Boom over 80 Tons.....\$ 20.52

Crane, Hydraulic 80 Tons

or Less.....\$ 18.12

Crawler Tractor.....\$ 14.07 \*\*

Excavator, 50,000 pounds

or less.....\$ 17.19 \*\*

Excavator, over 50,000

pounds.....\$ 16.99 \*\*

Foundation Drill , Truck

Mounted.....\$ 21.07

Foundation Drill, Crawler

Mounted.....\$ 17.99

Front End Loader 3 CY or

Less.....\$ 13.69 \*\*

Front End Loader, over 3 CY.\$ 14.72 \*\*

Loader/Backhoe.....\$ 15.18 \*\*

Mechanic.....\$ 17.68

Milling Machine.....\$ 14.32 \*\*

Motor Grader, Fine Grade....\$ 17.19 \*\*

Motor Grader, Rough.....\$ 16.02 \*\*

Pavement Marking Machine....\$ 13.63 \*\*

Reclaimer/Pulverizer.....\$ 11.01 \*\*

Roller, Asphalt.....\$ 13.08 \*\*

Roller, Other.....\$ 11.51 \*\*

Scraper.....\$ 12.96 \*\*

Small Slipform Machine.....\$ 15.96 \*\*

Spreader Box.....\$ 14.73 \*\*

Servicer.....\$ 14.58 \*\*

Steel Worker (Reinforcing).....\$ 16.18 \*\*

#### TRUCK DRIVER

Lowboy-Float.....\$ 16.24 \*\*

Off Road Hauler.....\$ 12.25 \*\*

Single Axle.....\$ 12.31 \*\*

Single or Tandem Axle Dump

Truck.....\$ 12.62 \*\*

Tandem Axle Tractor with

Semi Trailer.....\$ 12.86 \*\*

Transit-Mix.....\$ 14.14 \*\*

WELDER.....\$ 14.84 \*\*

-----  
WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

=====

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

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

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

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular

rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

-----



# WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

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

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

**SECTION 00 45 27**

**CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW - CSP**

Pursuant to Texas Labor Code Section 406.096(a), as amended, Contractor certifies that it provides worker's compensation insurance coverage for all of its employees employed on CSP 8586 ROBINWOOD RECONSTRUCTION. Contractor further certifies that, pursuant to Texas Labor Code, Section 406.096(b), as amended, it will provide to City its subcontractor's certificates of compliance with worker's compensation coverage.

**CONTRACTOR:**

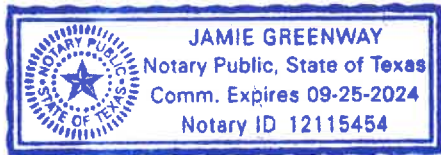
Texas Materials Group, Inc. By: Ronald D. Stinson, Jr.  
Company (Please Print)  
420 Decker Dr, Suite 200 Signature: [Signature]  
Address  
Irving, Texas 75062 Title: Estimating Manager  
City/State/Zip (Please Print)

THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared Ronald D. Stinson, Jr., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of Texas Materials Group, Inc. for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10<sup>th</sup> day of July, 2024



[Signature]  
Notary Public in and for the State of Texas

**END OF SECTION**

# **STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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**ARTICLE 1 – DEFINITIONS AND TERMINOLOGY****1.01 Defined Terms**

- A. Wherever used in the Contract or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument titled “Agreement”, “Agreement – CSP”, or “Agreement – Unit Price Bid” executed by the City and Contractor for the Work, setting forth the name of the Project, Contract Price, Contract Time and the items included in the Contract.
  3. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Award*—Authorization by the City Council for the City to enter into an Agreement.
  6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. The term “Bid” shall be defined to include the term “Proposal” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  7. *Bidder*—The individual or entity that submits a Bid directly to City. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda). The term “Bidding Documents” shall be defined to include the terms “Proposal Documents” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  9. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. The term “Bidding Requirements” shall be defined to include the terms “Proposal Requirements” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and will include the Request for Proposal or Invitation to Offerors, Instructions to Offerors, Offerors Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

10. *Business Day*—A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
11. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.
12. *Change Order*—A document which is prepared by the Contractor or City, approved by the City, and signed by Contractor and City, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*—The City of Denton is, a Texas home-rule municipal corporation acting by its City Council through its City Manager or his or her designee.
14. *City Attorney*—The officially appointed City Attorney of the City of Denton or his or her designee.
15. *City Council*—The duly elected and qualified governing body of the City of Denton.
16. *City Manager*—The officially appointed authorized City Manager of the City of Denton.
17. *Contract*—The entire and integrated set of written instruments between the City and Contractor concerning the Work comprised of the Agreement and all Contract Documents, which written instruments supersede all prior negotiations, representations, or agreements, whether written or oral, concerning the Work.
18. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
19. *Contract Documents*—Those items so designated as “Contract Documents.” in the Agreement at Paragraph 5.1.A. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 12.03 in the case of Unit Price Work). The Contract Price does not include any “Incentive”, if applicable.
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (a) achieve Milestones, if any and (bb) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 12.01 of these General Conditions for definition.
24. *Damage Claims*—A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day*—A day, unless otherwise defined, shall mean a Calendar Day.
26. *Drawings*—The part of the Contract Documents prepared or approved by an Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals, as defined, are not considered Drawings as so defined here.

27. *Effective Date of the Agreement*—The date, indicated in the Agreement, on which it becomes effective,, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the City.
28. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, text, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
29. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by the Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
30. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
31. *Extra Work*—Additional work made necessary by City-approved changes or alterations to the Contract Documents. Extra Work shall be part of the Work.
32. *Field Order*—A written directive issued by City that requires changes in the Work but does not involve a change to the Contract Price, Contract Time, or Drawings, Plan, or Shop Drawings.
33. *Final Acceptance*—The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.
34. *Final Inspection*—The inspection performed by the City to determine whether the Contractor has completed each and every part or appurtenance of the Work fully, entirely, and in conformance with the Contract Documents.
35. *General Requirements*—Sections of The information set forth in “Division 101 – General Requirements” of the Standard Construction Specification Documents.
36. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, P C B s , Petroleum, Hazardous Waste, Radioactive Material, or any other substance, product, waste or materials, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
37. *Hazardous Waste*—Any solid waste listed as hazardous or which possesses one or more hazardous characteristics as defined in applicable Laws and Regulations.
38. *Incidental or incidental*—Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.
39. *Laws and Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all

governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or any portion or part of the Work to be performed.

40. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
41. *Major Item*—An item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price.
42. *Milestone*—A principal event specified in the Contract Documents relating to the performance of an identified portion of the Work by an intermediate Contract Time prior to Final Acceptance of the Work.
43. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
44. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
45. *PCBs*—Polychlorinated biphenyls.
46. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
47. *Plans*—This term will have the same definition of as “Drawings”.
48. *Project* —The Work to be performed under the Contract.
49. *Project Manager*—The authorized representative of the City who will be assigned to the Project.
50. *Project Manual*—The documentary information prepared for bidding or proposing and furnishing the Work.
51. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising Contractor’s plan to achieve each Milestone and accomplish the Work within the Contract Time.
52. *Public Meeting*—An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
53. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
54. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

55. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
56. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
57. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
58. *Specifications or Technical Specifications* —The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Section 00 00 00) of the Project.
59. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
60. *Submittal*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to the City to illustrate some portion of the Work.
61. *Subsidiary or subsidiary*—*These terms will have the same* definition as "Incidental. or incidental".
62. *Successful Bidder*—The Bidder to whom City issues a Notice of Award. The term "Bidder" shall be defined to include the terms "Proposer" or "Offeror" in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and is the Proposer or Offeror submitting the proposal or offer that provides the best value to the City and to whom the City issues a Notice of Award.
63. *Superintendent*—The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
64. *Supplementary Conditions*—The part of the Contract set forth at Division 00 73 00 that amends or supplements these General Conditions.
65. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
66. *Underground Facilities*—All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid

petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

67. *Unit Price Work*—Work for which the Contract Price is determined by multiplying the unit price for the item by the estimated quantity of the item.
68. *Weekend Working Hours*—Those hours between 8:00 a.m. and 8:30 p.m. on Saturday, and between 1:00 p.m. and 8:30 p.m. on Sunday or on a federal or state holiday observed by the City, as approved in advance by the City for performing Work.
69. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
70. *Working Day*—Defined as a Business Day but excluding any days that weather or other conditions beyond the reasonable control of the Contractor prevents the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7:00 a.m. and 8:00 p.m.

#### 1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract includes the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by CityCity. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of judgment, action, or determination will be to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).
- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  1. does not conform to the Contract Documents; or
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. has been damaged prior to City’s written notice of Final Acceptance.
- D. *Furnish, Install, Perform, Provide*
  1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to execute, carry out, furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance***

- A. Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City the performance bond, payment bond and maintenance bond that comply with the provisions of Chapter 2253 of the Texas Government Code. Work will not be allowed to begin until the performance and payment bonds have been provided by the Contractor to the City.
- B. Evidence of Contractor’s Insurance: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6. Work will not be allowed to begin until the evidence of insurance has been provided by the Contractor to the City.

### **2.02 *Copies of Documents***

- A. City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract, and three (3) additional copies of the Drawings. Additional printed copies will be furnished upon request at the cost of reproduction.

### **2.03 *Before Starting Construction***

Baseline starting Work, Contractor shall submit for review by City the following in accordance with the Contract Documents:

- A. Baseline Schedules in accordance with General Requirements, Section 01 32 16.
- B. Preliminary Schedule of Submittals.
- C. Preliminary Schedule of Values: For lump sum contracts, a Schedule of Values for all of the Work that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.04 *Preconstruction Meeting*

- A. Before any Work at the Site is started, the Contractor shall attend a Preconstruction Meeting as specified in Section 01 31 19.

#### 2.05 *Public Meeting*

- A. Contractor may not mobilize any equipment, materials, or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

#### 2.06 *Initial Acceptance of Schedules*

- A. No progress payment shall be made to Contractor until acceptable Project Schedules are submitted to City in accordance with the Contract Documents.

#### 2.07 *Electronic Submittals and Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then City and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. City will issue clarifications and interpretations of the Contract Documents as provided herein.
- D. The Specifications may vary in form, forma and style. Some Specification sections may be written in varying degrees of streamlined or declarative style, and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims or Damage Claims.



- E. The cross-referencing of Specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross-referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not cross-referencing is provided in each section or whether the cross-referencing is complete or accurate.

### 3.02 *Reference Standards*

#### A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of City, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. Reporting Discrepancies

1. *Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements, and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.1717) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by City, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

**B. Resolving Discrepancies**

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier; or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

**3.04 Requirements of the Contract Documents**

- A. During the performance of the Work and until final payment, Contractor shall submit to the City in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. City will be the interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. City will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. City's written clarification, interpretation, or decision will be final and binding on Contractor, unless Contractor appeals by filing a Contract Claim.

**3.05 Reuse of Documents**

- A. Contractor and its Subcontractors and Suppliers shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of CityCity and specific written verification or adaptation by Engineer; or
  2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without City's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

**ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK****4.01** *Commencement of Contract Time; Notice to Proceed*

- A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

**4.02** *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work may be done at the Site prior to the date on which the Contract Time commences to run.

**4.03** *Delays in Contractor's Progress*

- A. If Contractor is delayed, City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. The City shall be liable only to the extent allowed by the provisions of the Contract and as allowed by Subchapter I, Chapter 271 of the Texas Local Government Code.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, that the Contract specifies is to be furnished by the City.
- D. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of City, Contractor, and those for whom they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Time. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph 4.03. D. The Contractor is responsible for the prompt submission of a request for an adjustment to the Contract Time under this Paragraph to the City. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this Paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with City, as contemplated in Article 8); and

4. Acts of war or terrorism.
- E. Contractor's entitlement to an adjustment of Contract Time or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Time is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Time to which Contractor is otherwise entitled.
  3. Adjustments of Contract Time or Contract Price are subject to the provisions of Article 11.
- F. Each Contractor request or Change Order seeking an increase in Contract Time or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Time claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.08.
  6. Contractor shall also furnish such additional supporting documentation as City may require including, where appropriate, a revised Project Schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- G. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from undisclosed Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.03.F and 4.03.G.

## **ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. City shall furnish the Site. City shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which

Contractor must comply in performing the Work. City will be responsible for obtaining any necessary easements for permanent structures or permanent changes in existing facilities.

1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
  2. Unless otherwise specified in the Contract Documents, the City has or anticipates moving and/or relocating utilities, and obstructions to the Site. Any outstanding movement or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be moved and/or relocated by others.
- B. Upon reasonable written request of Contractor, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for any additional lands and access thereto not included in the Site that may be required for construction facilities or storage of materials and equipment. The cost of such shall be part of the Contract Price.

#### 5.02 *Use of Site and Other Areas*

##### A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, worker car parking and the operations of workers to the Site, to adjacent areas that Contractor has arranged to use through construction easements or otherwise, and to other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with worker car parking, construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries, including death, and damage to or losses of property sustained by the owners or occupants of any such land or areas; provided that such damage, losses, injuries or deaths arose out of or result from the performance of the Work or arose out of or resulted from any other actions or conduct of the Contractor or those for whom Contractor is responsible.
2. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to reduce the area impacted to only that necessary for proper execution of the Work and/or to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
  4. Should any Damage Claim be made by any such owner or occupant adversely impacted because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
  5. ***PURSUANT TO PARAGRAPH 7.21, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH ADVERSELY IMPACTED OWNER OR OCCUPANT AGAINST CITY.***
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
  - C. *Site Maintenance Cleaning:* If 24 hours after written notice is given to the Contractor that the clean-up at the Site is insufficient or occurring in a manner unsatisfactory to the City, the Contractor fails to correct the unsatisfactory condition and/or procedures, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice, and the costs of such direct corrective action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor under the Contract.
  - D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City and any adjacent property owners, if applicable. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, surplus materials, waste materials, rubbish and other debris and shall restore to original condition or better all areas impacted or disturbed by the Work.
  - E. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  1. Those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and
  2. Those drawings known to City of existing physical conditions at or contiguous to the Site, including those drawings known to City depicting existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities.).
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as technical data.

- C. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of their officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any "technical data" is materially inaccurate; or
  2. is of such a nature as to require a change in the Contract Documents; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), notify City in writing about such condition.

- B. *Possible Price and Time Adjustments*
1. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under the Contract; or

- b. The existence of such condition reasonably could have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- C. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions::
- 1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
  - 2. the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data;
    - b. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
    - c. coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
- 1. If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.
  - 2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 11.
  - 3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.



#### 5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports known to City relating to Hazardous Environmental Conditions that have been identified at the Site; or
  2. drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for a Hazardous Environmental Condition uncovered or revealed at the Site if such Hazardous Environmental Condition was not shown or indicated in Drawings or Specifications or identified if the removal or remediation of such Hazardous Environmental Condition was not identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created by the actions of or with any materials brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible and the costs associated with the same.
- D. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.17); and (3) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. Contractor shall not be required to resume Work in connection with a Hazardous Environmental Condition identified pursuant to Paragraph 5.06.D or in any affected area until after City has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed.
- F. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work and the Contract Price. City may have such deleted portion of the Work performed by City's own forces or others.
- G. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.CityG OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.***
- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6 – BONDS AND INSURANCE**

### **6.01 *Licensed Sureties and Insurers***

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### **6.02 *Performance, Payment, and Maintenance Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, in accordance with the provisions of the Texas Government Code Chapter 2253 or successor statute and as required by the City, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The performance and payment bonds must be provided by the Contractor to the City prior to the Contractor beginning any Work.

- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City. The maintenance bond(s) shall be provided as directed by the City as part of the close-out of the Contract and shall be provided prior to the final payment being made.
- C. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, or its right to do business is terminated in the State of Texas, then Contractor shall promptly notify City in writing and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, City may refuse to allow the Contractor to begin Work, exclude the Contractor from the Site and exercise City’s termination rights under Article 15.
- F. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance and endorsements (and other evidence of insurance requested by City or any other additional insured) establishing that Contractor has obtained and is maintaining the policies and coverages required by these General Conditions and the Supplementary Conditions prior to beginning any Work.
  - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as “additional insureds” on all liability policies.
  - 2. The Contractor’s general liability insurance shall include a “per project” or “per location” endorsement, that shall be identified in the certificate of insurance provided to the City.
  - 3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
  - 4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent

financial strength and solvency to the satisfaction City. If the rating is below that required, written approval of City is required.

5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage or to provide such certificates or other evidence of full compliance with the insurance requirements.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If If City agrees in writing that coverage is underwritten may be written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance or for the warranty period provided for under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements that either nullify or amend the required lines of coverage, nor or decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Notice of an Award has been issued or the Agreement executed, and the policy exclusions are determined to be unacceptable or the City desires that the Contractor obtain additional insurance coverage the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. For any proposed self-insured retention (SIR,) in excess of \$25,000.00, affecting insurance coverage, Contractor must obtain the written approval of the City in regard to asset value and stockholders' equity. In lieu of traditional insurance, proposed alternative coverage maintained through insurance pools or, risk retention groups, or self-funding will also require the written approval of the City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis must be acceptable to and approved in writing by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City will provide prior notice of 90 days and the insurance adjustments shall be incorporated into the Work by Change Order.

13. City shall be entitled, upon written request to Contractor and without expense to City, to receive copies of policies and endorsements thereto and. City may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

#### 6.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability:* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury, including death, or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury including death, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The Commercial General Liability policy shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, that are normally contained with the policy, unless the City approves such exclusions in writing.

For construction projects that present a substantial completed operation exposure, the City may require the Contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions)).
- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because of bodily injury or death of any person and/or property damage arising out of or related to the work, maintenance or use of any motor vehicle by the Contractor, any

Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

- D. *Railroad Protective Liability.* If any of the Work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop Work until replacement insurance has been procured. There shall be no time credit for delays or days not worked pursuant to this section.

#### 6.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 6 or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Such failure to provide bonds or insurance as required by the Contract Documents is a breach of the terms of the Contract and the City may terminate the Contractor in accordance with the provisions of the Contract Documents.

### ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

#### 7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not City-delegated professional design services under this Contract, and neither City nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

#### 7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall identify and assign a competent superintendent, who is proficient in English, and who shall not be replaced without written

notice to City of the name of the replacement superintendent. If at any time the superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the superintendent with another satisfactory to City.

- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

#### 7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to City for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours on Business Days. Contractor will not permit the performance of Work outside of regular working hours on Business Days without City's prior written consent (which will not be unreasonably withheld)). Contractor's written request (by letter or electronic communication) for City's written consent must be made as follows:
  - 1. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;
  - 2. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and
  - 3. for Work on state or federal holidays observed by the City, request must be made sufficiently in advance of the holiday, to satisfy requirements for City Council approval.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work, and must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with

instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

#### 7.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.06 and the General Requirements as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to the City for acceptance (to the extent indicated in Paragraph 2.06 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments must comply with any provisions of the General Requirements applicable thereto.
  - 2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment request for the duration of the Contract in accordance with the Construction Progress Schedule, General Requirements 01 32 16.
  - 3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 11. Adjustments in Contract Time may only be made by a Change Order.

#### 7.06 *“Or Equals”*

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that City permit the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If City in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an “or equal” item. For the purposes of this Paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. the City determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to City.



- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
    - 1) there will be no increase in cost to the City or increase in Contract Time; and
    - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *City's Evaluation and Determination*: City will be allowed a reasonable time to evaluate each "or-equal" request. City may require Contractor to furnish additional data about the proposed "or-equal" item. City will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an "or-equal." City." City will advise Contractor in writing of its determination.
- D. *Effect of City's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The City's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If City determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that City consider the item a proposed substitution pursuant to Paragraph 7.07.

#### 7.07 Substitutions

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that City permit the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related Work at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitution therefor. City will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  - 2. The requirements for review by City will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as City may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to City for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
    - a. will certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design;
      - 2) be substantially similar in substance to the item specified; and

- 3) be well-suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will adversely impact Contractor's achievement of Final Acceptance on or before the Contract Time;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and Damage Claims of other contractors affected by any resulting change.
- B. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each substitution request. City may require Contractor to furnish additional data about the proposed substitute item. City will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an acceptable substitution. City's approval determination will be evidenced by a Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Time. City will advise Contractor in writing of any denial determination.
- C. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitution. ***Contractor shall indemnify and hold harmless City and its officers, elected and appointed officials, employees, agents, consultants and subcontractors and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorney's fees) arising out of or relateds to the use of substituted materials or equipment.***
- D. *Reimbursement of City's Cost:* City will record City's costs in evaluating a substitution proposed or submitted by Contractor. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse City for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

- F. *City Substitution Reimbursement:* Cost savings attributable to acceptance of a substitution shall be paid to City by Contractor by an appropriate Change Order decreasing the Contract Price.
- G. *Effect of City's Determination:* If City approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The City's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.07.D, by timely submittal of a Change Order.

#### 7.08 *Concerning Subcontractors and Suppliers*

- A. Contractor shall perform with its own organization, and with the assistance of workmen under its immediate superintendence, work of the kind and value specified in the Contract, and shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.C. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- B. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.C. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- C. The City may require the use of specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work, and will provide such requirements in the Supplementary Conditions.
- D. Contractor shall provide to City as part of the Bid, the identity of all proposed Subcontractors and Suppliers. Such proposed Subcontractor or Supplier shall be deemed acceptable to City unless City raises a substantive, reasonable objection prior to execution of the Agreement.
- E. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City and any such Subcontractor, Supplier or other individual or entity; nor
  - 2. shall create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- F. No acceptance by City of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of City to the completion of the Work in accordance with the Contract Documents, Contract Price and Contract Time.
- G. Contractor shall be solely responsible for scheduling and coordinating the tasks of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

- H. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of City. Contractor must comply with all applicable federal, state, and local laws, statutes, ordinances or regulations, including but not limited to immigration laws, workers compensation laws and wage laws, in the hiring of any Subcontractor or Supplier and shall ensure that each Subcontractor or Supplier has the same obligations.
- I. Contractor shall restrict all Subcontractors and Suppliers from communicating with City, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.09 *Wage Rates*

- A. *Duty to pay Prevailing Wage Rates:* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. The then current prevailing wage rates at the time of execution of the Agreement are included in these Contract Documents.
- B. *Penalty for Violation:* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code Section 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause:* On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being retained from successive progress payments pending a final determination of the violation.
- D. *Arbitration Required if Violation Not Resolved:* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph 7.09.C. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

- E. *Records to be Maintained:* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of Final Acceptance, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be available in Denton County, Texas at all reasonable hours for inspection by the City. The provisions of Paragraph 7.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments:* With each progress payment request or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates:* The Contractor shall post prevailing wage rates in a conspicuous place at the Site at all times.
- H. *Subcontractor Compliance:* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs 7.09.A through 7.09.G.

#### 7.10 *Patent Fees and Royalties*

- A. Contractor shall pay all patent or license fees and royalties and pay all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any patent or license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay said fees or, royalties or costs to others.
- B. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.***

#### 7.11 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Unless otherwise expressly provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. City shall provide reasonable assistance to Contractor, if necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work applicable at the time the Notice of Award is issued, except for permits provided by the City as specified in Paragraph 7.11.B. City shall pay the charges of utility service providers for connections for providing permanent service to the Work.

- B. *City obtained permits and licenses.* City will obtain and pay for those permits and licenses identified as City's responsibility in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to comply with and carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency, relating to the changes. The City will not reimburse the Contractor for any cost associated with the requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
  2. U.S. Army Corps of Engineers Permits
  3. Texas Commission on Environmental Quality Permits
  4. Railroad Company Permits
  5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

#### 7.12 *Taxes*

- A. On issuance of a Notice of Award by the City, an organization which qualifying for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to hisits Supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas tax permits and information may be obtained from:
1. Comptroller of Public Accounts  
Sales Tax Division  
Capitol Station  
Austin, TX 78711; or
  2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

#### 7.13 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, City shall not be responsible for monitoring Contractor's compliance with any Laws and Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall be liable for all resulting claims, costs losses, and damages, and shall indemnify and hold harmless City, and its officers, elected

and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

- C. Changes in Laws and Regulations not known at the time of the City's issuance of a Notice of Award having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

#### 7.14 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. Contractor shall include accurate locations for buried and imbedded items. These record documents, together with all approved Samples, will be available to City for reference. Upon completion of the Work, Contractor shall deliver these record documents to City prior to Final Inspection.

#### 7.15 *Safety and Protection*

- A. As between City and Contractor, Contractor shall be responsible for the safety of persons and property in the performance of the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. Contractor shall inform the City in writing of Contractor's designated safety representative at the Site.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.1515.C.2 or 7.1515.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of and remedied by Contractor at its expense.
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss;

and shall implement, erect and maintain all necessary safeguards for such safety and protection.

- F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- H. Contractor shall inform City in advance in writing of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed and City has issued a Letter of Final Acceptance.
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

#### 7.17 *Emergencies and/or Rectification*

- A. In the event of threatened or actual emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to immediately act to prevent damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If City determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take proper action within 24 hours to fulfill this written request or fails to show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire cost for such remedial action, plus 25% from any funds due or to become due the Contractor on the Project.



## 7.18 Submittals

- A. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.03).
1. Contractor shall submit the Submittals in accordance with Section 01 33 00 of the General Requirements.
  2. Data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 7.18.C.
  3. Submittals reviewed and accepted by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
  4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
  5. For-Information-Only submittals upon which the City is not expected to conduct a review or take responsive action may be so identified in the Contract Documents.
  6. Contractor shall submit the required number of Samples specified in the Specifications.
  7. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data as City may require to enable City to review the Submittal for the limited purposes set forth in Paragraph 7.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole risk, expense and responsibility of Contractor.
- C. City's Review
1. City will provide timely review of Submittals in accordance with the accepted Schedule of Submittals. City's review and acceptance will be to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents), or to safety precautions or programs incident thereto.
  3. City's review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 of the General

Requirements, and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

5. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.
6. City's review and acceptance of a Submittal, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Time or Contract Price, unless such changes are included in a Change Order.
7. Neither City's receipt, review, or acceptance of a Submittal will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in accepted Submittals, subject to the provisions of Section 01 33 00 of the General Requirements.

#### 7.19 *Continuing the Work*

- A. Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

#### 7.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Contractor's warranty and guarantee under this Paragraph 7.20:
  1. Observations by Engineer or City;
  2. Recommendation by Engineer or payment by City of any progress or final payment;
  3. The issuance of a letter or certificate of Final Acceptance by City or any payment related thereto by City;
  4. Use or occupancy of the Work or any part thereof by City;
  5. Any review and acceptance of a Submittal by City;

6. Any inspection, test, or acceptance by others; or
  7. Any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.

#### 7.21 Indemnification

- A. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM , FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL OR BODILY INJURY OR DEATH, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THESE CONTRACT DOCUMENTS. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY, OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR COSTS, EXPENSES AND LEGAL FEES INCURRED IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**
- B. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM FROM AND AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF PROPERTY OF THE CITY, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**

## 7.22 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Submittal related to the requirements indicated in Paragraph 7.22.B is prepared by Contractor, a Subcontractor, or others for submittal to City, then such Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to City.
- D. City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under the conditions indicated in Paragraph 7.22.B, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, City's review, acceptance, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to the conditions indicated in Paragraph 7.22.B, will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.22;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

## 7.23 *Right to Audit*

- A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract during the term of the Contract and for five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be made available, in Denton County, Texas within ten (10) Business Days of City's written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within Denton County, Texas. Except as otherwise provided herein, the cost of the audit will be borne by the City

unless the audit reveals an overpayment of 1% or greater. If the City is undertaking an audit or inspection pursuant to Paragraph 7.09 or if an overpayment of 1% or greater occurs, the City's reasonable cost of the audit, including any travel costs, must be paid by the Contractor within five (5) Business Days of receipt of City's invoice for such costs.

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

#### 7.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. Contractor shall comply with the requirements of *Title VI, Civil Rights Act of 1964 as amended* and the regulations promulgated thereunder, as may be further defined in the Supplementary Conditions, for any project receiving Federal assistance.

### **ARTICLE 8 – OTHER WORK AT THE SITE**

#### 8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work, if such other work is not noted in the Contract Documents.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and City, if City is performing other work with City's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with

Contractor's Work except for latent defects and deficiencies in such other work that could not have been discovered through a proper inspection.

- F. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with City, or that is performed without having been arranged by City. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.D.3.

#### 8.02 *Coordination*

- A. If City intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with City's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

#### 8.03 *Legal Relationships*

- A. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. When City is performing other work at or adjacent to the Site with City's employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work.
- B. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any Damage Claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, City, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, defend and hold harmless City and Engineer, and the officers, elected and appointed officials, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

**ARTICLE 9 – CITY’S RESPONSIBILITIES****9.01    *Communications to Contractor***

- A. Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

**9.02    *Furnish Data***

- A. City shall promptly furnish the data required of City under the Contract Documents.

**9.03    *Pay When Due***

- A. City shall make payments to Contractor when they are due in accordance with and subject to the provisions of Article 14.

**9.04    *Lands and Easements; Reports, Tests, and Drawings***

- A. City’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Article 5 refers to City’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

**9.05    *Change Orders***

- A. City’s responsibilities with respect to Change Orders are set forth in Article 11.

**9.06    *Inspections, Tests, and Approvals***

- A. City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.02.DD.

**9.07    *Limitations on City’s Responsibilities***

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

**9.08    *Undisclosed Hazardous Environmental Condition***

- A. City’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

**9.09    *Compliance with Safety Program***

- A. While at the Site, City’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which City has been informed in advance in writing pursuant to Paragraph 7.15.

**ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION****10.01** *City’s Project Manager or Duly Authorized Representative*

- A. City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City’s Project Manager or duly appointed representative during construction are set forth in the Contract Documents.
- B. City’s Project Manager for these Contract Documents is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19 of the General Requirements.

**10.02** *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City’s efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City’s visits and observations are subject to all the limitations on City’s responsibility set forth in Paragraph 9.07. Particularly, but without limitation, during or as a result of City’s visits or observations of Contractor’s Work, City will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

**10.03** *Determinations for Work Performed*

- A. As applicable, Contractor will determine the actual quantities and classifications of Work performed.. City’s Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City’s written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

**10.04** *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. City will be the interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City’s written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 11.07.



**ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK****11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including in the Contract Price or Contract Time, but such amendment will be made by Change Order only.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one of the following ways:
  - 1. A Field Order; or
  - 2. City's review of a Submittal (subject to the provisions of Paragraph 7.18.C); or
  - 3. City's written interpretation or clarification.

**11.02 *Execution of Change Orders***

- A. City and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed..
  - 2. Changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.04, (b) required because of City's acceptance of defective Work under Paragraph 13.05 or City's correction of defective Work under Paragraph 13.08, or (c) as otherwise agreed to by the parties.

**11.03 *Field Orders***

- A. City may authorize minor variations and deviations in changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on both the City and Contractor, which shall perform the Work involved promptly.

**11.04 *Authorized Changes in the Work – Extra Work***

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra Work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by City.

**11.05 *Unauthorized Changes in the Work***

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract

Documents, as amended, modified, or supplemented as allowed herein, except in certain cases of an emergency as provided in Paragraph 7.17.A.

**11.06** *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment for such Extra Work, and the City requires its performance, the Contractor shall proceed with the Extra Work after making written request for a Change Order and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 11.07.
- B. The Contractor shall furnish the City such records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual work performed.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be the full, complete and final payment for all charges, fees and costs Contractor incurs as a result of or relating to the Extra Work, whether said charges, fees or costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any charges, fees or costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the Extra Work.

**11.07** *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
  - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
  - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City no later than 45 days after the start of the event giving rise thereto (unless the City notifies Contractor in writing that City will allow additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
  - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.08.
  - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 11.09.
  - 5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.

6. The City shall submit any response to the Contractor within 30 days after receipt of the Contractor's last submittal (unless in connection with the Contract Claim (unless Contractor allows the City additional time to submit a response).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor unless action by City's Council is required, take one of the following actions in writing:
  1. deny the Contract Claim in whole or in part;
  2. approve the Contract Claim; or
  3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under this Paragraph 11.07 will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 11.07.
- F. If the City fails to take any action pursuant to this Paragraph 11.07, the Contract Claim is considered to have been denied by the City.

#### 11.08 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. TheThe value of any Work covered by a Change Order will be determined as follows:
  1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.08.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum or unit price, then on the basis of the Cost of the Work (determined as provided in Paragraph 12.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.08.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit will be determined as follows:
  1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3, the Contractor's fee will be 15 percent except for:
  - 1) rental fees for Contractor's own equipment; and
  - 2) bonds and insurance;
- b. For costs incurred under Paragraph 12.01.B.4, the Contractor's fee will be 5 percent;
  - 1) Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.08.C.2.a and 11.08.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, in no case shall the cumulative total of fees paid be in excess of 25% of the Cost of the Work;
- c. No fee will be payable on the basis of costs itemized under Paragraphs 12.01.B.5, 12.01.B.6, and 12.01.C;
- d. The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

#### 11.09 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed under a Change Order for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.
- C. Delay, disruption, and interference in the Work, and any related changes in Contract Time, are addressed in and governed by Paragraph 4.03.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.

**ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT****12.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work:* The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 12.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. When needed to determine the value of a Change Order. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* The term, “Cost of the Work” means the sum of all costs, except those excluded in Paragraph 12.01.C, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall be in amounts no higher than those calculated based on the prevailing wage rates contained in the Contract Documents, shall not include any of the costs itemized in Paragraph 12.01.C, and may include as applicable, but not be limited to the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs shall include, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours on Business Days, during Weekend Working Hours, or on a state or federal holiday observed by the City, shall be included in the above to the extent authorized by City.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith.
  3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved in writing by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. and the Contract Documents. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City. Contractor shall deliver such bids to City, which will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 12.01 and Paragraph 11.08.C.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work and specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically included in the Contract.
6. Supplemental costs consisting of the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and temporary office or facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations, excluding those taxes for which an exemption is available as described in Paragraph 7.12.
  - d. Deposits lost for causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of CityCity. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - f. The cost of utilities, fuel, and sanitary facilities at the Site.
  - g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - h. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically covered in the Contract. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the acts, omissions, negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Agreement will be determined as set forth in the Contract.
  - b. for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as set forth in Paragraph 11.08.C.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.08.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 12, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices, and submit in a form acceptable to City an itemized cost breakdown together with supporting data. Subject to prior written notice, City will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by City. Contractor will be responsible for ensuring that pertinent Subcontractors will afford such access to City, and preserve such documents, to the same extent as is required of Contractor.

## 12.02 Allowances

- A. *Specified Allowance*: It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to City.
- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances, have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

## 12.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 10.03.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to Unit Price Work listed and the cost of incidental work included as part of the unit price.
- D. Adjustments in Contract Price
  - 1. City may make an adjustment in the Contract Price in accordance with Paragraph 11.08 if:
    - a. the quantity of the item of Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. there is no corresponding adjustment with respect to any other item of Work.
  - 2. Adjusted unit prices will apply to all units of that item.



- E. Increased or Decreased Quantities: The City reserves the right to order Extra Work in accordance with Paragraph 11.04.
1. If the changes in quantities or the alterations do not significantly change the character of the Work under the Contract Documents, the altered Work will be paid for at the Contract unit price.
  2. If the changes in quantities or alterations materially and significantly change the character of the Work, the Contract will be amended by a Change Order.
  3. If no unit prices exist, this any increase or decrease in quantities will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 11.
  4. A significant change in the character of Work occurs when:
    - a. the character of work for any Item as altered differs materially or significantly in kind or nature from that in the Contract; or
    - b. a Major Item of work varies by more than 25% from the original Contract quantity.
  5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
  6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

**12.04 Plans Quantity Measurement for Unclassified Excavation or Embankment**

- A. Plans quantities may or may not represent the exact quantity of Work performed or material moved, handled, or placed during the term of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised in accordance with the Contract.
- B. If the total actual quantity measured for an individual item varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized Work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 11.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount identified in the approved change, and the 25% variance provisions of Paragraph 12.04.B will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.

- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

### **13.01 Access to Work**

- A. City and its Engineer, consultants, representatives, employees, and independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

### **13.02 Tests and Inspections**

- A. Contractor shall give City timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. If the Contract Documents or any Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection, testing or approval, except that those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall will be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections, tests, re-tests, and approvals required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to City;
  - 2. to attain City's acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to City.

- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
  - 1. City will coordinate such Testing to the extent possible, with Contractor;

2. Should any Testing under this Section 13.03.D result in a “fail”, “did not pass” or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor’s cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
  3. Any amounts owed for any retest under this Section 13.02.D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
  4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If the Contract Documents require the Work (or part thereof) to be approved by City or another designated individual or entity, then Contractor shall assume full responsibility for seeking and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without the written approval of City, Contractor shall, if requested by City, uncover such Work for observation. Such uncovering and the recovering of such Work will be at Contractor’s expense.

### 13.03 *Defective Work*

- A. *Contractor’s Obligation:* It is Contractor’s obligation to assure that the Work is not defective.
- B. *City’s Authority:* City has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Written notice of all defective Work of which City has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if City has rejected the defective Work, shall remove the defective Work from the Project and replace it with Work that is not defective. Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair City’s warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Contractor or City by governmental authorities because the Work is defective, and the costs of repair, replacement or reconstruction of work of others resulting from defective Work.

### 13.04 *Rejecting Defective Work*

- A. City will have authority to reject Work which City believes to be defective or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing

of the Work as provided in this Article 13, whether or not the Work is fabricated, installed, or completed.

**13.05** *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted.

**13.06** *Uncovering Work*

- A. City has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the Contract Documents or specific instructions of City and if requested by City, Contractor shall uncover such Work for City's observation, inspection or testing and then replace the covering, all at Contractor's expense.
- C. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, then Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). City shall be entitled to accept defective Work in accordance with Paragraph 13.05 and in such case Contractor shall still be responsible for all costs associated with exposing, observing, and testing defective Work.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

**13.07** *City May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or Contractor fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or any employee or agent of, any of them.

**13.08 City May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace defective Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then City may, after providing 7 days' advance written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, and City's other contractors access to the Site to enable City to exercise the rights and remedies under this Paragraph 13.08.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court, or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.08 will be the responsibility of and will be charged against Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.08.

**ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD****14.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.03 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 12.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
  - 1. Contractor is responsible for providing all information as required to become a vendor of the City.
  - 2. At least 20 days before the date established in the General Requirements for each progress payment (but not more often than once a month), Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) bill of sale, invoice, or purchase order payments, copies of cancelled checks or other documentation establishing full payment by Contractor for the materials and equipment; (b) at City's request, documentation warranting that City has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received on account of the Work by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.

C. Review of Applications

1. City will, after receipt of each Application for Payment, either indicate in writing it will proceed to process the Application for Payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that based City's actual knowledge:
  - a. the Work has progressed to the point indicated; and
  - b. the quality and/or quantity of the Work is generally in accordance with the Contract Documents (subject to any subsequent evaluations of the Work, an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests or inspections called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraphs 10.05 and 12.03, and any other qualifications stated).
3. Processing any such payment will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
  - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
  - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process or pay the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and

may revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:

- a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
- b. there are discrepancies in quantities contained in previous applications for payment;
- c. the Contract Price has been reduced by Change Orders;
- d. City has been required to correct defective Work in accordance with Paragraph 1313.08, or has accepted defective Work pursuant to Paragraph 13.05;
- e. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- f. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Retainage:

1. For all contracts, retainage shall be five percent (5%).

E. *Liquidated Damages*: For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be paid by the Contractor to the City, not as a penalty, but as liquidated damages suffered by the City. If feasible, the parties may agree to have the liquidated damages deducted from any amounts owned to Contractor by City instead of being paid directly to City by Contractor.

F. *Payment*: Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

G. Reduction in Payment

1. City may refuse to make payment of the of the amount requested because:
  - a. Claims have been made against City based on Contractor's performance or furnishing of the Work, or City has incurred costs, losses, or damages resulting from Contractor's performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. City has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;

- g. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones or Final Acceptance of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
  - l. Other items entitle City to a set-off against the payment amount requested; or
  - m. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, within a reasonable time after Contractor remedies the reasons for such action to the satisfaction of City and City has confirmed such action.

#### 14.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

#### 14.03 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to of any such part of the Work which City determines to be ready for its intended use. In addition, City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete, subject to the following conditions:
- 1. At any time, Contractor may notify City that Contractor considers any such part of the Work ready for its intended use.
  - 2. Within a reasonable time after notification as enumerated in Paragraph 14.03, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
  - 3. Partial Utilization by City will not constitute Final Acceptance by City.



#### 14.04 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
  - 1. City will promptly schedule a Final Inspection with Contractor.
  - 2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

#### 14.05 *Final Acceptance*

- A. Upon completion by Contractor to City's satisfaction, of any and all Work in accordance with the Contract Documents, including any corrections or additional Work identified in the Final Inspection and delivery of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurances, certificates of inspection, annotated record documents and other required documents in accordance with the Contract Documents, City will issue to Contractor a letter of Final Acceptance.

#### 14.06 *Final Payment*

- A. Application for Payment
  - 1. Upon receipt of a letter of Final Acceptance from City, Contractor may make application for Final Payment following the procedures for requesting payments in accordance with the Contract Documents.
  - 2. The final Application for Payment must be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 6.03;
    - b. consent of the surety, if any, to final payment;
    - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any Liens or other title defects or will so pass upon final payment.
    - d. a list of all Contract Claims or Damage Claims against City that Contractor believes are unsettled; and
    - e. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- B. Payment Becomes Due: The final payment requested by Contractor, less previous payments made and less any sum to which City is entitled, including but not limited to liquidated damages, will become due and payable:
  - 1. After City's acceptance of the Application for Payment and accompanying documentation; and

## 2. After all Damage Claims have been resolved:

- a. directly by the Contractor; or
- b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.

The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract that continue thereafter.

14.07 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.01.D, and if bonds have been furnished as required in Paragraph 6.02, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.
- B. *Partial Retainage Release.* If the Contract provides for separate establishment and maintenance periods and/or test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

14.08 *Waiver of Claims*

- A. The acceptance of final payment will constitute a waiver and release by Contractor of all claims, rights, causes of action, or liabilities, including Contract Claims, against City arising out of, related to or under the Contract or for any act, omission or neglect of City.

14.09 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the Contract Documents) any Work has been found to be defective, or Contractor's repair of any damages to the Site, adjacent areas, or areas made available for Contractor's use by City has been found to be defective, then after receipt of City's written notice of defect, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
  1. correct the defective repairs to the Site or such adjacent areas, or areas made available for Contractor's use by City;
  2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by City, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected, repaired or removed and replaced under this Paragraph 14.09, the correction period hereunder with respect to such Work may be extended for an additional period of one year after the end of the initial correction period.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this Paragraph 14.09 are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

### **15.01 *City May Suspend Work***

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor. City may fix the date on which Work will be resumed in such notice, and Contractor shall resume the Work on the date so fixed. During a temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way; Contractor shall take every precaution to prevent damage or deterioration of the work performed; and Contractor shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the

equipment and no profit or overhead will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

15.02 *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Project Schedule established under Paragraph 2.06 as adjusted from time to time pursuant to Paragraph 7.05);
  2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract; or
  3. Contractor's disregard of Laws and Regulations of any public body having jurisdiction; or
  4. Contractor's repeated disregard of the authority of City; or
  5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
  6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
  7. Substantial indication that the Contractor has become insolvent or bankrupt, or otherwise financially unable to perform the Work satisfactorily; or
  8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. The conference shall be held not later than 15 days after receipt of notice. by both Contractor and surety.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of the conference to address Contractor's failure to perform the Work.
  2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
    - a. If City completes the Work, City may exclude Contractor and Surety from the Site and take possession of the Work, and all materials and equipment stored at the Site

or for which City has paid Contractor, but which are stored elsewhere, and the Work as City may deem expedient.

3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by City, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph 15.02, City shall not be required to obtain the lowest price for the Work performed.
  4. Neither City, nor any of its respective consultants, agents, officers, elected or appointed officials, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
  5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim, counterclaim or offset on account of the method used by City in completing the Contract.
  6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise under the Contract or prescribed by law.
- C. Notwithstanding Paragraph 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or Surety. Any retention or payment of money due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.02, the termination procedures of that bond shall not supersede the provisions of this Article 15.

#### 15.03 *City May Terminate for Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract, in whole or in part. Any termination shall be affected by giving notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Notice shall be deemed validly given if given in accordance with Paragraph 17.01.A.

- B. After a notice of termination, has been given, and except as otherwise directed by the City, the Contractor shall:
1. stop work under the Contract on the date and to the extent specified in the notice of termination;
  2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
  3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
  4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
    - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
    - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
  5. complete performance of such Work as shall not have been terminated by the notice of termination; and
  6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the City has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of in accordance with the Contract, exclusive of items the disposition of which has been directed or authorized by City.
- D. Not later than 15 days after Contractor's submission of the certified list to City pursuant to Paragraph 15.03.C, the City shall accept title to such items, subject to verification of the list by the City upon removal of the items or, If the items are stored, then City shall have 45 days after submission of the list, to verify the list submitted and accept title to such items. Any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination has been given, the Contractor shall submit a termination claim to the City in the form and with the certification prescribed by the City. Unless an extension request is made in writing within such 60-day period by the Contractor, and granted by the City, any and all such claims of Contractor that are not submitted to City within such 60-day period shall be conclusively deemed waived.
- F. Should a termination claim be timely submitted to the City, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead

- and profit on such Work calculated and determined in accordance with the Contract Documents;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses calculated and determined in accordance with the Contract Documents; and
  3. reasonable expenses directly attributable to reasonable and necessary wind-down and termination activities, without any overhead or profit.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information submitted and available to it, the amount, if any, due to the Contractor by reason of the termination and City shall pay to the Contractor the amounts so determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, related to or resulting from such termination.

## ARTICLE 16 – RESOLUTION OF DISPUTES

### 16.01 *Methods and Procedures*

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 11.07 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 11.07.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 calendar days of filing of the request.
- C. The parties shall agree on a mediator; however, if they cannot agree within 14 calendar days then the Denton County Alternative Dispute Resolution Program (“DCAP”) shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party, or the mediator, states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. All costs of mediation shall be borne equally by the parties.
- D. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.
- E. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

- F. If the Contract Claim is not resolved by mediation, City's action under Paragraph 11.07.C or a denial pursuant to Paragraphs 11.07.C.3 or 11.07.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction as set forth within the Contract Documents.

## **ARTICLE 17 – MISCELLANEOUS**

### **17.01 *Giving Notice***

- A. Whenever any provision of the Contract requires the giving of written notice, it will be deemed to have been validly given if delivered:
1. in person, by a commercial courier service or otherwise, if to City, to the duly authorized representative of City identified in the Contract Documents or to City's Project Manager or, if to Contractor, to a member of the firm or to an officer of the corporation for whom it is intended; or
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient.

### **17.02 *Computation of Time***

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a state or federal holiday observed by the City, the next Business Day shall become the last day of the period.

### **17.03 *Cumulative Remedies***

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, in equity, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph 17.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### **17.04 *Limitation of Damages***

- A. With respect to any and all claims, disputes subject to final resolution, and other matters at issue, neither City, nor any of its officers, directors, elected or appointed officials, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project. Further, the Contractor may only claim and the City may only be liable for those damages that are set forth in Subchapter I, Chapter 271 of the Texas



Local Government Code and the City shall not be liable for any consequential damages, exemplary damages or damages for unabsorbed home office overhead.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- B. The City has not waived its sovereign immunity except as expressly set forth in Subchapter I, Chapter 271 of the Texas Local Government Code or as expressly waived by other statute.

17.06 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and Final Acceptance of the Work or termination of the Contract or of the services of Contractor.

17.07 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

17.08 *Successors and Assigns*

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

17.09 *Governing Law*

- A. The Contract shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

17.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**SECTION 00 73 01**  
**SUPPLEMENTARY CONDITIONS - CSP**  
**TO**  
**GENERAL CONDITIONS**

**Supplementary Conditions**

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

**Defined Terms**

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

**Modifications and Supplements**

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

**SC-1.01 “Defined Terms”**

The following Terms listed in the General Conditions are modified as follows:

Bid – See Proposal.

Bidder – See Offeror.

Bidding Documents – See Proposal Documents.

Bidding Requirements – See Proposal Requirements.

The following Terms are added to the General Conditions as follows:

Competitive Sealed Proposals – A procurement method by which a governmental entity requests proposals, evaluates and ranks the Offerors, and negotiates a contract with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

Daily Value – The City-determined value in dollars as indicated in the Proposal Form as the value of one Day for the purposes of determining the Incentive (if applicable) for Substantial Completion relative to the Contract Time and achievement of Substantial Completion.

Offeror – The individual or entity that submits a Proposal directly to City.

Proposal – The offer or proposal of an Offeror submitted in accordance with the requirements set forth in the Instructions to Offerors.

Proposal Documents – The Proposal Requirements and the Proposed Contract Documents.

Proposal Requirements – The Advertisement or Invitation to Offerors, Instructions to Offerors, Offeror’s Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

Substantial Completion – The completion of the Work necessary for the project to function as it was intended pursuant to the Contract Documents and as specified below, to the reasonable satisfaction of the City. The date of Substantial Completion shall be memorialized by written notice given by the City to the Contractor.

SC-5.01A

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

SC-5.01A.1., “Availability of Lands”

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of [\[May 21, 2024\]](#):

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

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
------------------	-------	------------------------------

None

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

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

SC-5.01A.2, “Availability of Lands”

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

The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of [\[May 21, 2024\]](#)

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
-------------------	----------------------	------------------------------

<“None”>

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

SC-5.03A., “Subsurface and Physical Conditions”

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

None

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

*None*

#### **SC-5.05 A., “Underground Facilities**

The following are additional resources for identification of Underground Facilities which are at or contiguous to the site of the Work, and which are not necessarily shown in the Drawings:

*None*

#### **SC-5.06A., “Hazardous Environmental Conditions at Site”**

The following are reports and drawings of existing hazardous environmental conditions known to the City:

*None*

#### **SC-6.02, “Performance, Payment, and Maintenance Bonds”**

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

#### **SC-6.03A., “Certificates of Insurance”**

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

- (1) City
- (2) Consultant: *None*
- (3) Other: *None*

#### **SC-6.04A., “Contractor’s Insurance”**

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

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

*Statutory limits*

*Employer's liability*

*\$500,000 each accident/occurrence*

*\$500,000 Disease - each employee*

*\$500,000 Disease - policy limit*

#### **SC-6.04B., “Contractor’s Insurance”**

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

*\$1,000,000 each occurrence*

*\$2,000,000 aggregate limit*

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

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

**SC 6.04C., “Contractor’s Insurance”**

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

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

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

**SC-6.04D., “Contractor’s Insurance”**

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

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

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

- |   |  |
|---|--|
| (1) General Aggregate:  | <u><a href="#">\$Confirm Limits with Railroad</a></u>                          |
| (2) Each Occurrence:  | <u><a href="#">\$Confirm Limits with Railroad</a></u>                          |
| <u>      </u> <u><a href="#">Required for this Contract</a></u> | <u><a href="#">x</a></u> <u><a href="#">Not required for this Contract</a></u> |

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

1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.
2. Where more than one railroad company is operating on the same right-of-way or where several railroad companies are involved and operated on their own separate rights-of-way, the Contractor may be required to provide separate insurance policies in the name of each railroad company.
3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a railroad company’s right-of-way at a location entirely separate from the grade separation or at-grade crossing, insurance coverage for this work must be included in the policy covering the grade separation.

1  
2 4. If no grade separation is involved but other work is proposed on a railroad company’s right-of-  
3 way, all such other work may be covered in a single policy for that railroad, even though the work  
4 may be at two or more separate locations.  
5

6 No work or activities on a railroad company’s property to be performed by the Contractor shall be  
7 commenced until the Contractor has furnished the City with an original policy or policies of the insurance  
8 for each railroad company named, as required above. All such insurance must be approved by the City and  
9 each affected Railroad Company prior to the Contractor’s beginning work.  
10

11 The insurance specified above must be carried until all Work to be performed on the railroad right-of-way  
12 has been completed and the grade crossing, if any, is no longer used by the Contractor. In addition,  
13 insurance must be carried during all maintenance and/or repair work performed in the railroad right-of-way.  
14 Such insurance must name the railroad company as the insured, together with any tenant or lessee of the  
15 railroad company operating over tracks involved in the Project.  
16

17 **SC 6.04F., “Contractor’s Insurance”**

18 Add Paragraph 6.04F. Environmental Impairment/Pollution  
19 Environmental Impairment/Pollution Insurance to include coverage for the handling, receiving, dispensing,  
20 removal, storage, testing, transportation, disposal, discharge, dispersal release or escape of any hazardous  
21 material into or upon land, or any structure on land, the atmosphere or any watercourse or body of water,  
22 including ground water, with a minimum combined bodily injury (including death) and property damage  
23 limit of *\$2,000,000* per occurrence to be obtained upon substantial completion and acceptance of facility by  
24 the City.  
25

26 **SC-7.08C., “Concerning Subcontractors and Suppliers”**

27  
28 The following subcontractors shall be required to be utilized by the Contractor for specific portions of the  
29 Work as indicated below:  
30

31 **Required Subcontractors**

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
----------------------------	-------------------------------------

32 None

33 **SC-7.11., “Permits and Utilities”**

34  
35 **SC-7.11A., “Contractor obtained permits and licenses”**

36 The following are known permits and/or licenses required by the Contract to be acquired by the Contractor:  
37 *“None”*.  
38

39 **SC-7.11B. “City obtained permits and licenses”**

40 The following are known permits and/or licenses required by the Contract to be acquired by the City:  
41 *“None”*.  
42

43 **SC-7.11C. “Outstanding permits and licenses”**

44  
45 The following is a list of known outstanding permits and/or licenses to be acquired, if any as of *[May 21,*  
46 *2024]*:  
47

48 **Outstanding Permits and/or Licenses to Be Acquired**

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
-------	--------------------------------	---------------------------

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
-------	--------------------------------	------------------------------

None

### SC-8.02., "Coordination"

The individuals or entities listed below have contracts with the City for the performance of other work at the Site:

Vendor	Scope of Work	Coordination Authority
<i>None</i>		

### SC-9.01, "Communications to Contractor"

There are no special communication requirements for this project.

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

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

### SC-13.02B., "Tests and Inspections"

*"None"*

### SC-14.01G, "Reduction in Payment"

Add Paragraph 14.01G.3:

3. *City may reduce payments to the Contractor, if the number of Days that have passed after the date listed on the Notice to Proceed exceeds the Contract Time for Substantial Completion.*

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

*"None"*

### SC – 17.01, "Documents"

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

END OF SECTION

Revision Log		
DATE	NAME	SUMMARY OF CHANGE



<b>CONFLICT OF INTEREST QUESTIONNAIRE -</b> <b>For vendor or other person doing business with local governmental entity</b>		<b>FORM CIQ</b>
<b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b>		
<p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.</p> <p>By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>		
<b>1</b>	<b>Name of vendor who has a business relationship with local governmental entity.</b>  <div style="border-bottom: 1px solid black; width: 100%; padding-bottom: 5px;">Texas Materials Group, Inc.</div>	
<b>2</b>	<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"><input checked="" type="checkbox"/></div> <div> <b>Check this box if you are filing an update to a previously filed questionnaire.</b>                       (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)                 </div> </div>	
<b>3</b>	<b>Name of local government officer about whom the information in this section is being disclosed.</b>  <div style="text-align: center; margin-bottom: 10px;">Rodney McCarn</div> <div style="border-top: 1px solid black; width: 60%; margin: 0 auto;"></div> <div style="text-align: center;">Name of Officer</div>	
<p>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 &amp; D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <span><input type="checkbox"/> Yes</span> <span><input checked="" type="checkbox"/> No</span> </div> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <span><input type="checkbox"/> Yes</span> <span><input checked="" type="checkbox"/> No</span> </div> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?</p> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <span><input type="checkbox"/> Yes</span> <span><input checked="" type="checkbox"/> No</span> </div> <p>D. Describe each employment or business and family relationship with the local government officer named in this section.</p> <div style="height: 100px; border: 1px solid black; margin-top: 10px;"></div>		
<b>4</b>	<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"><input checked="" type="checkbox"/></div> <div> <b>I have no Conflict of Interest to disclose.</b> </div> </div>	
<b>5</b>	<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 45%;"> <p>Signed by:</p> <div style="border-bottom: 1px solid black; width: 100%; padding-bottom: 5px;"> </div> <div style="font-size: 8px; margin-top: 5px;">87E70BDF56894AA</div> </div> <div style="width: 45%; text-align: center;"> <p>8/21/2024</p> <div style="border-top: 1px solid black; width: 100%;"></div> <p>Date</p> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <span>Signature of Vendor doing business with the governmental entity</span> <span></span> </div>	

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

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

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

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

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

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

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

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

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> 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: 574B7371388A4288B008DB1E151B4359

Status: Completed

Subject: Please DocuSign: City Council Contract 8586 Robinwood Reconstruction

Source Envelope:

Document Pages: 100

Signatures: 6

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Cori Power

Location: DocuSign

8/16/2024 2:41:57 PM

cori.power@cityofdenton.com

**Signer Events****Signature****Timestamp**

Cori Power

**Completed**

Sent: 8/16/2024 2:50:43 PM

cori.power@cityofdenton.com

Viewed: 8/16/2024 2:50:56 PM

Purchasing Supervisor

Signed: 8/16/2024 2:51:19 PM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 8/16/2024 2:51:23 PM

lori.hewell@cityofdenton.com

Viewed: 8/18/2024 10:30:25 AM

Purchasing Manager

Signed: 8/18/2024 10:31:35 AM

City of Denton

Signature Adoption: Pre-selected Style

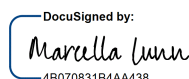
Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 8/18/2024 10:31:38 AM

marcella.lunn@cityofdenton.com

Viewed: 8/20/2024 6:16:15 PM

Senior Deputy City Attorney

Signed: 8/20/2024 8:20:59 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 47.190.47.120

Signed using mobile

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Ron Stinson



Sent: 8/20/2024 8:21:03 PM

ronald.stinson@texasmaterials.com

Viewed: 8/21/2024 8:01:22 AM

Estimating Manager

Signed: 8/21/2024 8:05:50 AM

Security Level: Email, Account Authentication  
(None)

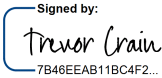

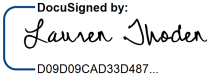
Signature Adoption: Pre-selected Style

Using IP Address: 47.185.111.194

**Electronic Record and Signature Disclosure:**

Accepted: 8/21/2024 8:01:22 AM

ID: 7c2fdb6f-17d1-47ed-9d56-7bf13f98a050

Signer Events	Signature	Timestamp
<p>Trevor Crain</p> <p>Trevor.Crain@cityofdenton.com</p> <p>Director of Capital Projects</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 8/21/2024 8:15:27 AM ID: 5df31a60-3597-47ea-b41d-aa4002b5c849</p>	<p>Signed by:</p>  <p>7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 8/21/2024 8:05:53 AM</p> <p>Viewed: 8/21/2024 8:15:27 AM</p> <p>Signed: 8/21/2024 8:15:50 AM</p>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p><b>Completed</b></p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 8/26/2024 2:31:06 PM</p> <p>Viewed: 9/18/2024 9:13:28 AM</p> <p>Signed: 9/18/2024 9:13:41 AM</p>
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>City Manager</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>DocuSigned by:</p>  <p>5236DB296270423...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 47.190.47.120 Signed using mobile</p>	<p>Sent: 9/18/2024 9:13:45 AM</p> <p>Viewed: 9/18/2024 9:47:44 AM</p> <p>Signed: 9/18/2024 9:47:49 AM</p>
<p>Lauren Thoden</p> <p>lauren.thoden@cityofdenton.com</p> <p>City Secretary</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>DocuSigned by:</p>  <p>D09D09CAD33D487...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 9/18/2024 9:47:52 AM</p> <p>Viewed: 9/18/2024 11:15:22 AM</p> <p>Signed: 9/18/2024 11:15:41 AM</p>

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<div>COPIED</div>	<p>Sent: 8/16/2024 2:51:22 PM</p>

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 8/21/2024 8:15:55 AM Viewed: 8/26/2024 3:13:32 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 9/18/2024 11:15:45 AM
Sheldon Gatewood sheldon.gatewood@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 8/23/2024 8:50:40 AM ID: 78a39ed0-31d0-4db1-b920-58fa3d9b9eba	COPIED	Sent: 9/18/2024 11:15:46 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/16/2024 2:50:43 PM
Envelope Updated	Security Checked	8/23/2024 8:48:42 AM
Envelope Updated	Security Checked	8/26/2024 2:31:05 PM
Certified Delivered	Security Checked	9/18/2024 11:15:22 AM
Signing Complete	Security Checked	9/18/2024 11:15:41 AM
Completed	Security Checked	9/18/2024 11:15:47 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

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

### **Getting paper copies**

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

### **Withdrawing your consent**

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

### **Consequences of changing your mind**

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

### **All notices and disclosures will be sent to you electronically**

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

**How to contact City of Denton:**

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

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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

**Acknowledging your access and consent to receive materials electronically**

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

By checking the 'I Agree' box, I confirm that:

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



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE CHANGE ORDER NO. 1 TO THE CONTRACT BETWEEN THE CITY OF DENTON AND TEXAS MATERIALS GROUP, INC., FOR THE CONSTRUCTION OF THE ROBINWOOD RECONSTRUCTION PROJECT FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8586 – CHANGE ORDER NO. 1 IN THE NOT-TO-EXCEED AMOUNT OF \$301,421.50, FOR A TOTAL CONTRACT AWARD AGGREGATED TO \$3,097,446.88).

WHEREAS, on September 17, 2024, by Ordinance No. 24-1773, the City Council awarded a contract to Texas Materials Group, Inc., in the amount of \$2,796,025.38, for the construction of the Robinwood Reconstruction Project with the geographical limits as follows: Robinwood Lane, Clover Lane, Live Oak Street, Shadywood Street, and Mistywood Lane for the Capital Projects Department; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function [Street construction and design]; and

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Change Order No. 1, increasing the amount of the contract between the City and Texas Materials Group, Inc., which is on file in the office of the Purchasing Agent, in the amount of Three Hundred One Thousand Four Hundred Twenty-One and 50/100 (\$301,421.50) dollars, is hereby approved and the expenditure of funds therefore is hereby authorized in accordance with said change order. The total purchase order amount increases to \$3,097,446.88.

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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

FILE	8586
File Name	Robinwood Reconstruction
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Contractor: Texas Materials  
420 Decker Dr, Suite 200  
Irving, Texas 75062  
Juan Garcia

CHANGE ORDER NO. 1  
PO# 208613

New Completion Date:  
5/31/2025

Orig Contract Days:	<u>180</u>	This CO Days Request:	<u>0</u>
Approved CO Days:	0	New Contract Days:	180

Description of work included in Contract:

Full road reconstruction of Robinwood, Clover, Mistywood, and Shadywood, along with drainage improvements.

## Reason for change:

During construction, Subgrade material was more sand than clay. Raba Kistner was called on-site to perform a cement series test. Test results provided guidance to switch materials from lime to cement for subgrade stabilization.

During this testing phase, 1 was lime stabilized, and lift one was poured. Crumbing of Type B appeared, so the first lift should be removed to be restabilized and repoured.

## CONTINGENCY USE ALLOWANCE (CUA) CONTRACT CHANGES

### QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price
21	32 11 29	Lime Treated Subgrade	SY	14,949	-8,991	\$ 12.75	\$ (114,635.25)
22	32 11 29	Hydrated Lime	Ton	565	-283	\$ 352.15	\$ (99,658.45)
9	02 41 15	Surface Milling (2")	SY	340	4,957	\$ 6.55	\$ 32,468.35
23	32 12 16	Asphalt Pavement Type B (2")	SY	14.437	4,957	\$ 20.23	\$ 100,280.11

Contingency funds are used at City's discretion per contract spec language

TOTAL CUA EXISTING ITEMS:	-\$81,545.24
---------------------------	--------------

## NEW ITEMS OF WORK

Co1-1	Cement Materials for Stabilization @ 54#/SY	Ton	0	378	\$	447.55	\$	169,173.90
Co1-2	Cement Stabilization & Manipulation	SY	0	4,330	\$	10.51	\$	45,508.30

*Contingency funds are used at City's discretion per contract spec language*

<b>TOTAL CUA NEW ITEMS:</b>	<b>\$214,682.20</b>
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## ADDITIONAL CONTINGENCY ALLOWANCE CONTRACT CHANGES

## NEW CONTINGENCY ALLOWANCE CHANGES

	00 72 00	Additlional Contingency Allowance for the sole use of the City, per 12.02 of General Conditions	LS		1	\$ 200,000.00	\$ 200,000.00
--	----------	---	----	--	---	---------------	---------------

Contingency funds are used at City's discretion per contract spec language

<b>TOTAL ADDITIONAL CONTINGENCY ITEMS:</b>	<b>\$200,000.00</b>
--	---------------------

### PROJECT (NON-CONTINGENCY) FUNDED CONTRACT CHANGES (CO)

## QUANTITY CHANGES TO EXISTING ITEMS

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	+/- QTY	Unit Price	Extended Price

TOTAL PROJECT (NON-CONTINGENCY) FUNDED EXISTING QTY CHANGES:		\$0.00
--	--	--------

## NEW ITEMS OF WORK

Co1-2	Cement Stabilization & Manipulation	SY	0	9,650	\$	10.51	\$	101,421.50
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<b>TOTAL PROJECT (NON-CONTINGENCY) FUNDED NEW ITEMS:</b>	<b>\$101,421.50</b>
--	---------------------

<b>TOTAL CO AMOUNT:</b>	<b>\$434,558.46</b>
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## Robinwood Reconstruction

Original BID/Contract Amount:	\$	2,662,881.31
Original Not To Exceed Amount:	\$	2,796,025.38
Total CUA's:	\$	133,136.96
Total CO's:	\$	101,421.50
Contingency Added to NTE:	\$	200,000.00
<b>Revised Contract Amount:</b>	<b>\$</b>	<b>2,897,439.77</b>
% of CUA Approved To-Date:		100%
<b>Total Changes over Original Bid:</b>		<b>8.81%</b>
Percent Changes over NTE:		10.78%

CHANGE ORDER NO.	1
Total Change Request:	\$ 434,558.46

## Certificate Of Completion

Envelope Id: E18D795D-6019-45E8-950F-EDC87719E144

Status: Sent

Subject: Please DocuSign: City Council Contract 8586 Robinwood Reconstruction CO#1

Source Envelope:

Document Pages: 3

Signatures: 5

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

IP Address: 198.49.140.104

## Record Tracking

Status: Original

Holder: Cori Power

Location: DocuSign

3/18/2025 1:26:08 PM

cori.power@cityofdenton.com

## Signer Events

## Signature

## Timestamp

Cori Power

**Completed**

Sent: 3/18/2025 1:40:13 PM

cori.power@cityofdenton.com

Viewed: 3/18/2025 2:35:40 PM

Purchasing Supervisor

Signed: 3/18/2025 2:38:07 PM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication (None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Lori Hewell

DocuSigned by:

*Lori Hewell*  
13E1D934887C40F...

Sent: 3/18/2025 2:38:08 PM

lori.hewell@cityofdenton.com

Viewed: 3/18/2025 4:54:02 PM

Purchasing Manager

Signed: 3/18/2025 4:54:11 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn

DocuSigned by:

*Marcella Lunn*  
4B070831B4AA438...

Sent: 3/18/2025 4:54:12 PM

marcella.lunn@cityofdenton.com

Viewed: 3/20/2025 9:19:29 AM

Senior Deputy City Attorney

Signed: 3/20/2025 9:22:14 AM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Sheldon Gatewood

Signed by:

*Sheldon Gatewood*  
57056FE70827443...

Sent: 3/20/2025 9:22:16 AM

sheldon.gatewood@cityofdenton.com

Viewed: 3/20/2025 9:27:12 AM

Security Level: Email, Account Authentication (None)

Signed: 3/20/2025 9:27:35 AM

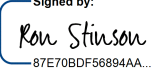
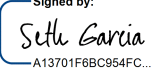
Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

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Accepted: 3/20/2025 9:27:12 AM

ID: 25ad16e6-276b-4fd8-b1fb-60f3b41fd939

Signer Events	Signature	Timestamp
<p>Ron Stinson ronald.stinson@texasmaterials.com Estimating Manager Security Level: Email, Account Authentication (None)</p>	<p>Signed by:  87E70BDF56894AA...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 47.161.7.93</p>	<p>Sent: 3/20/2025 9:27:37 AM Viewed: 3/20/2025 10:21:58 AM Signed: 3/20/2025 10:42:39 AM</p>
<p><b>Electronic Record and Signature Disclosure:</b> Accepted: 3/20/2025 10:21:58 AM ID: 18f9bc9e-8101-4f3b-bf19-87f7dd0473d1</p>		
<p>Seth Garcia Seth.Garcia@cityofdenton.com Interim Director of Capital Projects Security Level: Email, Account Authentication (None)</p>	<p>Signed by:  A13701F6BC954FC...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 107.77.218.5 Signed using mobile</p>	<p>Sent: 3/20/2025 10:42:42 AM Viewed: 3/20/2025 10:43:56 AM Signed: 3/20/2025 10:44:30 AM</p>
<p><b>Electronic Record and Signature Disclosure:</b> Accepted: 3/20/2025 10:43:56 AM ID: bbbde305-0f4e-45f7-8c0c-c127a2a3fb00</p>		
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>		<p>Sent: 3/20/2025 10:44:34 AM</p>
<p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		
<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)</p>		
<p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		
<p>Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None)</p>		
<p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 3/18/2025 2:38:09 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 3/20/2025 10:44:33 AM Viewed: 3/20/2025 11:16:03 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Sheldon Gatewood sheldon.gatewood@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 3/20/2025 9:27:12 AM ID: 25ad16e6-276b-4fd8-b1fb-60f3b41fd939		
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Notary Events	Signature	Timestamp
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Envelope Updated	Security Checked	3/18/2025 2:37:37 PM
Envelope Updated	Security Checked	3/18/2025 2:37:37 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](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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

**Acknowledging your access and consent to receive materials electronically**

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

By checking the 'I Agree' box, I confirm that:

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



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB25-053, Version: 1**

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### **AGENDA CAPTION**

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 Altec Industries, Inc., for Altec branded equipment inspections, maintenance, and repairs for the Fleet Services Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8757 - awarded to Altec Industries, 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 \$780,000.00).



# City of Denton

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

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Christine Taylor  
**DATE:** April 14, 2025

### 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 Altec Industries, Inc., for Altec branded equipment inspections, maintenance, and repairs for the Fleet Services Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8757 – awarded to Altec Industries, 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 \$780,000.00).

### STRATEGIC ALIGNMENT

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

### INFORMATION/BACKGROUND

The City of Denton Fleet Services Department is establishing a maintenance, repairs, inspections, and certification contract for Altec-branded vehicles and equipment utilized by various City departments. The contract will be used to keep Altec branded equipment in the best condition possible to avoid service interruption throughout the City. Denton Municipal Electric, Traffic, and Parks & Recreation departments currently have twenty-two (22) pieces of equipment in use with both replacements and additions in the order/planning stages. Due to the risk and liability involved in the repair, maintenance, and inspections of aerial equipment, Fleet Services staff are not certified to work on Altec vehicles and equipment. Altec factory-trained field technicians are necessary to keep City vehicles and equipment maintained. To standardize aerial equipment, the majority of City-owned equipment is Altec.

#### Estimated Contract Expenses

Category	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Repair Services	\$140,000	\$144,200	\$148,526	\$152,759	\$157,351	\$742,836
Contingency 5%	7,000	7,210	7,426	7,649	7,879	37,164
<b>Total</b>	<b>\$147,000</b>	<b>\$151,410</b>	<b>\$155,952</b>	<b>\$160,408</b>	<b>\$165,230</b>	<b>\$780,000</b>

Section 252.022 of the Local Government Code provides that procurement of sole source commodities and services is exempt from competitive bidding if over \$50,000, shall be awarded by the governing body.

## **RECOMMENDATION**

Award with a contract to Altec Industries, Inc., as a sole source supplier, for Altec branded equipment inspections, maintenance, and repairs 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 \$780,000.

## **PRINCIPAL PLACE OF BUSINESS**

Altec Industries, Inc.  
Houston, 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 Capital Fund accounts. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$780,000. 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: 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: Marcella Lunn at 940-349-8333.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ALTEC INDUSTRIES, INC., FOR ALTEC BRANDED EQUIPMENT INSPECTIONS, MAINTENANCE, AND REPAIRS FOR THE FLEET SERVICES DEPARTMENT, WHICH IS THE SOLE PROVIDER OF THIS SERVICE, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING, AND IF OVER \$50,000, SHALL BE AWARDED BY THE GOVERNING BODY; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8757 – AWARDED TO ALTEC INDUSTRIES, 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 \$780,000.00).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids; and

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

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the “File” listed hereon, and on file in the office of the Purchasing Agent, and the license terms attached are hereby approved:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8757	Altec Industries, Inc.	\$780,000.00

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library

that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids.

**SECTION 3.** The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

**SECTION 4.** The City Manager, or their designee, is hereby authorized to execute the contract relating to the items specified in Section 1, attached hereto, and the expenditure of funds pursuant to said contract is hereby authorized.

**SECTION 5.** 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 6.** This ordinance shall become effective immediately upon its passage and approval.

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

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

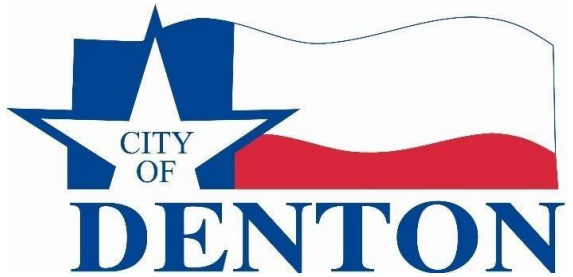


ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

FILE	8757
File Name	Altec Repairs and Maintenance
Purchasing Contact	kayla clark
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND ALTEC INDUSTRIES, INC.  
(Contract #8757)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between ALTEC INDUSTRIES, INC. an Alabama corporation, whose address 210 INVERNESS CENTER DRIVE Birmingham, AL 35242, 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 contractor’s proposal in Exhibit E, 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) Contractor’s Proposal (“Contractor’s Offer”) (**Exhibit “E”**);
- (f) Form CIQ – Conflict of Interest Questionnaire (**Exhibit “F”**)

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

**Prohibition on Contracts with Companies Boycotting Israel**

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

**Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

Contractor acknowledges that in accordance with Chapter 2276 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company”

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.

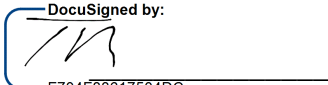
#### **Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies**

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.

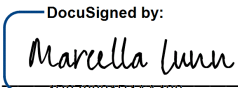
THIS CONTRACT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

DocuSigned by:  
  
F704F88617504DC  
SIGNATURE  
Thomas Gramer  
PRINTED NAME  
Director  
TITLE  
Fleet  
DEPARTMENT

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
  
BY: \_\_\_\_\_  
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Signed by:  
**CONTRACTOR**  
BY:   
07854FF0B4FF42B  
AUTHORIZED SIGNATURE

Printed Name: Michael wilkinson

Title: East TX Area Service Manager  
904-517-7081

PHONE NUMBER

Michael.wilkinson@altec.com

EMAIL ADDRESS  
2025-1272938

TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

**CITY OF DENTON, TEXAS**

BY: \_\_\_\_\_  
SARA HENSLEY  
CITY MANAGER

## **Exhibit A**

### **Special Terms and Conditions**

#### **1. Total Contract Amount**

The contract total for services shall not exceed \$780,000. Pricing shall be per Exhibit E attached.

#### **2. The Quantities**

The quantities indicated on Exhibit E are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

#### **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.

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](mailto: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.

**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.



**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

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](mailto:accountspayable@cityofdenton.com). Approved invoices will be paid within thirty (30) calendar days of the invoice being received in Accounts Payable.

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

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

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

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

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

F. Payment will be made by check unless the parties mutually agree to payment by credit card or Contract 8757

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<sup>th</sup>) 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

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 Contract 8757

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,



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

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

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

**30. DELAYS:**

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

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

**31. TIME OF COMPLETION AND LIQUIDATED DAMAGES:** Contractor agrees and acknowledges that completing the services and/or delivering the goods described in this Contract in a timely manner is very important to the City. Contractor agrees to perform all obligations within the timeframes required. As it is impracticable and extremely difficult to fix the actual damages, if any, that may proximately result from a failure by Contractor to provide the goods or

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perform the service, should Contractor fail to timely perform its obligations, Contractor agrees to pay to City, or have withheld and offset from monies due it, the amount stated in the Contract Documents as liquidated damages for each calendar day of delay or nonperformance. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract. Execution of the Contract shall constitute agreement by the City and Contractor that said amount is the minimum value of the costs and actual damage caused by the Contractor's failure to timely perform. Adjustments to the contract times can only be made as provided in the Contract Documents and any conditions or specifications referenced therein.

### **32. INDEMNITY:**

#### **A. Definitions:**

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

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST THE OTHER PARTY OR 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 Contract 8757

Solicitation and the Insurance Exhibit.

**35. CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

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

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

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

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**RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF. FURTHER, CONTRACTOR AGREES THAT THE CITY'S SPECIFICATIONS REGARDING THE DELIVERABLES SHALL IN NO WAY DIMINISH CONTRACTOR'S WARRANTIES OR OBLIGATIONS UNDER THIS PARAGRAPH AND THE CITY MAKES NO WARRANTY THAT THE PRODUCTION, DEVELOPMENT, OR DELIVERY OF SUCH DELIVERABLES WILL NOT IMPACT SUCH WARRANTIES OF CONTRACTOR. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

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

**40. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables, provided that no intellectual property rights are included in the deliverables.

**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,

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percentage, brokerage or contingent fee.

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

**45. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** The Contractor agrees to comply with the conflict of interest provisions of the City of Denon Code of Ordinances and/or State law. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance codified at Chapter 2, Article XI and in the City Charter Section 14.04, as amended. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire. The Contractor agrees to maintain current, updated disclosure of information on file with the Procurement Department throughout the term of this Contract.

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

**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

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 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:

<p>New Year's Day (observed)  Martin Luther King, Jr. Day  Memorial Day  Juneteenth  Independence Day  Labor Day</p>
--

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)**

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.

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ii. "Cost of components" means -

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Contractor shall submit documentation with their offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

**61. RIGHT TO INFORMATION:** The City of Denton reserves the right to use any and all information presented in any response to this Contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

**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](http://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 Contract 8757

the Texas Government Code, which outlines policy for public information. The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

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

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

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

**68. CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

**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 Contract 8757

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 Contract; (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.

**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](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](mailto:purchasing@cityofdenton.com) with the contract number in the subject line.  
(EX: Contract 1234 – Form 1295)

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

Exhibit 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**.
- Intentionally Omitted.
- Liability policies shall be endorsed to provide the following:
  - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.
  - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that

this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***
- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

**SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:**

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

**A. GARAGE LIABILITY**

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 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.

#### **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.

Exhibit E



The City of Denton

Service Proposal

February 21, 2025





## THE ALTEC DIFFERENCE

### ALTEC SERVICE

ANSI and OSHA regulations require your unit to be maintained to the manufacturers' specifications. Altec has over 350 mobile technicians and 375 shop technicians located within the US and Canada.

Most repairs and inspections can be performed on-site which reduces the need to transport vehicles for repair/inspection.

Altec will stock our service trucks with parts commonly used by your fleet, helping us get your equipment up and running immediately should repairs be required. If a part must be ordered for a repair, 92% of Altec's part orders ship within 24 hours.

Altec's preventative maintenance inspection is a complete factory-specified service performed by one of Altec's factory-trained, Fluid Power Certified technicians. None of our unit inspections are outsourced to third party vendors. This guarantees that all ANSI safety inspections are being performed to identical standards throughout your fleet.

If PMs to be performed by a Mobile Service Technician are scheduled in advance and there are two (2) or more inspections to be completed on the same trip, there will be no travel charge for the inspections. If two (2) units are unavailable at scheduled time, Altec reserves the right to charge travel at market rates. (Travel time will be capped at three (3) hours.)

<b>HOURLY SERVICE RATE</b>	<b>PER HOUR*</b>
<b>MOBILE SERVICE TECH -LABOR &amp; TRAVEL</b>	<b>\$185.00</b>
<b>HOUSTON &amp; SOUTH DALLAS SERVICE CENTER</b>	<b>\$165.00</b>
<b>ODESSA SERVICE CENTER</b>	<b>\$170</b>
<b>EDF/SHOP SUPPLIES</b>	<b>\$6</b>

<b>UNIT DESCRIPTION</b>	<b>ANNUAL PM PRICE*</b>
<b>SMALL AERIAL UNITS 40' AND UNDER WITHOUT MATERIAL HANDLING (AT, AO)</b>	<b>\$465</b>
<b>MIDSIZE AERIALS UNDER 50' WITH OR WITHOUT MATERIAL HANDLING (AT40M, L Series, AP, A-A28D)</b>	<b>\$740</b>
<b>LARGE AERIAL UNITS UNDER 65' (AM, AA, AN, LR Series)</b>	<b>\$740</b>
<b>EXTRA LARGE AERIAL MATERIAL HANDLING UNITS AND LARGE AERIAL ELEVATORS UNDER 100' (A-Class, AM Elevators, LR Elevators)</b>	<b>\$1,080</b>
<b>SMALL AND BACKYARD DERRICKS (DL, DM, DC, DB)</b>	<b>\$1,020</b>
<b>LARGE DERRICKS AND PRESSURE DIGGERS (D2000-D4000, DT80, HD)</b>	<b>\$1,080</b>
<b>ALTEC HILINE OR SIMILAR TRANSMISSION AERIAL</b>	<b>\$1,625</b>
<b>TELESCOPIC BOOM TRUCK CRANES (AC Series or Similar)</b>	<b>\$1,625</b>
<b>OSHA INSPECTION; CRANE – WHEN DONE WITH PM</b>	<b>\$375</b>

<b>DOT INSPECTIONS</b>	<b>PER INSPECTION*</b>
<b>2 AXLE WITHOUT AIRBRAKES</b>	<b>\$140</b>
<b>3 OR 4 AXLE OR ANY AIRBRAKE SYSTEM</b>	<b>\$250</b>

<b>DIELECTRIC TEST</b>	<b>PER TEST*</b>
<b>CAT B/C; BOOM &amp; ISO GRIP(WHEN APPLICABLE) &amp; LINER</b>	<b>\$400</b>
<b>CAT B/C; BOOM &amp; ISO GRIP(WHEN APPLICABLE)</b>	<b>\$240</b>
<b>PLATFORM LINER</b>	<b>\$180</b>
<b>CAT B/C; BOOM &amp; LINER &amp; ISO GRIP (WHEN APPLICABLE) (PRICE DISCOUNTED, Use Only when done with PM)</b>	<b>\$250</b>

<b>PARTS DISCOUNT/MARKUP FROM PRICING SHOWN ON <a href="https://www.altec.com/altec-connect/">HTTPS://WWW.ALTEC.COM/ALTEC-CONNECT/</a></b>	<b>0%</b>
--	-----------

\*Prices current as of February 21, 2025, and subject to change.

Altec's corporate policy may prevent us from working on equipment of a certain age or manufacturer. If there is equipment that falls under this policy, Altec may be able to service it if an Indemnification Letter is signed.

**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.**

ALTEC INDUSTRIES, 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 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

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

\_\_\_\_\_  
Name of Officer

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

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

☐

Yes

☒

No

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

☐

Yes

☒

No

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

☐

Yes

☒

No

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

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

**5** Signed by:

*Michael Wilkinson*

3/28/2025

Signature of vendor doing business with the governmental entity

Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

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

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

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

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

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

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

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

### **City of Denton Ethics Code Ordinance Number 18-757**

#### **Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> 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: 4C594E20-5A58-4850-94AA-B7A992707243

Status: Sent

Subject: Please DocuSign: City Council Contract 8757 - Altec Repairs and Maintenance

Source Envelope:

Document Pages: 35

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Kayla Clark

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

kayla.clark@cityofdenton.com

IP Address: 198.49.140.10

## Record Tracking

Status: Original

Holder: Kayla Clark

Location: DocuSign

3/25/2025 7:43:54 AM

kayla.clark@cityofdenton.com

## Signer Events

### Signature

### Timestamp

Kayla Clark

**Completed**

Sent: 3/25/2025 7:45:29 AM

kayla.clark@cityofdenton.com

Viewed: 3/25/2025 7:45:42 AM

Buyer

Signed: 3/25/2025 7:45:56 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication (None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Lori Hewell

Sent: 3/25/2025 7:45:59 AM

lori.hewell@cityofdenton.com

Viewed: 3/25/2025 7:48:24 AM

Purchasing Manager

Signed: 3/25/2025 7:48:59 AM

City of Denton

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn

DocuSigned by:  
  
4B070B31B4AA43B...

Sent: 3/25/2025 7:49:01 AM

marcella.lunn@cityofdenton.com

Resent: 3/25/2025 7:50:59 AM

Senior Deputy City Attorney

Viewed: 3/25/2025 10:44:59 AM

City of Denton

Signed: 3/25/2025 10:48:53 AM

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Michael Wilkinson

Signed by:  
  
07854FF0D4FF43B...

Sent: 3/27/2025 2:10:45 PM

Michael.Wilkinson@altec.com

Viewed: 3/28/2025 8:36:00 AM

East TX Area Service Manager

Signed: 3/28/2025 8:42:42 AM

Security Level: Email, Account Authentication (None)

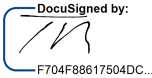
Signature Adoption: Pre-selected Style

Using IP Address: 163.116.129.117

### Electronic Record and Signature Disclosure:

Accepted: 3/28/2025 8:36:00 AM

ID: e870697a-a01a-4e76-acdd-ec07eeec66f7

Signer Events	Signature	Timestamp
Thomas Gramer Tom.Gramer@cityofdenton.com Director Facilities and Fleet Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Accepted: 3/28/2025 9:54:06 AM ID: 20671336-2d80-4196-80f9-8f2b8e99e7d9	 Signature Adoption: Drawn on Device Using IP Address: 174.226.191.139 Signed using mobile	Sent: 3/28/2025 8:42:46 AM Resent: 3/28/2025 9:10:31 AM Viewed: 3/28/2025 9:54:06 AM Signed: 3/28/2025 9:54:47 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		Sent: 3/28/2025 9:54:51 AM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> 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)  <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 3/25/2025 7:45:59 AM
Rex Krehmeyer Rex.Krehmeyer@altec.com Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Accepted: 3/25/2025 1:27:05 PM ID: 4cf5f09b-4c2a-4830-97d1-cecf7cb93868	<div>COPIED</div>	Sent: 3/27/2025 2:10:48 PM Viewed: 3/28/2025 7:36:01 AM

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Sarah Cochran Sarah.cochran@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 3/28/2025 9:54:51 AM Viewed: 3/31/2025 8:28:52 AM

Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/25/2025 7:45:29 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](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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

**Acknowledging your access and consent to receive materials electronically**

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

By checking the 'I Agree' box, I confirm that:

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



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB25-058, **Version:** 1

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### **AGENDA CAPTION**

Consider approval of March 24, 2025, minutes.

**CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES**  
**March 24, 2025**

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 24, 2025, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Aaron Newquist, Thomas Plock

Also present: Stephen Gay (alternate) and Senior Deputy City Attorney Marcella Lunn

Absent: 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 members pulled item B.

**Board Member Parker moved to recommend adoption of agenda items 2 A,C-D. Motion seconded by Board Member Rayner; motion carried.**

**YES (6): Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Aaron Newquist, Thomas Plock**

**NO (0):**

**A. PUB25-034** 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 Wastech Corporation, amending the contract approved by City Council on September 22, 2020, in the not-to-exceed amount of \$500,907.00; said first amendment to provide additional annual services and equipment replacements for the Smart Routing Solutions for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 7169 - providing for an additional first amendment expenditure amount not-to-exceed \$125,226.00, with the total contract amount not-to-exceed \$626,133.00).

**C. PUB25-038** 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 Hayes Construction, LLC, for the Trinity Bridge 6-inch Force Main Relocation for Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 8711 - awarded to Hayes Construction, LLC, in the not-to-exceed amount of \$151,988.55).

**D. PUB25-043** 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 Milsoft Utility Solutions, Inc., for continued vendor support of the Milsoft Interactive Voice Response and associated software modules along with new hardware and software upgrades for Denton Municipal Electric, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8752 - awarded to Milsoft Utility Solutions, Inc., for two (2) years, with the option for two (2) additional one (1) year extension, in the total four (4) year not-to-exceed amount of \$224,000.00).

**B. PUB25-036** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute Change Order No. 1 to the Construction Manager at Risk contract with McCarthy Building Companies, Inc., for construction phase services for Southeast Denton Package B (SED-B) Improvements for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7714 - Change Order No. 1 in the not-to-exceed amount of \$544,645.00, for a total contract award aggregated to \$22,127,023.00).

Scott Fettig answered questions from Billy Cheek.

**Board Member Parker moved to recommend adoption of agenda item 2 B. Motion seconded by Board Member Taylor; motion carried.**

**YES (6): Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Aaron Newquist, Thomas Plock**

**NO (0):**

### **3. ITEMS FOR INDIVIDUAL CONSIDERATION**

**A. PUB25-041** Consider approval of the February 24, 2025, minutes.

**Board Member Parker moved to recommend adoption of agenda items 3 A. Motion seconded by Board Member Newquist; motion carried.**

**YES (6): Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Aaron Newquist, Thomas Plock**

**NO (0):**

**B. PUB25-044** Consider approval of the March 10, 2025, minutes.

**Board Member Taylor moved to recommend adoption of agenda items 3 B. Motion seconded by Board Member Newquist; motion carried.**

**YES (6): Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Aaron Newquist, Thomas Plock**

**NO (0):**

- C. PUB25-001** Consider recommending adoption of an ordinance of the City of Denton, Texas, establishing the schedule of rates for electric service; amending the energy cost adjustment and transmission cost recovery factor schedules; providing for a repealer; providing for a severability clause; and providing effective dates for this ordinance and the schedule or rates.

Vis Bouaphanthavong gave a presentation on IC item 3C. Board members asked questions that Vis Bouaphanthavong, Tony Puente, and Bill Shepherd answered.

**Board Member Taylor moved to recommend adoption of agenda items 3 C. Motion seconded by Board Member Newquist; motion carried.**

**YES (6): Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Aaron Newquist, Thomas Plock**

**NO (0):**

- D. PUB25-037** 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 NorthStar Energy Solutions, LLC, for substation construction services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (CSP 8574 - awarded to NorthStar Energy Solutions, LLC, in the not-to-exceed amount of \$22,090,000.00).

Mark Zimmerer gave a presentation. Board members Susan Parker and Aaron Newquist asked questions that Mark answered. Newquist requested how much of the requested amount will be recoverable. Mark advised that he will follow-up with that information.

**Board Member Rayner moved to recommend adoption of agenda items 3 D. Motion seconded by Board Member Taylor; motion carried.**

**YES (6): Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Aaron Newquist, Thomas Plock**

**NO (0):**

**E. PUB25-042 Management Reports**

1. Impact on Tariffs Memo
  - a. Robert Rayner and Devin Taylor asked questions regarding the memo that Lori Hewell answered.
2. Utility Billing and Mailing Extension
3. Future Agenda Items
4. New Business Action Items

The Public Utilities Board convened into closed session at 9:29 AM.

**CLOSED MEETING**

- A. PUB25-033** Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas

Government Code Section 551.071. Receive information from staff regarding an update to the Denton Municipal Electric Energy Risk Management Policy that includes public power utility competitive data; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding legal issues associated with the above matter where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.

The Public Utilities Board reconvened at 9:38 AM from the closed session and no official action was taken.

**F. PUB25-032** Consider recommending adoption of an ordinance of the City of Denton repealing ordinance No. 24-2027; approving the 2025 Denton Municipal Electric - Energy Risk Management Policy (the "2025 ERMP"); delegating authority as provided in the 2025 ERMP; authorizing and approving the subsequent execution of such other ancillary and related documents, including, without limitation, contracts, nominations, certificates, assignments, licenses, directions, instruments, confirmations, orders, and statements as are authorized by the 2025 ERMP, which are incident to or related thereto; confirming that the city of Denton, its mayor, its city council members, its city manager, its city attorney, and its city secretary are authorized to perform such acts and obligations as are reasonably required to consummate those future transactions which are provided for and authorized by the 2025 ERMP; finding that the purchase of electricity, natural gas, and related commodities and instruments are exempt from the requirements of competitive bidding; finding that the purchase of electric energy, natural gas, and related commodities and instruments made by the city under the terms of the 2025 ERMP are in the public welfare of the citizens and electric ratepayers of the city; authorizing the expenditure of funds therefor; and, providing an effective date.

Chris Lutrick gave a presentation on agenda item 2 F.

**Board Member Plock moved to recommend adoption of agenda items 2 F. Motion seconded by Board Member Parker; motion carried.**

**YES (6): Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Aaron Newquist, Thomas Plock**

**NO (0):**

## **WORK SESSION**

**A. PUB24-268** Receive a report, hold a discussion, and give staff input regarding an Overview and Update of the City of Denton Solid Waste and Recycling Department. (Presentation 45 mins.)

Brian Boerner gave a presentation and answered questions from Board members. Brian advised that he can get the February map/memo sent out to board members.

## **5. CONCLUDING ITEMS**

None

With no further business, the meeting was adjourned at 10:15 AM.

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**BILLY CHEEK**  
**CHAIR**  
**CITY OF DENTON, TEXAS**

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**CASSIE BLACKBURN**  
**ADMIN MANAGER**  
**CITY OF DENTON, TEXAS**

Minutes approved on: 4/14/2025





# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB25-046, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending approval of a resolution of the City Council of the City of Denton, Texas approving the sale of certain transmission system assets by the Texas Municipal Power Agency ("TMPA"); and providing an effective date.



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Denton Municipal Electric

**GM:** Antonio Puente, Jr.

**DATE:** April 14, 2025

### **SUBJECT**

Consider recommending approval of a resolution of the City Council of the City of Denton, Texas approving the sale of certain transmission system assets by the Texas Municipal Power Agency ("TMPA"); and providing an effective date.

### **BACKGROUND**

The City of Bryan owns the Dansby and Bryan East substations. TMPA owns equipment in these substations. The TMPA and Bryan equipment in the Dansby and Bryan East substations have, over the years, been comingled together to such an extent, that the situation has created operational, maintenance, and regulatory issues for Bryan and TMPA.

The Resolution that is proposed for consideration and action would resolve these issues by transferring ownership of the substation equipment to Bryan. The following is a summary of the terms and conditions of the proposed Asset Purchase Agreement:

- Bryan would purchase from TMPA the substation assets for net book value, \$3,238,620.
- TMPA would reserve the right to construct new transmission lines connecting to the substations.
- TMPA would purchase from Bryan the Gibbons Creek to Greens Prairie 138 kV transmission line for net book value, \$251,648. Bryan would reserve and continue to operate its electric distribution system that is built under the transmission line.
- TMPA would purchase from Bryan equipment (consisting mainly of poles) owned by Bryan in the Agency's Gibbons Creek to Bryan East 138 kV transmission line for net book value, \$2,008,691.
- Bryan has initiated a project to reconductor the Gibbons Creek to Greens Prairie 138 kV transmission line (the "Gibbons Creek to Greens Prairie 138 kV Reconductor Project"). TMPA will acquire this Project. At closing, TMPA would reimburse Bryan for actual costs incurred as of the date of closing. Thereafter, Bryan would continue to construct the Project to completion with the costs of the Project being borne by TMPA. The Resolution appropriates \$4,786,000 for this Project.

Since the net book value of the transmission assets being sold to Bryan exceed \$500,000 in the aggregate, TMPA is required under the Joint Operating Agreement to obtain approval of this transaction from the four Member Cities.

## **RECOMMENDATION**

In conjunction with the purchase and ownership of transmission system assets by TMPA from the City of Bryan, Texas, the value proposition for TMPA is beneficial to the City of Denton. These transactions add \$3,807,719 in additional value to TMPA and since the City's ownership share is 21.3%, it'll add an additional \$811,044 in value compared to the current transmission system value. This incremental increase in value will create additional transmission revenue that will be allocated annually to the City of Denton.

Staff recommends approval of the Resolution approving the sale of certain transmission system assets by TMPA to the City of Bryan, Texas.

## **EXHIBITS**

1. Agenda Information Sheet
2. TMPA Resolution No. 2025-3-4
3. Resolution
4. Presentation

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

**AGENDA ITEM NO. 9**

**SUBJECT:** Resolution No. [2025-3-4](#) authorizing an Asset Purchase Agreement with the City of Bryan ("Bryan"), relating to the purchase by Bryan of certain Agency substation assets, and the purchase by the Agency of certain Bryan transmission line assets; amending the FY2025 Annual Transmission System Capital Budget by appropriating funds for the Gibbons Creek to Greens Prairie 138 kV Line Reconductor Project; and resolving matters incidental and related thereto.

**DISCUSSION:** The City of Bryan owns the Dansby and Bryan East substations. TMPA owns equipment in these substations. The TMPA and Bryan equipment in the Dansby and Bryan East substations have, over the years, been comingled together to such an extent, that the situation has created operational, maintenance, and regulatory issues for Bryan and TMPA.

The Resolution that is proposed for consideration and action would resolve these issues by transferring ownership of the substation equipment to Bryan. The following is a summary of the terms and conditions of the proposed Asset Purchase Agreement:

- Bryan would purchase from TMPA the substation assets for net book value, \$3,238,620.
- TMPA would reserve the right to construct new transmission lines connecting to the substations.
- TMPA would purchase from Bryan the Gibbons Creek to Greens Prairie 138 kV transmission line for net book value, \$251,648. Bryan would reserve and continue to operate its electric distribution system that is built under the transmission line.
- TMPA would purchase from Bryan equipment (consisting mainly of poles) owned by Bryan in the Agency's Gibbons Creek to Bryan East 138 kV transmission line for net book value, \$2,008,691.
- Bryan has initiated a project to reconductor the Gibbons Creek to Greens Prairie 138 kV transmission line (the "Gibbons Creek to Greens Prairie 138 kV Reconductor Project"). TMPA will acquire this Project. At closing, TMPA would reimburse Bryan for actual costs incurred as of the date of closing. Thereafter, Bryan would continue to construct the Project to completion with the costs of the Project being borne by TMPA. The Resolution appropriates \$4,786,000 for this Project.

Since the net book value of the transmission assets being sold to Bryan exceed \$500,000 in the aggregate, TMPA is required under the Joint Operating Agreement to obtain approval of this transaction from the four Member Cities. Also under the Joint Operating Agreement, this Resolution will require a Super Majority Vote of the Board.

**BACKUP MATERIAL:** Asset Purchase Agreement  
Capital Project Proposal

**ACTION REQUESTED:** Consideration and action on Resolution No. [2025-3-4](#)

**RESOLUTION NO. 2025-3-4**

**A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY (“AGENCY”) AUTHORIZING AN ASSET PURCHASE AGREEMENT WITH THE CITY OF BRYAN (“BRYAN”), RELATING TO THE PURCHASE BY BRYAN OF CERTAIN AGENCY SUBSTATION ASSETS, AND THE PURCHASE BY THE AGENCY OF CERTAIN BRYAN TRANSMISSION LINE ASSETS; AMENDING THE FY2025 ANNUAL TRANSMISSION SYSTEM CAPITAL BUDGET BY APPROPRIATING FUNDS FOR THE GIBBONS CREEK TO GREENS PRAIRIE 138 KV LINE RECONDUCTOR PROJECT; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.**

---

**WHEREAS**, the commingling of Agency and Bryan assets in Bryan's Dansby and Bryan East substations (the “Substation Assets”) is creating operational, maintenance, and regulatory issues, causing these assets to be no longer useful in the operation of the Agency's Transmission System;

**WHEREAS**, in order to resolve the foregoing operational, maintenance, and regulatory issues, the Agency and Bryan desire to enter into an Asset Purchase Agreement, under which the Substation Assets will be acquired by Bryan, and TMPA will acquire from Bryan the Gibbons Creek to Greens Prairie 138 kV Line and Bryan assets in the Agency's Gibbons Creek to Bryan East 138 kV Line;

**WHEREAS**, the disposition of the Substation Assets in accordance with the terms of the Asset Purchase Agreement is advantageous to the Transmission System;

**WHEREAS**, in order to improve the reliability of the Gibbons Creek to Greens Prairie 138 kV Line, it is necessary to acquire from Bryan its project to reconductor the Line, which is currently in progress, and to continue such project to completion (the “Gibbons Creek to Greens Prairie 138 kV Line Reconductor Project”);


**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:**

1. That the above recitals are true and correct;
2. That the General Manager, or person acting at his direction, is authorized to execute the Asset Purchase Agreement, in substantially the same form as Exhibit “A”,
3. That the General Manager, or person acting at his direction, may execute such further documents as may be necessary to close the transactions contemplated by the Asset Purchase Agreement, including a joint use or similar agreement authorizing Bryan to continue to maintain and operate its electric distribution system under the Gibbons Creek to Greens Prairie 138 kV line;
4. That the FY2025 Annual Transmission System Capital Budget is amended by appropriating (i) \$4,786,000 for the Gibbons Creek to Greens Prairie 138 kV Line Reconductor Project (ii) \$2,008,691, to acquire the City of Bryan's equipment (poles and related facilities) in the Gibbons Creek to Bryan East 138 kV

transmission line and (iii) \$251,648, to acquire the Gibbons Creek to Greens Prairie 138 kV transmission line;

5. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

**PASSED AND APPROVED THIS 13TH DAY OF MARCH 2025.**

  
\_\_\_\_\_  
Summer Spurlock, President  
Board of Directors  
Texas Municipal Power Agency

**ATTEST:**

  
\_\_\_\_\_  
Jesse Davis, Secretary  
Board of Directors  
Texas Municipal Power Agency

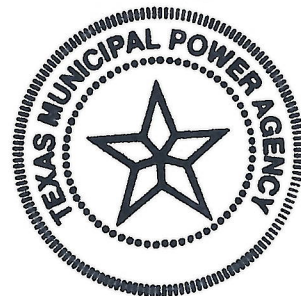


EXHIBIT "A"  
ASSET PURCHASE AGREEMENT, ATTACHED

## ASSET PURCHASE AGREEMENT

This Agreement is entered into between the Texas Municipal Power Agency (“TMPA”) and the City of Bryan, Texas (“Bryan”) on this \_\_\_\_ day of \_\_\_\_\_, 2025 (the “Effective Date”).

### RECITALS

Bryan is the owner of the Bryan East and Dansby substations. Both Bryan and TMPA own equipment in these substations. The commingling of Bryan and TMPA equipment in these substations is creating maintenance and operational issues that require resolution. To resolve these issues, the parties desire that the TMPA equipment in these substations be sold to Bryan, in order that all of the equipment in these substations will be owned by Bryan.

As part of the same transaction, TMPA desires to purchase from Bryan the Gibbons Creek to Greens Prairie 138 kV transmission line and the poles and other equipment Bryan owns in TMPA’s Gibbons Creek to Bryan East 138 kV transmission line.

In addition, Bryan is undertaking its Gibbons Creek to Greens Prairie Reconductor Capital Project (the “Reconductor Project”). The parties desire that TMPA will purchase the Reconductor Project from Bryan.

### AGREEMENT

In consideration of the mutual benefits and obligations of the parties as set forth herein, TMPA and Bryan agree as follows:

Section 1. CONVEYANCE OF TMPA EQUIPMENT TO BRYAN. TMPA agrees to convey to Bryan (i) the equipment located in the Bryan East Substation described in the Bill of Sale attached as Exhibit “A” and (ii) the equipment located in the Dansby Substation described in the Bill of Sale attached as Exhibit “B”. In consideration of these conveyances, Bryan agrees to pay TMPA at Closing \$2,425,516 for the TMPA assets in the Bryan East Substation and \$813,104 for the TMPA assets in the Dansby Substation.

Section 2. CONVEYANCE OF BRYAN EQUIPMENT TO TMPA. Bryan agrees to convey to TMPA (i) the Gibbons Creek to Greens Prairie 138 kV transmission line described in the Bill of Sale and Assignment of Easements attached as Exhibit “C” and (ii) poles and other equipment contained in TMPA’s Gibbons Creek to Bryan East 138 kV transmission line, described in the Bill of Sale attached as Exhibit “D”. In consideration of these conveyances, TMPA agrees to pay Bryan at Closing \$251,648 for the Gibbons Creek to Greens Prairie 138 kV transmission line and \$2,008,691 for the poles and other Bryan-owned equipment in the Gibbons Creek to Bryan East 138 kV transmission line.

Section 3. ACQUISITION OF CAPITAL PROJECT AS PART OF THIS EXCHANGE.



- a. PURCHASE OF RECONDUCTOR PROJECT. At Closing, TMPA will reimburse Bryan for Reimbursable Costs incurred to the date of Closing and thereby acquire the assets constructed by Bryan as of such date for the Reconductor Project. Thereafter, the Reconductor Project shall be owned by TMPA and Bryan shall complete the Reconductor Project at TMPA's expense in accordance with Section 7.

Section 4. RIGHTS RELATING TO FUTURE PROJECTS. Following Closing, TMPA shall have the right to construct and own future transmission lines connecting to the Bryan East and Dansby substations.

Section 5. PREREQUISITES TO CLOSING. The Closing shall occur at a mutually agreeable date and time after the following shall have occurred:

- a. This transaction is approved by the TMPA Board of Directors and by the four Member Cities in accordance with the Joint Operating Agreement, effective September 1, 2016, as amended (the "JOA").
- b. If a Certificate of Convenience and Necessity ("CCN") is required, TMPA obtains the CCN.

Section 6. CLOSING. At Closing:

- a. The parties will execute and deliver to Bryan the Bills of Sale substantially in the form of Exhibits "A" and "B".
- b. The parties will execute and deliver to TMPA two copies of the Bill of Sale and Assignment of Easements substantially in the form of Exhibit "C" (one for recording in Brazos County and one for recording in Grimes County) and one copy of the Bill of Sale substantially in the form of Exhibit "D".
- c. Bryan will deliver to TMPA the amount of \$3,238,620.
- d. TMPA will deliver to Bryan the amount of \$2,260,339.
- e. In addition, TMPA will deliver to Bryan the Reimbursable Costs incurred as of Closing for the Reconductor Project and the parties will deliver to TMPA a Bill of Sale for the assets constructed for such Project as of Closing similar to the form of Exhibit "D".

Section 7. CONSTRUCTION OF AND REIMBURSEMENT FOR RECONDUCTOR PROJECT FOLLOWING CLOSING. Following Closing, Bryan shall continue to completion the Reconductor Project, acting as TMPA's independent contractor. In this Agreement, "Reimbursable Costs" shall mean actual costs incurred by Bryan to construct the Reconductor Project plus benefit and overhead costs. TMPA shall reimburse to Bryan such costs within 20 days following the date of invoicing. Invoicing shall be on a monthly basis. If TMPA is late in the payment of any invoice, interest shall be paid as required by the Texas Prompt Payment Act. TMPA shall be the owner of the Reconductor Project assets constructed following Closing.

Section 8. TAX EXEMPT BONDS. It is the understanding of TMPA and Bryan that (i) TMPA acquired the facilities being conveyed to Bryan (for purposes of this Section, the "Bryan Acquired Property") and (ii) Bryan acquired the facilities being conveyed to TMPA (for purposes of this Section, the "TMPA Acquired Property") each with the proceeds of obligations, the interest on which is excludable from gross income for federal income tax purposes (collectively, the "Tax-Exempt Bonds") and, in connection each respective acquisition, both TMPA and Bryan, as the case may be, have made certain covenants, representations and provisions to assure compliance with the Internal Revenue Code of 1986, as amended (the "Code") and any regulations or rulings promulgated by the U.S. Department of the Treasury relating to Tax Exempt Bonds. TMPA and Bryan agree to take such action, or to refrain from such action, to ensure the Tax-Exempt Bonds applicable to the Bryan Acquired Property or the TMPA Acquired Property, as the case may be, satisfy such covenants, representations and provisions of the transferring party. Moreover, in the event that the Code is amended, or regulations or rulings are hereafter promulgated which impose additional requirements applicable to the Tax-Exempt Bonds or in the event that it is determined by a court of applicable jurisdiction that this Agreement fails to comply with the terms of the Code, then TMPA and Bryan agree to renegotiate, in good faith, to amend or replace this Agreement in order to comply with the additional requirements to the extent necessary to preserve the exemption from federal income taxation of interest on the Tax Exempt Bonds originally issued with respect to the Bryan Acquired Property or the TMPA Acquired Property, as the case may be.

Section 9. GOVERNING LAW. Except as provided in Section 8, this Agreement shall be governed by the laws of the State of Texas.

Section 10. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument. This Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

[Remainder of page intentionally left blank. Signature page to follow.]

In Witness Whereof, the parties have executed this Agreement as of the Effective Date.

TEXAS MUNICIPAL POWER AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF BRYAN, TEXAS

ATTEST:

\_\_\_\_\_  
Bobby Gutierrez, Mayor

\_\_\_\_\_  
Melissa Brunner, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas A. Leeper, City Attorney

EXHIBIT “A”  
FORM OF BILL OF SALE

**BILL OF SALE**

This Bill of Sale is made entered into as of \_\_\_\_\_, 202\_\_, by Texas Municipal Power Agency, a Texas municipal corporation (“**Seller**”), and the City of Bryan, Texas (“**Purchaser**”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement (as hereinafter defined).

**BACKGROUND**

Seller and Purchaser entered into that certain Asset Exchange Agreement dated \_\_\_\_\_, 2025 (the “**Agreement**”), whereby Seller and Purchaser agreed to the exchange of certain electric transmission system assets.

In connection with and as a requirement of the Agreement, Seller and Purchaser enter into this Bill of Sale for the conveyance of the non-real property Purchased Assets shown on Exhibit A-1 to this Bill of Sale.

**TRANSFER OF ASSETS**

For the good and valuable consideration set forth in the Agreement, the receipt and sufficiency of which are acknowledged by Purchaser and Seller, Seller grants, sells, conveys, delivers and otherwise transfers to Purchaser all of Seller’s right, title and interest in and to the Purchased Assets set forth on Exhibit A-1 attached to and incorporated by reference into this Bill of Sale, to have and to hold forever.

Seller represents and warrants to Purchaser: (a) that the Purchased Assets are free and clear of all Liens except for Existing Encumbrances; (b) that Seller has good title to the Purchased Assets; (c) that Seller has the lawful right and authority to sell and otherwise transfer all of Seller’s right, title and interest in and to the Purchased Assets to Purchaser; (d) that Seller will warrant and defend the same in favor of Purchaser, its successors and assigns, against the claims and demands of all persons or entities claiming by, under or through Seller but not otherwise.

**IT IS UNDERSTOOD AND AGREED THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THE AGREEMENT:**

**THE TRANSFER AND CONVEYANCE BY SELLER AND ACCEPTANCE BY PURCHASER OF THE PURCHASED ASSETS, IS ON AN “AS IS,” “WHERE IS” AND “WITH ALL FAULTS AND DEFECTS” BASIS;**

**PURCHASER HAS THOROUGHLY INSPECTED AND EXAMINED THE PURCHASED ASSETS TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE PURCHASER TO EVALUATE THE PURCHASE OF THE PURCHASED ASSETS ON THE FOREGOING BASIS; AND**

**PURCHASER IS RELYING SOLELY UPON ITS INSPECTIONS, EXAMINATION, AND EVALUATION OF THE PURCHASED ASSETS IN PURCHASING THE PURCHASED ASSETS ON AN “AS IS”, “WHERE IS” AND “WITH ALL FAULTS AND DEFECTS” BASIS, WITHOUT REPRESENTATION, WARRANTY, AGREEMENT OR STATEMENT BY SELLER OR ANYONE ACTING ON BEHALF OF SELLER, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE.**

This Bill of Sale may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Any signature to this Bill of Sale transmitted by facsimile or in PDF format via electronic mail will be deemed the equivalent of delivery of an original signature.

TEXAS MUNICIPAL POWER AGENCY,  
a Texas municipal corporation

By: \_\_\_\_\_  
Daniel Meadows, its General Manager

CITY OF BRYAN, TEXAS

ATTEST:

\_\_\_\_\_  
Bobby Gutierrez, Mayor

\_\_\_\_\_  
Melissa Brunner, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas A. Leeper, City Attorney

EXHIBIT A-1  
Conveyance of TMPA assets in Bryan East Substation

The transmission assets owned by Seller in Purchaser's Bryan East Substation, the intention being that Purchaser shall own all transmission assets in the Substation, including the following equipment as listed in the City of Bryan / TMPA Interconnection Agreement Facility Schedule No. 1 relating to the East Substation:

- 138/69/12.5kV autotransformer (BREA TI)
- 69kV circuit breaker (BREA-9010)
- 138kV disconnect switches (BREA-8012(1600A), BREA-8021(1600A), BREA-8027(1600A), BREA-8022(1600A), BREA-8031(1600A), BREA-8032(1600A), BREA-804(1600A), BREA-8019 (1200A))
- 69kV disconnect switches (BREA-9011, BREA-9012 2000A)
- 12kV surge arrestors
- 60kV surge arrestors
- 108kV surge arrestors
- 120kV surge arrestors
- 75kVA station service transformer
- manual transfer switch
- potential transformers
- coupling capacitor voltage transformers
- current transformers
- fused disconnect switches
- motor operated disconnect
- 138kV control house, including inverter transfer switch, yard lighting control, DC breaker panel, AC breaker panel, synchscope
- bus work, structures, distribution bays, relaying, wiring, and conduit.

Seller reserves from the conveyance the following assets inside the Bryan East Substation as follows:

- TMPA's Gibbons Creek-Bryan East 138kV line terminating at BTU's dead-end structure as specified in the City of Bryan / TMPA Interconnection Agreement Facility Schedule No. 1 East Substation.
- Right-of-way and access necessary to maintain Seller's facilities

EXHIBIT “B”  
FORM OF BILL OF SALE

**BILL OF SALE**

This Bill of Sale is made entered into as of \_\_\_\_\_, 202\_\_, by Texas Municipal Power Agency, a Texas municipal corporation (“**Seller**”), and the City of Bryan, Texas (“**Purchaser**”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement (as hereinafter defined).

**BACKGROUND**

Seller and Purchaser entered into that certain Asset Exchange Agreement dated \_\_\_\_\_, 2025 (the “**Agreement**”), whereby Seller and Purchaser agreed to the exchange of certain electric transmission system assets.

In connection with and as a requirement of the Agreement, Seller and Purchaser enter into this Bill of Sale for the conveyance of the non-real property Purchased Assets shown on Exhibit A-1 to this Bill of Sale.

**TRANSFER OF ASSETS**

For the good and valuable consideration set forth in the Agreement, the receipt and sufficiency of which are acknowledged by Purchaser and Seller, Seller grants, sells, conveys, delivers and otherwise transfers to Purchaser all of Seller’s right, title and interest in and to the Purchased Assets set forth on Exhibit A-1 attached to and incorporated by reference into this Bill of Sale, to have and to hold forever.

Seller represents and warrants to Purchaser: (a) that the Purchased Assets are free and clear of all Liens except for Existing Encumbrances; (b) that Seller has good title to the Purchased Assets; (c) that Seller has the lawful right and authority to sell and otherwise transfer all of Seller’s right, title and interest in and to the Purchased Assets to Purchaser; (d) that Seller will warrant and defend the same in favor of Purchaser, its successors and assigns, against the claims and demands of all persons or entities claiming by, under or through Seller but not otherwise.

**IT IS UNDERSTOOD AND AGREED THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THE AGREEMENT:**

**THE TRANSFER AND CONVEYANCE BY SELLER AND ACCEPTANCE BY PURCHASER OF THE PURCHASED ASSETS, IS ON AN “AS IS,” “WHERE IS” AND “WITH ALL FAULTS AND DEFECTS” BASIS;**

**PURCHASER HAS THOROUGHLY INSPECTED AND EXAMINED THE PURCHASED ASSETS TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE PURCHASER TO EVALUATE THE PURCHASE OF THE PURCHASED ASSETS ON THE FOREGOING BASIS; AND**

**PURCHASER IS RELYING SOLELY UPON ITS INSPECTIONS, EXAMINATION, AND EVALUATION OF THE PURCHASED ASSETS IN PURCHASING THE PURCHASED ASSETS ON AN “AS IS”, “WHERE IS” AND “WITH ALL FAULTS AND DEFECTS” BASIS, WITHOUT REPRESENTATION, WARRANTY, AGREEMENT OR STATEMENT BY SELLER OR ANYONE ACTING ON BEHALF OF SELLER, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE.**

This Bill of Sale may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Any signature to this Bill of Sale transmitted by facsimile or in PDF format via electronic mail will be deemed the equivalent of delivery of an original signature.

TEXAS MUNICIPAL POWER AGENCY,  
a Texas municipal corporation

By: \_\_\_\_\_  
Daniel Meadows, its General Manager

CITY OF BRYAN, TEXAS

ATTEST:

\_\_\_\_\_  
Bobby Gutierrez, Mayor

\_\_\_\_\_  
Melissa Brunner, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas A. Leeper, City Attorney



EXHIBIT A-1  
Conveyance of TMPA assets in Dansby Substation

The transmission assets owned by Seller in Purchaser's Dansby Substation, the intention being that Purchaser shall own all transmission assets in the Substation, including the following equipment as listed in the City of Bryan / TMPA Interconnection Agreement Facility Schedule No. 2 Dansby Substation:

- Termination on breaker side of 69kV switch BRDA-9012
- 138/69/12.5kV autotransformer (BRDA T1)
- 138kV circuit breaker (BRDA-8010, BRDA-8020, BRDA-8030, BRDA-8040)
- 138kV disconnect switches (BRDA-8017, BRDA-8011, BRDA-8012, BRDA-8021, BRDA-8027, BRDA-8022, BRDA-8037, BRDA-8031, BRDA-8032, BRDA-8041, BRDA-8042, BRDA-8019, BRDA-8062)
- 69kV circuit breaker (BRDA-9010)
- 69kV disconnect switches (BRDA-9011, BRDA-9012)
- 12kV surge arresters
- 60kV surge arresters
- 84kV surge arresters (Jack Creek Line)
- 120kV surge arresters (3 on Atkins Line, 3 on Hearne Line)
- 75kVA station service transformer
- 50kVA station service transformer
- manual transfer switch
- potential transformers
- coupling capacitor voltage transformer
- current transformers (3 on Atkins Line, 3 on Hearne Line)
- fused disconnect switches
- Control house
- bus work, structures, insulators, connectors, distribution bays, associated protective relaying, wiring, and conduit.

Seller reserves from the conveyance the following assets inside the substation as follows:

- TMPA's Dansby-Triangle Park 138kV line terminating at BTU's dead-end structure as specified in the City of Bryan / TMPA Interconnection Agreement Facility Schedule No. 2 Dansby Substation.
- Right-of-way and access necessary to maintain Seller's facilities

EXHIBIT “C”  
FORM OF BILL OF SALE AND ASSIGNMENT OF EASEMENTS

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**BILL OF SALE AND ASSIGNMENT OF EASEMENTS**

This Bill of Sale and Assignment of Easements is made entered into as of \_\_\_\_\_, 202\_\_, by the City of Bryan, Texas, a home rule municipality (“**Seller**”) and Texas Municipal Power Agency, a Texas municipal corporation (“**Purchaser**”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement (as hereinafter defined).

**BACKGROUND**

Seller and Purchaser entered into that certain Asset Exchange Agreement dated \_\_\_\_\_, 2025 (the “**Agreement**”), whereby Seller and Purchaser agreed to the exchange of certain electric transmission system assets.

In connection with and as a requirement of the Agreement, Seller and Purchaser enter into this Bill of Sale and Assignment of Easements for the conveyance of the assets shown on Exhibits A-1 and A-2 to this Bill of Sale and Assignment of Easements.

**BILL OF SALE**

For the good and valuable consideration set forth in the Agreement, the receipt and sufficiency of which are acknowledged by Purchaser and Seller, Seller grants, sells, conveys, delivers and otherwise transfers to Purchaser all of Seller’s right, title and interest in and to the Purchased Assets set forth on Exhibit A-1 attached to and incorporated by reference into this Bill of Sale and Assignment of Easements (the “A-1 Purchased Assets”), to have and to hold forever.

Seller represents and warrants to Purchaser: (a) that the A-1 Purchased Assets are free and clear of all Liens except for Existing Encumbrances; (b) that Seller has good title to the A-1 Purchased Assets; (c) that Seller has the lawful right and authority to sell and otherwise transfer all of Seller’s right, title and interest in and to the A-1 Purchased Assets to Purchaser; (d) that Seller will warrant and defend the same in favor of Purchaser, its successors and assigns, against the claims and demands of all persons or entities claiming by, under or through Seller but not otherwise.

**IT IS UNDERSTOOD AND AGREED THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THE AGREEMENT:**

**THE TRANSFER AND CONVEYANCE BY SELLER AND ACCEPTANCE BY PURCHASER OF THE A-1 PURCHASED ASSETS, IS ON AN “AS IS,” “WHERE IS” AND “WITH ALL FAULTS AND DEFECTS” BASIS;**

**PURCHASER HAS THOROUGHLY INSPECTED AND EXAMINED THE A-1 PURCHASED ASSETS TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE PURCHASER TO EVALUATE THE PURCHASE OF THE A-1 PURCHASED ASSETS ON THE FOREGOING BASIS; AND**

**PURCHASER IS RELYING SOLELY UPON ITS INSPECTIONS, EXAMINATION, AND EVALUATION OF THE A-1 PURCHASED ASSETS IN PURCHASING THE PURCHASED ASSETS ON AN “AS IS”, “WHERE IS” AND “WITH ALL FAULTS AND DEFECTS” BASIS, WITHOUT REPRESENTATION, WARRANTY, AGREEMENT OR STATEMENT BY SELLER OR ANYONE ACTING ON BEHALF OF SELLER, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE.**

#### **ASSIGNMENT OF EASEMENTS**

For the same consideration, Seller has sold, conveyed, assigned and transferred, and by these presents does sell, convey, assign and transfer unto Purchaser the transmission line easements described on Exhibit A-2 attached hereto (hereinafter, the “Transmission Easements”).

TO HAVE AND TO HOLD the Transmission Easements, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the said Purchaser, its successors and assigns forever; and Seller does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said Transmission Easements unto the said Purchaser, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same or any part thereof by, through, or under Seller, but not otherwise.

This Bill of Sale and Assignment of Easements may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Any signature to this Bill of Sale transmitted by facsimile or in PDF format via electronic mail will be deemed the equivalent of delivery of an original signature.

TEXAS MUNICIPAL POWER AGENCY,  
a Texas municipal corporation

By: \_\_\_\_\_  
Daniel Meadows, its General Manager

CITY OF BRYAN, TEXAS

ATTEST:

\_\_\_\_\_  
Bobby Gutierrez, Mayor

\_\_\_\_\_  
Melissa Brunner, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas A. Leeper, City Attorney

STATE OF TEXAS

COUNTY OF BRAZOS

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by Daniel Meadows, the General Manager of Texas Municipal Power Agency, a Texas municipal corporation on behalf of said corporation, for the purposes and consideration therein expressed.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF BRAZOS

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by Bobby Gutierrez, Mayor of the City of Bryan, Texas, a Texas home rule municipality, on behalf of said municipality, for the purposes and consideration therein expressed.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

## EXHIBIT A-1

### Conveyance of City of Bryan's Gibbons Creek to Greens Prairie 138 kV Transmission Line

Those certain electric facilities, in place, known as the Gibbons Creek-Greens Prairie 138kV Transmission Line, between the Gibbons Creek Steam Switchyard in Grimes County, Texas, and the City of College Station, Texas, extending from the dead-end structure in the Gibbons Creek Switchyard owned by TMPA in Grimes County, Texas, to the dead-end structure in the Greens Prairie substation owned by the City of College Station, in Brazos County, Texas, consisting of (i) one circuit of a double circuit line for 7.4 miles on single pole concrete structures (the "7.4 Mile Portion"), (ii) 4.1 miles of single circuit on steel and concrete single pole structures (the "4.1 Mile Portion"), and (iii) 1.5 miles of double circuit (the "1.5 Mile Portion") on steel single pole structures with the second circuit being owned by the City of College Station, and being foundations, steel and concrete structures, cross-arms, insulators, static wire, associated hardware and electric conductors (hereinafter, the "Transmission Facilities"). Without limiting the foregoing, the Transmission Facilities include approximately 5.6 miles of poles, hardware, and 48-count optical ground wire, 13.0 miles of conductor, and approximately 65 concrete and steel poles.

There is excepted from this conveyance and Transmission Facilities hereby conveyed by Seller shall not include the following:

- a. The structures, owned by TMPA, on the 7.4 Mile Portion.
- b. The second circuit and structures, owned by the City of College Station, Texas, on the 1.5 Mile Portion.
- c. The Distribution Facilities, owned by Seller, described in Exhibit B of the Non-Exclusive Partial Assignment of Easement Agreement For Electrical Utilities, dated \_\_\_\_\_, 2025.

Exhibit "A-2"

TRANSMISSION EASEMENTS

The easements utilized for the Gibbons Creek to Greens Prairie 138 kV Transmission Line, including the following easements conveyed to the Texas Municipal Power Agency as recorded in the Real Property Records of Brazos County, Texas:

1. Grantor: Lillian Weaver  
Volume 1230, Page 823
2. Grantor: Travelers Insurance Company  
Volume 1233, Page 108
3. Grantor: Anderson/Stephen  
Volume 1251, Page 663
4. Grantor: First National Bank of Bryan  
Volume 1244, Page 346
5. Grantor: Dolly Olden  
Volume 1231, Page 5
6. Grantor: James Creagor  
Volume 1231, Page 10
7. Grantor: Jerry Windham and Frank Thurmond  
Volume 1231, page 15
8. Grantor: Louise Marsh Reeves  
Volume 1231, Page 20
9. Grantor: Esterline Smith  
Volume 1230, Page 816
10. Grantor: Johnnie Mae Allen  
Volume 1230, Page 830
11. Grantor: Vivian Duren et al  
Volume 1230, Page 837
12. Grantor: Sheila Ford et al  
Volume 1230, Page 845
13. Grantor: Delores Payne et al  
Volume 1231, Page 1

After recording, return to:

Texas Municipal Power Agency  
Attention: General Manager  
P.O. Box 7000  
Bryan, Texas 77805

EXHIBIT “D”  
FORM OF BILL OF SALE

**BILL OF SALE**

This Bill of Sale is made entered into as of \_\_\_\_\_, 202\_\_, by the City of Bryan, Texas, a home rule municipality (“**Seller**”) and Texas Municipal Power Agency, a Texas municipal corporation (“**Purchaser**”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement (as hereinafter defined).

**BACKGROUND**

(A) Seller and Purchaser entered into that certain Asset Exchange Agreement dated \_\_\_\_\_, 2025 (the “**Agreement**”), whereby Seller and Purchaser agreed to the exchange of certain electric transmission system assets.

(B) In connection with and as a requirement of the Agreement, Seller and Purchaser enter into this Bill of Sale for the conveyance of the non-real property Purchased Assets shown on Exhibit A-1 to this Bill of Sale.

**TRANSFER OF ASSETS**

For the good and valuable consideration set forth in the Agreement, the receipt and sufficiency of which are acknowledged by Purchaser and Seller, Seller grants, sells, conveys, delivers and otherwise transfers to Purchaser all of Seller’s right, title and interest in and to the Purchased Assets set forth on Exhibit A-1 attached to and incorporated by reference into this Bill of Sale, to have and to hold forever.

Seller represents and warrants to Purchaser: (a) that the Purchased Assets are free and clear of all Liens except for Existing Encumbrances; (b) that Seller has good title to the Purchased Assets; (c) that Seller has the lawful right and authority to sell and otherwise transfer all of Seller’s right, title and interest in and to the Purchased Assets to Purchaser; (d) that Seller will warrant and defend the same in favor of Purchaser, its successors and assigns, against the claims and demands of all persons or entities claiming by, under or through Seller but not otherwise.

**IT IS UNDERSTOOD AND AGREED THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THE AGREEMENT:**

**THE TRANSFER AND CONVEYANCE BY SELLER AND ACCEPTANCE BY PURCHASER OF THE PURCHASED ASSETS, IS ON AN “AS IS,” “WHERE IS” AND “WITH ALL FAULTS AND DEFECTS” BASIS;**

**PURCHASER HAS THOROUGHLY INSPECTED AND EXAMINED THE PURCHASED ASSETS TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN**



**ORDER TO ENABLE PURCHASER TO EVALUATE THE PURCHASE OF THE PURCHASED ASSETS ON THE FOREGOING BASIS; AND**

**PURCHASER IS RELYING SOLELY UPON ITS INSPECTIONS, EXAMINATION, AND EVALUATION OF THE PURCHASED ASSETS IN PURCHASING THE PURCHASED ASSETS ON AN “AS IS”, “WHERE IS” AND “WITH ALL FAULTS AND DEFECTS” BASIS, WITHOUT REPRESENTATION, WARRANTY, AGREEMENT OR STATEMENT BY SELLER OR ANYONE ACTING ON BEHALF OF SELLER, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE.**

This Bill of Sale may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Any signature to this Bill of Sale transmitted by facsimile or in PDF format via electronic mail will be deemed the equivalent of delivery of an original signature.

TEXAS MUNICIPAL POWER AGENCY,  
a Texas municipal corporation

By: \_\_\_\_\_  
Daniel Meadows, its General Manager

CITY OF BRYAN, TEXAS

ATTEST:

\_\_\_\_\_  
Bobby Gutierrez, Mayor

\_\_\_\_\_  
Melissa Brunner, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas A. Leeper, City Attorney

EXHIBIT A-1  
Conveyance of City of Bryan assets in TPA'S Gibbons Creek to Bryan East 138 kV  
Transmission Line

The transmission assets owned by Seller in Purchaser's Gibbons Creek to Bryan East 138 kV Transmission Line, the intention being that Purchaser shall own all transmission assets related to this line, including 34 concrete poles and associated hardware, and 4 steel poles and associated hardware

### CERTIFICATE OF CHIEF FINANCIAL OFFICER

I, the undersigned, am the Chief Financial Officer of the Texas Municipal Power Agency (the "Agency") within the meaning of Section 5.09 of the Series 2021 Bond Resolution, the Series 2025 Bond Resolution, and the Reconstituted Series A Note Resolution (collectively, the "Bond/Note Resolutions"). In accordance with Section 5.09, I hereby make the following certifications to the Board. Capitalized terms used herein but not defined shall have the meanings set forth in the Bond/Note Resolutions.

1. The Board has authorized the sale to the City of Bryan of certain substation equipment through the adoption of Resolution 2025-3-4 on March 13, 2025 (the "Sale"). The Resolution has also authorized a partial assignment of easements to the City of Bryan (the "Assignment").

2. The Transmission System will not be materially adversely affected by the Sale and the Sale will not materially adversely affect the rates and charges charged by the Agency for the services provided by the Transmission System.

3. In my opinion as Chief Financial Officer, the Sale will not impair the ability of the Agency to comply during the current or any future year with the provisions of Section 5.02 of the Bond/Note Resolutions.

4. The Assignment does not result in a breach of the conditions set forth in Section 5.02 of the Bond/Note Resolutions.

Witness my hand this 17 day of March, 2025.

By: Lyndi Birkhead

Signature: 

Title: Chief Financial Officer

# TEXAS MUNICIPAL POWER AGENCY CAPITAL PROJECT PROPOSAL

<b>PROJECT TITLE:</b> Gibbons Creek-Greens Prairie 138kV Reconductor					
<b>DATE OF REQUEST:</b> 01/31/2025		<b>PROJECT MANAGER:</b> Clay Lindstrom - BTU			
		<input type="checkbox"/> GP&L <input type="checkbox"/> DME			
<b>TOTAL PROJECT COST:</b> \$4,786,000		<b>START DATE:</b> 09/02/2024		<b>CAPITAL PLAN YEAR:</b> 2025	
<b>CASH FLOW \$ SPENT</b>	<b>FY25:</b> \$ 2,393,000	<b>FY26:</b> \$ 2,393,000	<b>FY27:</b> \$	<b>FY28:</b> \$	<b>FY29:</b> \$
<b>YEAR(S) \$ PLACED IN-SVC</b>	<b>FY25:</b> \$	<b>FY26:</b> \$ 4,786,000	<b>FY27:</b> \$	<b>FY28:</b> \$	<b>FY29:</b> \$
<input type="checkbox"/> UPGRADE <input checked="" type="checkbox"/> REPLACEMENT <input type="checkbox"/> NEW CONSTRUCTION <input type="checkbox"/> Reimbursable by TXDOT <input type="checkbox"/> Reimbursable by _____		<b>EXISTING TMPA ASSETS RELATED TO THIS PROJECT:</b> Gibbons Creek-Greens Prairie 138kV line			
<b>DESCRIPTION OF PROJECT (INCLUDING BACKGROUND, ASSUMPTIONS, &amp; PROJECT BENEFITS):</b> <p>This project includes reconductoring 15 miles of the Gibbons Creek-Greens Prairie 138kV line using 1033.5 ACSS "curlew" and replacing 3 dead-end structures and miscellaneous hardware. The reconductor upgrade is necessitated due to the long-range planning study indicating reliability concerns .</p> <p>The cost estimate is \$4,786,000 that includes a 15% contingency. The cost estimate assumes no structure changes will be required by TXDOT nor any other re-routing or permitting issues.</p> <p>This capital proposal is associated with a potential transmission asset exchange between BTU and TMPA and will be considered by the TMPA Board in conjunction with the asset exchange agreement.</p>					

# TEXAS MUNICIPAL POWER AGENCY CAPITAL PROJECT PROPOSAL

<p>Will this project require a new Interconnection Agreement (IA) or changes to an existing IA? Explain:</p> <p>This is an existing T-line 138 KV line jointly owned by BTU and TMPA</p>	<input type="radio"/> Yes <input checked="" type="radio"/> No
<p>Will this project increase/decrease oil storage or hazardous chemical inventory or capacity? Explain:</p> <p>No new transformers/hazardous materials</p>	<input type="radio"/> Yes <input checked="" type="radio"/> No
<p>Were security improvements evaluated and/or included in the project scope? Explain:</p>	<input type="radio"/> Yes <input checked="" type="radio"/> No

COST BREAKDOWN	
Labor	\$ 1,734,000
Materials	\$ 2,034,000
Contract Services	\$ 0
Engineering Consulting	\$ 394,000
Misc. Expenses	\$ 624,000
<b>TOTAL</b>	<b>\$ 4,786,000</b>

**COST BREAKDOWN BASIS:**  
See above values as listed

<p><b>Estimation Levels:</b>            P1 = Budget/Preliminary (+/- 30%)            P2 = Conceptual (+/- 20%)            P3 = Detail Design (+/- 10%)</p> <p>Estimate Level:  <input type="radio"/> P1 <input checked="" type="radio"/> P2 <input type="radio"/> P3</p>	<p>Over \$100K in Professional Services: <input checked="" type="radio"/> Yes <input type="radio"/> No</p> <p>Is land acquisition or right of ways procurement required? <input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Does project involve asset retirement? If yes, please provide detail: <input type="radio"/> Yes <input checked="" type="radio"/> No</p>
--	---

SIGNATURES	
Project Manager: <i>Clay Lindstrom</i>	Date: 2/25/25
Supervisor: <i>[Signature]</i>	Date: 25 FEB 2025
Utility General Manager: <i>[Signature]</i>	Date: 2-28-25
TMPA CFO: <i>Lyndi Birkhead</i>	Date: 2.28.25
TMPA General Manager: <i>[Signature]</i>	Date: 02-28-2025

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DENTON, TEXAS APPROVING THE SALE OF CERTAIN TRANSMISSION SYSTEM ASSETS BY THE TEXAS MUNICIPAL POWER AGENCY (“TMPA”); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton is party to the Joint Operating Agreement, effective September 1, 2016, between TMPA and the Member Cities of Bryan, Denton, Garland, and Greenville, Texas (as amended, the “JOA”); and

WHEREAS, Section 4.4.1(6) of the JOA requires the approval of the Member Cities to enable TMPA to sell transmission assets having a net book value, in the aggregate, in excess of \$500,000 in any fiscal year; and

WHEREAS, TMPA owns assets in the City of Bryan’s Dansby and Bryan East Substations having an aggregate net book value of \$3,238,620; and

WHEREAS, in order to avoid operational and maintenance issues resulting from the comingling of Bryan-owned and TMPA-owned assets in the Dansby and Bryan East Substations, it is advisable for TMPA to sell to the City of Bryan the TMPA-owned assets, as part of the transactions described in TMPA Resolution No. 2025-3-4 (the “Resolution”) and in the Asset Purchase Agreement attached as Exhibit “A” to the Resolution (the “Transmission Assets Sale”); NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. The Transmission Assets Sale is approved for purposes of the JOA.

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

The motion to approve this resolution was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The resolution was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

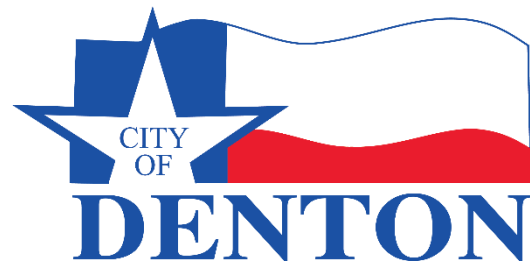
APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



# TMPA Transmission Asset Sale

**Tony Puente**  
**DME General Manager**  
**April 14, 2025**  
**Legistar ID #PUB25-046**





# About TMPA

- Texas Municipal Power Agency (TMPA)
  - A "Joint Powers Agency" owned by the cities of Denton, Bryan, Greenville and Garland.
  - Created in 1975.
  - Purpose: the generation and sale or exchange of electric energy; or the provision of wholesale transmission service.
  - Generation Assets - Sold the Gibbons Creek Steam Electric Station and all generation assets to a private party in January 2021.
  - Mine Property – Sold approximately 11,000 acres to a private party in December 2021. Approximately 723 acres remain which are currently being marketed for sale. Remaining acreage was never mined, has highway frontage, and is likely valued higher on a per acre basis.
  - Transmission Assets – Possible unbundling and transfer of ownership to each member city. May lead to dissolution of agency if no assets remain.

# Transmission Asset Sale

- Background –
  - The City of Bryan owns the Dansby and Bryan East substations, but TMPA owns some assets in these substations. This comingling has created operational, maintenance, and regulatory issues for Bryan and TMPA.
- Asset Purchase Agreement Terms and Conditions –
  - Bryan would purchase TMPA assets at Dansby and Bryan East substations for a net book value of \$3,238,620. **(This is the only item for City Council consideration)**
  - TMPA would purchase Bryan assets related to Gibbons Creek infrastructure for a net book value of \$2,260,339. In addition, TMPA would reimburse Bryan for the construction of a related transmission project valued at \$4,786,000.

## Action Required

- Per the Joint Operating Agreement, effective September 1, 2016, Member Cities must approve the sale of transmission assets having a net book value, in the aggregate, in excess of \$500,000 in any fiscal year.
- As such, staff recommends approval of the resolution approving the sale of transmission assets to the City of Bryan, Texas.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB25-048, Version: 1**

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### **AGENDA CAPTION**

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 Mountain Cascade of Texas, LLC, for the construction and movement of public water/wastewater utilities in support of TxDOT's IH-35 and FM 1173 widening from US 288 to Ganzer Road for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7968-005 - awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$16,029,149.85).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Christine Taylor  
**DATE:** April 14, 2025

### **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 Mountain Cascade of Texas, LLC, for the construction and movement of public water/wastewater utilities in support of TxDOT's IH-35 and FM 1173 widening from US 288 to Ganzer Road for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7968-005 – awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$16,029,149.85).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The Texas Department of Transportation (TxDOT) has proposed a widening of IH-35 from US-288 to Ganzer Road and the widening of FM 1173, with an estimated construction start of mid-2025. The Milam Creek Basin Wastewater Line and Lift Station Project will move public utilities in support of TxDOT with the removal and installation of 21,700 linear feet of wastewater and water utilities along I-35 from US-288 to Ganzer Road. To align with TxDOT's IH-35 widening project timeline, the Milam Creek Basin Wastewater Line and Lift Station project is scheduled for 480 days for final completion. Since the project is a forced relocation of City of Denton utilities, there will be reimbursements from TxDOT to support this effort.

The Milam Creek Basin Wastewater Line and Lift Station Project has a total estimated cost of \$16,029,149.85. This estimate includes a \$15,265,857.00 total base proposal amount and a contingency amount of \$763,292.85. A five (5) percent contingency allowance, if any, is for the sole use of the City and will be subject to written authorization by the City's Project Manager.

In an effort to meet TxDOT's anticipated roadway construction schedule, a Request for Qualifications for utility relocation construction services was solicited using the City's formal solicitation process. City Council approved a pre-qualified list of professional service firms on June 7, 2022 (Ordinance 22-1145).

Invitation for Bids was sent to the three pre-qualified firms. Two (2) bids meeting specifications were received. The lowest bid was received from Mountain Cascade of Texas, LLC.

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

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

## **RECOMMENDATION**

Award a contract with Mountain Cascade of Texas, LLC, for the construction and movement of public water/wastewater utilities in support of TxDOT's IH-35 and FM 1173 widening from US 288 to Ganzer Road for the Capital Projects Department, in a not-to-exceed amount of \$16,029,149.85.

## **PRINCIPAL PLACE OF BUSINESS**

Mountain Cascade of Texas, LLC  
Alvarado, TX

## **ESTIMATED SCHEDULE OF PROJECT**

This project will be started upon approval, with a final completion date within 480 days after receipt of order.

## **FISCAL INFORMATION**

These items/services will be funded from a combination of.

TXDOT I-35N WW LINE RELOCATION	640468545.1365.401000	\$7,265,857.00
TXDOT I-35N WW LINE RELOCATION	640500541.1365.401000	\$8,000,000.00

Requisition #169665 has been entered into the Purchasing software system in the amount of \$15,265,857. The budgeted amount for this item is \$16,029,149.85.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Bid Tabulation  
Exhibit 3: Presentation  
Exhibit 4: Ordinance and Contract

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

For information concerning this acquisition, contact: Shawn Messick, 940-349-8390.

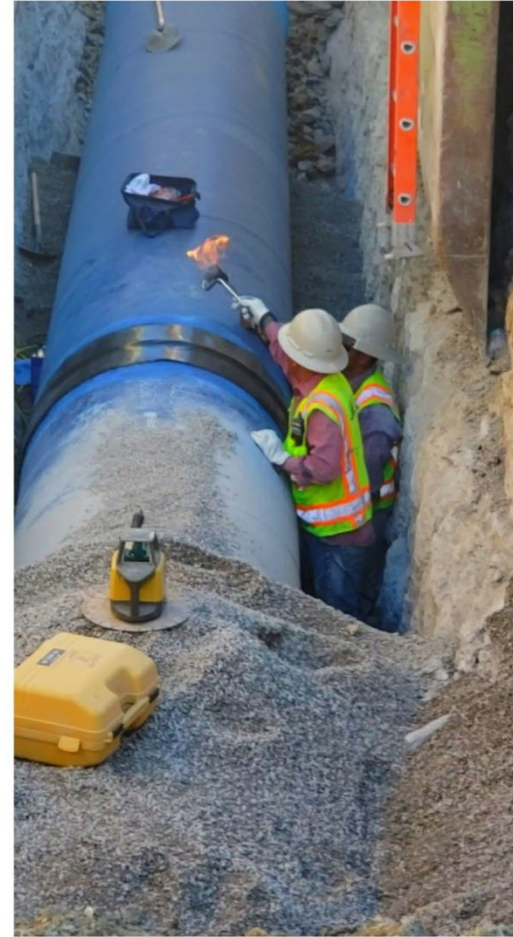
Legal point of contact: Marcella Lunn at 940-349-8333.

**Exhibit 2****RFQ 7968-005 - Bid Tabulation for the I-35H Utility Relocation Split to Milam Phase 2**

Respondent's Business Name:	<b>Mountain Cascade of Texas, LLC</b>	S.J. Louis Construction of Texas, Ltd
Principal Place of Business (City and State):	<b>Alvarado, TX</b>	Mansfield, TX
Total Bid Amount	<b>\$15,265,857.00</b>	\$17,707,340.36

5% Contingency Amount:	<b>\$763,292.85</b>
Total Contract NTE Amount:	<b>\$16,029,149.85</b>





# I-35 Split to Milam Rd Phase 2 – Milam Creek Gravity Sewer and Ganzer Lift Station

Public Utilities Board

April 14, 2025

File ID PUB25-048

Project Manager: Shawn Messick



# PROJECT OVERVIEW

## Project Scope:

- Wastewater Relocation & Abandonment
- New Lift Station and Abandonment
- Supporting TxDOT I-35 widening
- TxDOT reimbursable project
- Wastewater Abandonment (700 Linear Feet)
- Wastewater Install (11,285 Linear Feet)
- Waterline Install (500 LF of 30" Casing & 80 LF)

## Project Extents:

- US 288 to Ganzer Rd



# PROPOSAL RECEIVED

Responding Supplier	City	State	Responded Total
Mountain Cascade of Texas	Alvarado	Texas	\$15,265,857.00
S.J. Louis Construction of Texas	Mansfield	Texas	\$17,707,340.36

Note: This is an Invitation for Bid (IFB) and all the above vendors have been vetted via a pre-qualification process. All vendors can successfully complete this project on schedule and within budget.

# PROJECT SCHEDULE

- Design: Kimley-Horn & Associates, Completed in December 2024
- Public Utilities Board: April 14, 2025
- Council Award: April 15, 2025
- Notice to Proceed: Q2 2025
- Construction Completion:
  - Q4 2026\*

*\*Dates are weather dependent*

# STAFF RECOMMENDATION

Authorize contract approval with Mountain Cascade of Texas, LLC, for the base bid amount of \$15,265,857.00 for the construction of the I-35 Utility Relocation project for a not-to-exceed amount of \$16,029,149.85, which includes the 5% project contingency.

Total Base Proposal Amount	\$15,265,857.00
5% Contingency	\$763,292.85
Total Contract NTE Amount	\$16,029,149.85

# 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 MOUNTAIN CASCADE OF TEXAS, LLC, FOR THE CONSTRUCTION AND MOVEMENT OF PUBLIC WATER/WASTEWATER UTILITIES IN SUPPORT OF TXDOT'S IH-35 AND FM 1173 WIDENING FROM US 288 TO GANZER ROAD FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7968-005 – AWARDED TO MOUNTAIN CASCADE OF TEXAS, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$16,029,149.85).

WHEREAS, on June 7, 2022, the City Council approved a pre-qualified list for utility relocation and construction services for various Capital Improvement Projects (Ordinance 22-1145), and the provider (the "Provider") mentioned in this ordinance is being selected as being the most advantageous to the City considering the relative importance of price and the other evaluation factors; 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 City Manager, or their designee, is hereby authorized to enter into an agreement with Mountain Cascade of Texas, LLC, to provide construction services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

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

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

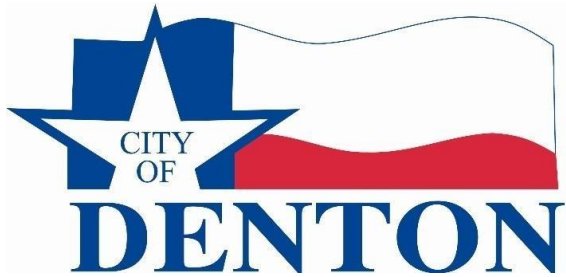
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

IFB	7968-005
File Name	I35 Utility Relocation (Split to Milam Creek Ph 2: Ganzer Road Lift Station, Force Main and Gravity Sewer)
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	



**SECTION 00 52 43**  
**AGREEMENT – UNIT PRICE BID**

**THIS AGREEMENT**, authorized on \_\_\_\_\_ is made by and between the City of Denton, a Texas home-rule municipal corporation, acting by and through its duly authorized City Manager, (“City”), and Mountain Cascade of Texas, LLC, authorized to do business in Texas, acting by and through its duly authorized representative, (“Contractor”).

City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein.

**Article 2. PROJECT**

The project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

I-35H Utility Relocation (Split to Milam Phase 2: Ganzer Road Lift Station, Force Main and Gravity Sewer)

7968-005

**Article 3. CONTRACT PRICE**

City agrees to pay Contractor for performance of the Work in accordance with the Contract Documents an amount, in current funds, of Fifteen Million Two Hundred Sixty-five Thousand Eight Hundred Fifty-seven Dollars (\$15,265,857.00). At the sole option of the City, five (5) percent contingency in the amount of Seven Hundred Sixty-three Thousand Two Hundred Ninety-two Dollars and Eighty-five Cents (\$763,292.85) may be used for a total not-to-exceed amount of Sixteen Million Twenty-nine Thousand One Hundred Forty-nine Dollars and Eighty-five Cents (\$16,029,149.85).

**Article 4. CONTRACT TIME**

**4.1 Time is of the essence.**

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

**4.2 Final Acceptance.**

The Work will be completed for Final Acceptance within **480** Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

## 4.3 Liquidated Damages:

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

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

**Article 5. CONTRACT DOCUMENTS**

## 5.1 CONTENTS:

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

1. Attachments to this Agreement:
  - a. Proposal Form
    - 1) Bid Form
    - 2) Unit Price Proposal Form
    - ~~3) Vendor Compliance to State Law Non-Resident Offeror~~
    - 4) State and Federal documents (*project specific*)
  - b. Current Prevailing Wage Rate Table
  - c. Worker's Compensation Affidavit
  - d. General Conditions.
  - e. Supplementary Conditions.
2. The following located in File 7968-005 at:  
<https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1>
  - a. Specifications described in the Table of Contents of the Project's Contract Documents.
  - b. Drawings.
  - c. Addenda.
  - d. Documentation submitted by Contractor prior to Notice of Award.
3. The following which shall be issued after the Effective Date and delivered to the City within ten (10) days of the Effective Date and before beginning Work:
  - a. Payment Bond
  - b. Performance Bond
  - c. Maintenance Bond
  - d. Power of Attorney for the Bonds
  - e. Form 1295 – Certificate of Interested Parties (email to purchasing)
  - f. Insurance Certificate

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

## Article 6. INDEMNIFICATION

**6.1 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**

**6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**

## Article 7. MISCELLANEOUS

1     7.1   Capitalized Terms.

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

5     7.2   Assignment of Contract.

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

8     7.3   Successors and Assigns.

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

12    7.4   Severability.

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

16    7.5   Venue and Waiver of Sovereign Immunity.

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

23    7.6   Authority to Sign.

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

26    7.7   Prohibition on Contracts with Companies Boycotting Israel.

27          Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government  
28          Code, the City is prohibited from entering into a contract with a company for goods or  
29          services unless the contract contains a written verification from the company that it: (1) does  
30          not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms  
31          "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section  
32          808.001 of the Texas Government Code. By signing this contract, Contractor certifies that  
33          Contractor's signature provides written verification to the City that Contractor: (1) does not  
34          boycott Israel; and (2) will not boycott Israel during the term of the contract.

35    7.8   Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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

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

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

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

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

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

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

SIGNATURE PAGE TO FOLLOW

1 IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective  
2 as of the date subscribed by the City's City Manager or his designee ("Effective Date").  
3  
4

CITY OF DENTON

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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

16 Signed by:  
17 Seth Garcia Seth Garcia  
18 SIGNATURE PRINTED NAME  
19  
20 Interim Director of Capital Projects  
21 TITLE  
22  
23 Capital Projects  
24 DEPARTMENT

CONTRACTOR  
MOUNTAIN CASCADE OF TEXAS, LLC

Signed by:  
BY: Andrew McCulloch  
0AB877B6B5940A  
AUTHORIZED AGENT

Andrew McCulloch  
NAME

Vice-President  
TITLE

817-783-3094  
PHONE NUMBER

AMcCulloch@mountaincascade.com  
EMAIL ADDRESS

39 ATTEST:  
40 LAUREN THODEN, CITY SECRETARY

51 2025-1283081  
52 TEXAS ETHICS COMMISSION  
53 1295 CERTIFICATE NUMBER

46 APPROVED AS TO LEGAL FORM:  
47 MACK REINWAND, CITY ATTORNEY

48 DocuSigned by:  
49 Marcella Luna  
50 4B070831B4AA438...

**SECTION 00 41 00****BID FORM**

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

FOR: *IFB #7968-005 – IH-35 Split to Milam Phase 2 Ganzer Road Lift Station, Force Main and Gravity Sewer*

**1 Enter Into Agreement**

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

**2 BIDDER Acknowledgements and Certification**

- 2.1 In submitting this Bid, Bidder accepts all of the terms and conditions of the INVITATION TO BIDDERS and INSTRUCTIONS TO BIDDERS, including without limitation those dealing with the disposition of Bid Bond.
- 2.2 Bidder is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.
- 2.3 Bidder certifies that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- 2.4 Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
- 2.5 Bidder has not solicited or induced any individual or entity to refrain from bidding.
- 2.6 Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:
- a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
  - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of City (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.
  - c. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish Bid prices at artificial, non-competitive levels.



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

- 2.7 The Bidder acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

### 3 Time of Completion

- 3.1 The Work will be complete for Final Acceptance within **480** Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.
- 3.2 Bidder accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable) and Final Acceptance within the times specified in the Agreement.

### 4 Attached to this Bid

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

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

**5 Total Bid Amount**

- 5.1 Bidder will complete the Work in accordance with the Contract Documents for the following bid amount. In the space provided below, please enter the total bid amount for this project. Only this figure will be read publicly by the City at the bid opening.
- 5.2 It is understood and agreed by the Bidder in signing this proposal that the total bid amount entered below is subject to verification and/or modification by multiplying the unit bid prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Total Bid Amount: \$ 15,265,857.00

**6 Bid Submittal**

This Bid is submitted on February 12th, 2025 by the entity named below.

Respectfully submitted,

By:   
(Signature)

Andrew L. McCulloch  
(Printed Name)

Title: Vice President

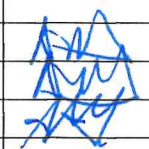
Company: Mountain Cascade of Texas, LLC.

Address: 5340 East US Highway 67  
Alvarado, TX 76009

State of Incorporation: Texas

Email: amcculloch@mountaincascade.com

Phone: 817-783-3094

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

**END OF SECTION**

SECTION 00 42 43 - UNIT PRICE BID FORM



To:

City of Denton

901-B Texas Street

Denton, TX 76209

Attn: Purchasing Dept.

From: Mountain Cascade of Texas, LLC.

5340 E US Hwy 67

Alvarado, TX 76009

Andrew L. McCulloch

817-783-3094

[amcculloch@mountaincascade.com](mailto:amcculloch@mountaincascade.com)

PROJ.:

IH-35 Split to Milam Phase 2:Ganzer Road Lift Station, Force Main and Gravity Sewer

IFB:

7968-005

ENG

PMO:

BIDDERS APPLICATION - UNIT PRICE BID

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
VOLUME 1						
CSJ 074						
CSJ 074 FORCE MAIN						
1	32 93 00	Temporary Project Sign	EA	3	\$ 1,000.00	\$ 3,000.00
2	01 70 00	Mobilization	EA	1	\$ 1,330,000.00	\$ 1,330,000.00
3	32 93 00	Seeding	SY	40,513	\$ 1.00	\$ 40,513.00
4	33 01 30	Post-CCTV Inspection	LF	10,363	\$ 3.00	\$ 31,089.00
5	33 05 05	Trench Safety	LF	9,601	\$ 1.00	\$ 9,601.00
6	33 05 07	18" Casing by Other Than Open Cut*	LF	742	\$ 750.00	\$ 556,500.00
7	33 05 07	18" Casing by Open Cut*	LF	20	\$ 550.00	\$ 11,000.00
8	33 05 15, 33 14 14	12" HDPE Force Main Carrier Pipe	LF	762	\$ 135.00	\$ 102,870.00
9	33 05 61, 33 05 62	5' Concrete Manhole*	EA	2	\$ 64,250.00	\$ 128,500.00
10	33 14 14	12" HDPE Pressure Pipe, Force Main	LF	9,461	\$ 180.00	\$ 1,702,980.00
11	33 14 14	12" HDPE Pressure Pipe, Force Main, CLSM Backfill	LF	140	\$ 370.00	\$ 51,800.00
12	33 14 20	8" Gate Valve*	EA	1	\$ 6,500.00	\$ 6,500.00
13	33 14 20	12" Gate Valve*	EA	5	\$ 9,700.00	\$ 48,500.00
14	33 31 23	3" Sewer Air Release Valve and Vault*	EA	5	\$ 30,000.00	\$ 150,000.00
15	33 05 05	Trench Safety	LF	100	\$ 5.00	\$ 500.00
16	33 05 07	30" Casing by Open Cut*	LF	100	\$ 700.00	\$ 70,000.00
17	33 05 07	30" Casing by by Other Than Open Cut*	LF	367	\$ 900.00	\$ 330,300.00
CSJ 047						
CSJ 047 GRAVITY SEWER						
18	32 93 00	Seeding	SY	1,620	\$ 1.00	\$ 1,620.00
19	33 01 30	Post-CCTV Inspection	LF	894	\$ 3.00	\$ 2,682.00
20	33 05 05	Trench Safety	LF	425	\$ 2.00	\$ 850.00
21	33 05 07	48" Casing by Open Cut	LF	99	\$ 1,080.00	\$ 106,920.00
22	33 05 08	48" Casing or Tunnel Liner Plate by Other Than Open Cut*	LF	370	\$ 1,600.00	\$ 592,000.00
23	33 05 15, 33 31 10	30" FRP Sanitary Sewer Carrier Pipe	LF	469	\$ 240.00	\$ 112,560.00
24	33 05 61, 33 05 62	5' Concrete Manhole*	EA	2	\$ 21,000.00	\$ 42,000.00
25	33 05 61, 33 05 62	6' Concrete Manhole*	EA	1	\$ 23,000.00	\$ 23,000.00
26	33 05 61, 33 05 62	5' Extra Depth Concrete Manhole	VF	20	\$ 715.00	\$ 14,300.00
27	33 05 61, 33 05 62	6' Extra Depth Concrete Manhole	VF	16	\$ 1,000.00	\$ 16,000.00
28	33 31 10	30" Fiberglass Reinforced Sanitary Sewer Pipe	LF	48	\$ 490.00	\$ 23,520.00
29	33 31 14	12" PVC Gravity Sewer Pipe	LF	377	\$ 180.00	\$ 67,860.00
30	33 31 14	15" PVC Gravity Sewer Pipe	LF	20	\$ 205.00	\$ 4,100.00
CSJ 047 LIFT STATION						
31	Various	<b>Lift Station Mechanical:</b> Including but not limited to the installation of cast-in-place wetwell and associated appurtenances, junction structure and associated gravity pipe, two (2) 1,270 gpm non-clog submersible sewage pumps and guide rails, discharge piping, pump base elbows, valve vault with valves, piping, and appurtenances, gravity and force main yard piping, flow meter and vault, and any other improvements not specifically identified in the other lump sum items, including all equipment, materials, labor and services required in accordance with the Contract Documents, Drawings, and specifications for the completion of the Work.	EA	1	\$ 1,900,000.00	\$ 1,900,000.00
32	Various	<b>Lift Station Electrical:</b> Including but not limited to procurement and installation of all proposed electrical, instrumentation, and controls equipment, SCADA equipment, level, pressure and temperature instruments, conduit, grounding and lightning protection, switchboard and automatic transfer switch, onsite generator, VFD and associated cooling units, connection to electric utility, and site lighting, including all equipment, materials, labor and services required in accordance with the Contract Documents, Drawings, and specifications for the completion of the Work.	EA	1	\$ 1,250,000.00	\$ 1,250,000.00

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
33	Various	<b>Site Improvements:</b> Including but not limited to site grading, paving, fencing, gates, landscaping improvements, equipment pads, erosion control and preparation of SWPPP, site restoration, as-built survey of underground improvements, and including all equipment, materials, labor and services required in accordance with the Contract Documents, Drawings, and specifications for the completion of the Work.	EA	1	\$ 500,000.00	\$ 500,000.00
TOTAL BID AMOUNT VOLUME 1						\$ 9,231,065.00
VOLUME 2						
CSJ 047						
CSJ 047 GRAVITY SEWER						
34	32 93 00	Temporary Project Sign	EA	3	\$ 1,000.00	\$ 3,000.00
35	02 41 14	Grout Fill 8" Utility Line (Sewer)	LF	169	\$ 20.00	\$ 3,380.00
36	02 41 14	Remove 8" Utility Line (Sewer)	LF	278	\$ 35.00	\$ 9,730.00
37	02 41 14	Remove 10" Utility Line (Sewer)	LF	199	\$ 35.00	\$ 6,965.00
38	02 41 14	Remove 12" Utility Line (Sewer)	LF	18	\$ 40.00	\$ 720.00
39	02 41 14	Remove 4' Utility Manhole	EA	7	\$ 5,000.00	\$ 35,000.00
40	02 41 14	Abandon Lift Station and Related Structures	EA	2	\$ 45,000.00	\$ 90,000.00
41	02 41 14	Remove Sewer ARV Appurtenance	EA	1	\$ 1,500.00	\$ 1,500.00
42	32 01 17	Concrete Paving Repair for Utility Trench	SY	362	\$ 250.00	\$ 90,500.00
43	32 93 00	Seeding	SY	50,084	\$ 1.00	\$ 50,084.00
44	32 01 17	Flexible Paving Repair for Utility Trench	SY	126	\$ 170.00	\$ 21,420.00
45	33 01 30	Post-CCTV Inspection	LF	9,563	\$ 7.00	\$ 66,941.00
46	33 01 33	18" Pipe Bursting	LF	880	\$ 330.00	\$ 290,400.00
47	33 01 33	Service Reinstatement, Pipe Bursting	EA	1	\$ 18,000.00	\$ 18,000.00
48	33 05 05	Trench Safety	LF	8,464	\$ 1.00	\$ 8,464.00
49	33 05 07	24" Casing by by Other Than Open Cut*	LF	679	\$ 800.00	\$ 543,200.00
50	33 05 07	30" Casing by by Other Than Open Cut*	LF	199	\$ 900.00	\$ 179,100.00
51	33 05 07	36" Casing by by Other Than Open Cut*	LF	401	\$ 1,100.00	\$ 441,100.00
52	33 05 08	48" Casing or Tunnel Liner Plate by Other Than Open Cut*	LF	349	\$ 1,600.00	\$ 558,400.00
53	32 05 15, 33 14 11, 33 31 14	12" PVC Sanitary Sewer Carrier Pipe	LF	1,152	\$ 100.00	\$ 115,200.00
54	33 05 15, 33 14 11, 33 31 14	18" PVC Sanitary Sewer Carrier Pipe	LF	199	\$ 120.00	\$ 23,880.00
55	33 05 15, 33 14 11, 33 31 14	21" PVC Sanitary Sewer Carrier Pipe	LF	401	\$ 137.00	\$ 54,937.00
56	33 05 15, 33 31 10	30" FRP Sanitary Sewer Carrier Pipe	LF	349	\$ 240.00	\$ 83,760.00
57	33 05 61, 33 05 62	4' Concrete Manhole*	EA	3	\$ 17,000.00	\$ 51,000.00
58	33 05 61, 33 05 62	5' Concrete Manhole*	EA	13	\$ 20,000.00	\$ 260,000.00
59	33 05 61, 33 05 62	6' Concrete Manhole*	EA	8	\$ 25,000.00	\$ 200,000.00
60	33 05 61, 33 05 62	5' Drop Concrete Manhole	EA	5	\$ 30,000.00	\$ 150,000.00
61	33 05 61, 33 05 62	4' Extra Depth Concrete Manhole	VF	5	\$ 600.00	\$ 3,000.00
62	33 05 61, 33 05 62	5' Extra Depth Concrete Manhole	VF	207	\$ 715.00	\$ 148,005.00
63	33 05 61, 33 05 62	6' Extra Depth Concrete Manhole	VF	48	\$ 1,000.00	\$ 48,000.00
64	33 31 14	18" PVC Gravity Sewer Pressure Pipe, CLSM Backfill	LF	180	\$ 550.00	\$ 99,000.00
65	33 31 14	8" PVC Gravity Sewer Pipe	LF	87	\$ 580.00	\$ 50,460.00
66	33 31 14	12" PVC Gravity Sewer Pipe	LF	985	\$ 250.00	\$ 246,250.00
67	33 31 14	12" PVC Gravity Sewer Pipe, CSS Embedment	LF	20	\$ 186.00	\$ 3,720.00
68	33 31 14	18" PVC Gravity Sewer Pipe	LF	37	\$ 227.00	\$ 8,399.00
69	33 31 10	30" Fiberglass Reinforced Sanitary Sewer Pipe	LF	3,391	\$ 337.00	\$ 1,142,767.00
70	34 31 14	21" PVC Gravity Sewer Pipe	LF	3,765	\$ 204.00	\$ 768,060.00
71	33 31 23	6" Sewer Service	EA	2	\$ 4,230.00	\$ 8,460.00
72	34 71 13	Traffic Control	MO	3	\$ 10,200.00	\$ 30,600.00
73	02 41 14	Grout Fill 16" Utility Line (Water)	LF	115	\$ 100.00	\$ 11,500.00
74	02 41 14	Remove 16" Water Valve	EA	2	\$ 1,000.00	\$ 2,000.00
75	02 41 14	Salvage Fire Hydrant	EA	1	\$ 1,000.00	\$ 1,000.00
76	32 01 17	Concrete Paving Repair for Utility Trench	SY	2	\$ 280.00	\$ 560.00
77	33 05 05	Trench Safety	LF	66	\$ 5.00	\$ 330.00
78	33 05 98	16" Water Main Connection with Shutdown	EA	1	\$ 20,000.00	\$ 20,000.00
79	33 14 10	16" DIP Water Pipe	LF	66	\$ 1,000.00	\$ 66,000.00
80	34 14 10	Fire Hydrant Assembly	LF	1	\$ 20,000.00	\$ 20,000.00
TOTAL BID AMOUNT VOLUME 2						\$ 6,034,792.00
TOTAL PROJECT BID AMOUNT (BOTH VOLUME 1 (CSJ 074) & VOLUME 2 (CSJ 047):						\$ 15,265,857.00

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

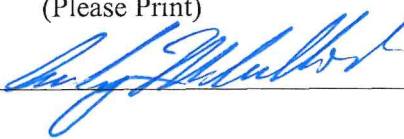


**SECTION 00 45 26**

**CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW**

Pursuant to Texas Labor Code Section 406.096(a), as amended, Contractor certifies that it provides worker's compensation insurance coverage for all of its employees employed on *IH-35 Split to Milam Phase 2: Ganzer Road Lift Station, Force Main and Gravity Sewer*. Contractor further certifies that, pursuant to Texas Labor Code, Section 406.096(b), as amended, it will provide to City its subcontractor's certificates of compliance with worker's compensation coverage.

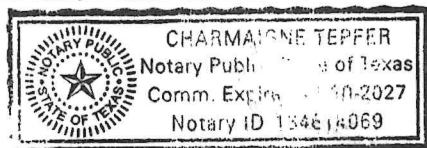
**CONTRACTOR:**

Mountain Cascade of Texas, LLC By: Andrew L. McCulloch  
Company (Please Print)  
5340 East US Highway 67 Signature:   
Address  
Alvarado, TX 76009 Title: Vice President  
City/State/Zip (Please Print)

THE STATE OF TEXAS §  
COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared Andrew L. McCulloch, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of Vice President for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12th day of February, 2025.



Charmaine Tepper  
Notary Public in and for the State of Texas

**END OF SECTION**

"General Decision Number: TX20250025 01/03/2025

Superseded General Decision Number: TX20240025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 14026 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.</li></ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 13658 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.</li></ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

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

Modification Number      Publication Date  
0                              01/03/2025

SUTX2011-007 08/03/2011

Rates                              Fringes

CONCRETE FINISHER (Paving and  
Structures).....\$ 14.12 \*\*

ELECTRICIAN.....\$ 19.80

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 13.16 \*\*

Structures.....\$ 13.84 \*\*

LABORER

Asphalt Raker.....\$ 12.69 \*\*

Flagger.....\$ 10.06 \*\*

Laborer, Common.....\$ 10.72 \*\*

Laborer, Utility.....\$ 12.32 \*\*

Pipelayer.....\$ 13.24 \*\*

Work Zone Barricade

Servicer.....\$ 11.68 \*\*

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 15.32 \*\*

Asphalt Paving Machine.....\$ 13.99 \*\*

Broom or Sweeper.....\$ 11.74 \*\*

Concrete Pavement

Finishing Machine.....\$ 16.05 \*\*

Concrete Saw.....\$ 14.48 \*\*

Crane Operator, Lattice

Boom 80 Tons or Less.....\$ 17.27 \*\*

Crane Operator, Lattice

Boom over 80 Tons.....\$ 20.52

Crane, Hydraulic 80 Tons

or Less.....\$ 18.12

Crawler Tractor.....\$ 14.07 \*\*

Excavator, 50,000 pounds

or less.....\$ 17.19 \*\*

Excavator, over 50,000

pounds.....\$ 16.99 \*\*

Foundation Drill , Truck

Mounted.....\$ 21.07

Foundation Drill, Crawler

Mounted.....\$ 17.99

Front End Loader 3 CY or

Less.....\$ 13.69 \*\*

Front End Loader, over 3 CY.\$ 14.72 \*\*

Loader/Backhoe.....\$ 15.18 \*\*

Mechanic.....\$ 17.68 \*\*

Milling Machine.....\$ 14.32 \*\*

Motor Grader, Fine Grade....\$ 17.19 \*\*

Motor Grader, Rough.....\$ 16.02 \*\*

Pavement Marking Machine....\$ 13.63 \*\*

Reclaimer/Pulverizer.....\$ 11.01 \*\*

Roller, Asphalt.....\$ 13.08 \*\*

Roller, Other.....\$ 11.51 \*\*

Scraper.....\$ 12.96 \*\*

Small Slipform Machine.....\$ 15.96 \*\*

Spreader Box.....\$ 14.73 \*\*

Servicer.....\$ 14.58 \*\*

Steel Worker (Reinforcing).....\$ 16.18 \*\*

TRUCK DRIVER

Lowboy-Float.....\$ 16.24 \*\*

Off Road Hauler.....\$ 12.25 \*\*

Single Axle.....\$ 12.31 \*\*

Single or Tandem Axle Dump

Truck.....\$ 12.62 \*\*

Tandem Axle Tractor with

Semi Trailer.....\$ 12.86 \*\*

Transit-Mix.....\$ 14.14 \*\*

WELDER.....\$ 14.84 \*\*

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

=====  
\*\* Workers in this classification may be entitled to a higher  
minimum wage under Executive Order 14026 (\$17.75) or 13658  
(\$13.30). Please see the Note at the top of the wage  
determination for more information. Please also note that the  
minimum wage requirements of Executive Order 14026 are not  
currently being enforced as to any contract or subcontract to  
which the states of Texas, Louisiana, or Mississippi, including  
their agencies, are a party.

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

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

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The body of each wage determination lists the classifications  
and wage rates that have been found to be prevailing for the  
type(s) of construction and geographic area covered by the wage  
determination. The classifications are listed in alphabetical  
order under rate identifiers indicating whether the particular  
rate is a union rate (current union negotiated rate), a survey



rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

#### Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

#### Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

#### Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

#### State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were

adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

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#### WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to [davisbaconinfo@dol.gov](mailto:davisbaconinfo@dol.gov) or by mail to:

Branch of Wage Surveys  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to [BCWD-Office@dol.gov](mailto:BCWD-Office@dol.gov) or by mail to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to [dba.reconsideration@dol.gov](mailto:dba.reconsideration@dol.gov) or by mail to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

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

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END OF GENERAL DECISION"

"General Decision Number: TX20250018 01/03/2025

Superseded General Decision Number: TX20240018

State: Texas

Construction Type: Heavy

Counties: Collin, Dallas, Denton, Ellis, Kaufman and Rockwall  
Counties in Texas.

Water and Sewer Lines/Utilities (Including Related Tunneling  
Where the Tunnel is 48"" or Less in Diameter)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date

0

01/03/2025

PLUM0100-002 11/01/2024

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 39.76	14.04

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SUTX1991-004 09/23/1991

	Rates	Fringes
Laborers:		
Common.....	\$ 7.25 **	
Utility.....	\$ 7.467 **	
Pipelayer.....	\$ 7.828 **	
Power equipment operators:		
Backhoe.....	\$ 10.804 **	
Crane.....	\$ 10.942 **	
Front End Loader.....	\$ 9.163 **	
Tunneling Machine (48" or less).....	\$ 9.163 **	
TRUCK DRIVER.....	\$ 8.528 **	

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====  
 \*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

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

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

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The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

#### Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

#### Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

#### Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date

for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

#### State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

#### WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

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

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END OF GENERAL DECISION"



# **STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Contract or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument titled “Agreement”, “Agreement – CSP”, or “Agreement – Unit Price Bid” executed by the City and Contractor for the Work, setting forth the name of the Project, Contract Price, Contract Time and the items included in the Contract.
  3. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Award*—Authorization by the City Council for the City to enter into an Agreement.
  6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. The term “Bid” shall be defined to include the term “Proposal” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  7. *Bidder*—The individual or entity that submits a Bid directly to City. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda). The term “Bidding Documents” shall be defined to include the terms “Proposal Documents” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  9. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. The term “Bidding Requirements” shall be defined to include the terms “Proposal Requirements” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and will include the Request for Proposal or Invitation to Offerors, Instructions to Offerors, Offerors Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

10. *Business Day*—A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
11. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.
12. *Change Order*—A document which is prepared by the Contractor or City, approved by the City, and signed by Contractor and City, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*—The City of Denton is, a Texas home-rule municipal corporation acting by its City Council through its City Manager or his or her designee.
14. *City Attorney*—The officially appointed City Attorney of the City of Denton or his or her designee.
15. *City Council*—The duly elected and qualified governing body of the City of Denton.
16. *City Manager*—The officially appointed authorized City Manager of the City of Denton.
17. *Contract*—The entire and integrated set of written instruments between the City and Contractor concerning the Work comprised of the Agreement and all Contract Documents, which written instruments supersede all prior negotiations, representations, or agreements, whether written or oral, concerning the Work.
18. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
19. *Contract Documents*—Those items so designated as “Contract Documents.” in the Agreement at Paragraph 5.1.A. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 12.03 in the case of Unit Price Work). The Contract Price does not include any “Incentive”, if applicable.
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (a) achieve Milestones, if any and (bb) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 12.01 of these General Conditions for definition.
24. *Damage Claims*—A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day*—A day, unless otherwise defined, shall mean a Calendar Day.
26. *Drawings*—The part of the Contract Documents prepared or approved by an Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals, as defined, are not considered Drawings as so defined here.



27. *Effective Date of the Agreement*—The date, indicated in the Agreement, on which it becomes effective,, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the City.
28. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, text, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
29. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by the Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
30. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
31. *Extra Work*—Additional work made necessary by City-approved changes or alterations to the Contract Documents. Extra Work shall be part of the Work.
32. *Field Order*—A written directive issued by City that requires changes in the Work but does not involve a change to the Contract Price, Contract Time, or Drawings, Plan, or Shop Drawings.
33. *Final Acceptance*—The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.
34. *Final Inspection*—The inspection performed by the City to determine whether the Contractor has completed each and every part or appurtenance of the Work fully, entirely, and in conformance with the Contract Documents.
35. *General Requirements*—Sections of The information set forth in “Division 101 – General Requirements” of the Standard Construction Specification Documents.
36. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, P C B s , Petroleum, Hazardous Waste, Radioactive Material, or any other substance, product, waste or materials, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
37. *Hazardous Waste*—Any solid waste listed as hazardous or which possesses one or more hazardous characteristics as defined in applicable Laws and Regulations.
38. *Incidental or incidental*—Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.
39. *Laws and Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all

governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or any portion or part of the Work to be performed.

40. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
41. *Major Item*—An item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price.
42. *Milestone*—A principal event specified in the Contract Documents relating to the performance of an identified portion of the Work by an intermediate Contract Time prior to Final Acceptance of the Work.
43. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
44. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
45. *PCBs*—Polychlorinated biphenyls.
46. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
47. *Plans*—This term will have the same definition of as “Drawings”.
48. *Project* —The Work to be performed under the Contract.
49. *Project Manager*—The authorized representative of the City who will be assigned to the Project.
50. *Project Manual*—The documentary information prepared for bidding or proposing and furnishing the Work.
51. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising Contractor’s plan to achieve each Milestone and accomplish the Work within the Contract Time.
52. *Public Meeting*—An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
53. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
54. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

55. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
56. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
57. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
58. *Specifications or Technical Specifications* —The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Section 00 00 00) of the Project.
59. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
60. *Submittal*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to the City to illustrate some portion of the Work.
61. *Subsidiary or subsidiary*—*These terms will have the same* definition as "Incidental. or incidental".
62. *Successful Bidder*—The Bidder to whom City issues a Notice of Award. The term "Bidder" shall be defined to include the terms "Proposer" or "Offeror" in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and is the Proposer or Offeror submitting the proposal or offer that provides the best value to the City and to whom the City issues a Notice of Award.
63. *Superintendent*—The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
64. *Supplementary Conditions*—The part of the Contract set forth at Division 00 73 00 that amends or supplements these General Conditions.
65. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
66. *Underground Facilities*—All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid

petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

67. *Unit Price Work*—Work for which the Contract Price is determined by multiplying the unit price for the item by the estimated quantity of the item.
68. *Weekend Working Hours*—Those hours between 8:00 a.m. and 8:30 p.m. on Saturday, and between 1:00 p.m. and 8:30 p.m. on Sunday or on a federal or state holiday observed by the City, as approved in advance by the City for performing Work.
69. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
70. *Working Day*—Defined as a Business Day but excluding any days that weather or other conditions beyond the reasonable control of the Contractor prevents the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7:00 a.m. and 8:00 p.m.

#### 1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract includes the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by CityCity. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of judgment, action, or determination will be to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).
- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  1. does not conform to the Contract Documents; or
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. has been damaged prior to City’s written notice of Final Acceptance.
- D. *Furnish, Install, Perform, Provide*
  1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to execute, carry out, furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance***

- A. Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City the performance bond, payment bond and maintenance bond that comply with the provisions of Chapter 2253 of the Texas Government Code. Work will not be allowed to begin until the performance and payment bonds have been provided by the Contractor to the City.
- B. Evidence of Contractor’s Insurance: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6. Work will not be allowed to begin until the evidence of insurance has been provided by the Contractor to the City.

### **2.02 *Copies of Documents***

- A. City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract, and three (3) additional copies of the Drawings. Additional printed copies will be furnished upon request at the cost of reproduction.

### **2.03 *Before Starting Construction***

Baseline starting Work, Contractor shall submit for review by City the following in accordance with the Contract Documents:

- A. Baseline Schedules in accordance with General Requirements, Section 01 32 16.
- B. Preliminary Schedule of Submittals.
- C. Preliminary Schedule of Values: For lump sum contracts, a Schedule of Values for all of the Work that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.04 *Preconstruction Meeting*

- A. Before any Work at the Site is started, the Contractor shall attend a Preconstruction Meeting as specified in Section 01 31 19.

#### 2.05 *Public Meeting*

- A. Contractor may not mobilize any equipment, materials, or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

#### 2.06 *Initial Acceptance of Schedules*

- A. No progress payment shall be made to Contractor until acceptable Project Schedules are submitted to City in accordance with the Contract Documents.

#### 2.07 *Electronic Submittals and Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then City and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. City will issue clarifications and interpretations of the Contract Documents as provided herein.
- D. The Specifications may vary in form, forma and style. Some Specification sections may be written in varying degrees of streamlined or declarative style, and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims or Damage Claims.

- E. The cross-referencing of Specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross-referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not cross-referencing is provided in each section or whether the cross-referencing is complete or accurate.

### 3.02 *Reference Standards*

#### A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of City, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. Reporting Discrepancies

1. *Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements, and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.1717) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by City, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

**B. Resolving Discrepancies**

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier; or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

**3.04 Requirements of the Contract Documents**

- A. During the performance of the Work and until final payment, Contractor shall submit to the City in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. City will be the interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. City will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. City's written clarification, interpretation, or decision will be final and binding on Contractor, unless Contractor appeals by filing a Contract Claim.

**3.05 Reuse of Documents**

- A. Contractor and its Subcontractors and Suppliers shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of CityCity and specific written verification or adaptation by Engineer; or
  2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without City's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.



**ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK****4.01** *Commencement of Contract Time; Notice to Proceed*

- A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

**4.02** *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work may be done at the Site prior to the date on which the Contract Time commences to run.

**4.03** *Delays in Contractor's Progress*

- A. If Contractor is delayed, City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. The City shall be liable only to the extent allowed by the provisions of the Contract and as allowed by Subchapter I, Chapter 271 of the Texas Local Government Code.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, that the Contract specifies is to be furnished by the City.
- D. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of City, Contractor, and those for whom they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Time. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph 4.03. D. The Contractor is responsible for the prompt submission of a request for an adjustment to the Contract Time under this Paragraph to the City. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this Paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with City, as contemplated in Article 8); and

4. Acts of war or terrorism.
- E. Contractor's entitlement to an adjustment of Contract Time or Contract Price is limited as follows:
  1. Contractor's entitlement to an adjustment of the Contract Time is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Time to which Contractor is otherwise entitled.
  3. Adjustments of Contract Time or Contract Price are subject to the provisions of Article 11.
- F. Each Contractor request or Change Order seeking an increase in Contract Time or Contract Price must be supplemented by supporting data that sets forth in detail the following:
  1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Time claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.08.
  6. Contractor shall also furnish such additional supporting documentation as City may require including, where appropriate, a revised Project Schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- G. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from undisclosed Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.03.F and 4.03.G.

## **ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. City shall furnish the Site. City shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which

Contractor must comply in performing the Work. City will be responsible for obtaining any necessary easements for permanent structures or permanent changes in existing facilities.

1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
  2. Unless otherwise specified in the Contract Documents, the City has or anticipates moving and/or relocating utilities, and obstructions to the Site. Any outstanding movement or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be moved and/or relocated by others.
- B. Upon reasonable written request of Contractor, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for any additional lands and access thereto not included in the Site that may be required for construction facilities or storage of materials and equipment. The cost of such shall be part of the Contract Price.

#### 5.02 *Use of Site and Other Areas*

- A. Limitation on Use of Site and Other Areas
1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, worker car parking and the operations of workers to the Site, to adjacent areas that Contractor has arranged to use through construction easements or otherwise, and to other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with worker car parking, construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries, including death, and damage to or losses of property sustained by the owners or occupants of any such land or areas; provided that such damage, losses, injuries or deaths arose out of or result from the performance of the Work or arose out of or resulted from any other actions or conduct of the Contractor or those for whom Contractor is responsible.
  2. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to reduce the area impacted to only that necessary for proper execution of the Work and/or to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
  4. Should any Damage Claim be made by any such owner or occupant adversely impacted because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
  5. ***PURSUANT TO PARAGRAPH 7.21, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH ADVERSELY IMPACTED OWNER OR OCCUPANT AGAINST CITY.***
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Site Maintenance Cleaning:* If 24 hours after written notice is given to the Contractor that the clean-up at the Site is insufficient or occurring in a manner unsatisfactory to the City, the Contractor fails to correct the unsatisfactory condition and/or procedures, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice, and the costs of such direct corrective action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor under the Contract.
- D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City and any adjacent property owners, if applicable. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, surplus materials, waste materials, rubbish and other debris and shall restore to original condition or better all areas impacted or disturbed by the Work.
- E. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. Those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and
  2. Those drawings known to City of existing physical conditions at or contiguous to the Site, including those drawings known to City depicting existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities.).
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as technical data.

- C. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of their officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any "technical data" is materially inaccurate; or
  2. is of such a nature as to require a change in the Contract Documents; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), notify City in writing about such condition.

- B. *Possible Price and Time Adjustments*
1. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under the Contract; or

- b. The existence of such condition reasonably could have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- C. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions::
- 1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
  - 2. the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data;
    - b. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
    - c. coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
- 1. If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.
  - 2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 11.
  - 3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

#### 5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports known to City relating to Hazardous Environmental Conditions that have been identified at the Site; or
  2. drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Reliance by Contractor on Technical Data*: Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for a Hazardous Environmental Condition uncovered or revealed at the Site if such Hazardous Environmental Condition was not shown or indicated in Drawings or Specifications or identified if the removal or remediation of such Hazardous Environmental Condition was not identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created by the actions of or with any materials brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible and the costs associated with the same.
- D. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.17); and (3) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. Contractor shall not be required to resume Work in connection with a Hazardous Environmental Condition identified pursuant to Paragraph 5.06.D or in any affected area until after City has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed.
- F. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work and the Contract Price. City may have such deleted portion of the Work performed by City's own forces or others.
- G. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.CityG OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.***
- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 6 – BONDS AND INSURANCE

### 6.01 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 6.02 *Performance, Payment, and Maintenance Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, in accordance with the provisions of the Texas Government Code Chapter 2253 or successor statute and as required by the City, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The performance and payment bonds must be provided by the Contractor to the City prior to the Contractor beginning any Work.



- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City. The maintenance bond(s) shall be provided as directed by the City as part of the close-out of the Contract and shall be provided prior to the final payment being made.
- C. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, or its right to do business is terminated in the State of Texas, then Contractor shall promptly notify City in writing and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, City may refuse to allow the Contractor to begin Work, exclude the Contractor from the Site and exercise City’s termination rights under Article 15.
- F. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance and endorsements (and other evidence of insurance requested by City or any other additional insured) establishing that Contractor has obtained and is maintaining the policies and coverages required by these General Conditions and the Supplementary Conditions prior to beginning any Work.
  - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as “additional insureds” on all liability policies.
  - 2. The Contractor’s general liability insurance shall include a “per project” or “per location” endorsement, that shall be identified in the certificate of insurance provided to the City.
  - 3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
  - 4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent

financial strength and solvency to the satisfaction City. If the rating is below that required, written approval of City is required.

5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage or to provide such certificates or other evidence of full compliance with the insurance requirements.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If If City agrees in writing that coverage is underwritten may be written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance or for the warranty period provided for under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements that either nullify or amend the required lines of coverage, nor or decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Notice of an Award has been issued or the Agreement executed, and the policy exclusions are determined to be unacceptable or the City desires that the Contractor obtain additional insurance coverage the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. For any proposed self-insured retention (SIR,) in excess of \$25,000.00, affecting insurance coverage, Contractor must obtain the written approval of the City in regard to asset value and stockholders' equity. In lieu of traditional insurance, proposed alternative coverage maintained through insurance pools or, risk retention groups, or self-funding will also require the written approval of the City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis must be acceptable to and approved in writing by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City will provide prior notice of 90 days and the insurance adjustments shall be incorporated into the Work by Change Order.

13. City shall be entitled, upon written request to Contractor and without expense to City, to receive copies of policies and endorsements thereto and. City may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

#### 6.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability:* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury, including death, or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury including death, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The Commercial General Liability policy shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, that are normally contained with the policy, unless the City approves such exclusions in writing.

For construction projects that present a substantial completed operation exposure, the City may require the Contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions)).
- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because of bodily injury or death of any person and/or property damage arising out of or related to the work, maintenance or use of any motor vehicle by the Contractor, any

Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

- D. *Railroad Protective Liability.* If any of the Work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop Work until replacement insurance has been procured. There shall be no time credit for delays or days not worked pursuant to this section.

6.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 6 or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Such failure to provide bonds or insurance as required by the Contract Documents is a breach of the terms of the Contract and the City may terminate the Contractor in accordance with the provisions of the Contract Documents.

**ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES**

7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not City-delegated professional design services under this Contract, and neither City nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall identify and assign a competent superintendent, who is proficient in English, and who shall not be replaced without written

notice to City of the name of the replacement superintendent. If at any time the superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the superintendent with another satisfactory to City.

- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

#### 7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to City for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours on Business Days. Contractor will not permit the performance of Work outside of regular working hours on Business Days without City's prior written consent (which will not be unreasonably withheld)). Contractor's written request (by letter or electronic communication) for City's written consent must be made as follows:
  - 1. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;
  - 2. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and
  - 3. for Work on state or federal holidays observed by the City, request must be made sufficiently in advance of the holiday, to satisfy requirements for City Council approval.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work, and must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with

instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

#### 7.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.06 and the General Requirements as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to the City for acceptance (to the extent indicated in Paragraph 2.06 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments must comply with any provisions of the General Requirements applicable thereto.
  - 2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment request for the duration of the Contract in accordance with the Construction Progress Schedule, General Requirements 01 32 16.
  - 3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 11. Adjustments in Contract Time may only be made by a Change Order.

#### 7.06 *“Or Equals”*

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that City permit the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If City in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an “or equal” item. For the purposes of this Paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. the City determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to City.

- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
    - 1) there will be no increase in cost to the City or increase in Contract Time; and
    - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *City's Evaluation and Determination*: City will be allowed a reasonable time to evaluate each "or-equal" request. City may require Contractor to furnish additional data about the proposed "or-equal" item. City will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an "or-equal." City." City will advise Contractor in writing of its determination.
- D. *Effect of City's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The City's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If City determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that City consider the item a proposed substitution pursuant to Paragraph 7.07.

#### 7.07 Substitutions

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that City permit the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related Work at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitution therefor. City will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  - 2. The requirements for review by City will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as City may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to City for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
    - a. will certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design;
      - 2) be substantially similar in substance to the item specified; and

- 3) be well-suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will adversely impact Contractor's achievement of Final Acceptance on or before the Contract Time;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and Damage Claims of other contractors affected by any resulting change.
- B. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each substitution request. City may require Contractor to furnish additional data about the proposed substitute item. City will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an acceptable substitution. City's approval determination will be evidenced by a Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Time. City will advise Contractor in writing of any denial determination.
- C. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitution. ***Contractor shall indemnify and hold harmless City and its officers, elected and appointed officials, employees, agents, consultants and subcontractors and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorney's fees) arising out of or relateds to the use of substituted materials or equipment.***
- D. *Reimbursement of City's Cost:* City will record City's costs in evaluating a substitution proposed or submitted by Contractor. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse City for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.



- F. *City Substitution Reimbursement:* Cost savings attributable to acceptance of a substitution shall be paid to City by Contractor by an appropriate Change Order decreasing the Contract Price.
- G. *Effect of City's Determination:* If City approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The City's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.07.D, by timely submittal of a Change Order.

#### 7.08 *Concerning Subcontractors and Suppliers*

- A. Contractor shall perform with its own organization, and with the assistance of workmen under its immediate superintendence, work of the kind and value specified in the Contract, and shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.C. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- B. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.C. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- C. The City may require the use of specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work, and will provide such requirements in the Supplementary Conditions.
- D. Contractor shall provide to City as part of the Bid, the identity of all proposed Subcontractors and Suppliers. Such proposed Subcontractor or Supplier shall be deemed acceptable to City unless City raises a substantive, reasonable objection prior to execution of the Agreement.
- E. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City and any such Subcontractor, Supplier or other individual or entity; nor
  - 2. shall create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- F. No acceptance by City of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of City to the completion of the Work in accordance with the Contract Documents, Contract Price and Contract Time.
- G. Contractor shall be solely responsible for scheduling and coordinating the tasks of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

- H. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of City. Contractor must comply with all applicable federal, state, and local laws, statutes, ordinances or regulations, including but not limited to immigration laws, workers compensation laws and wage laws, in the hiring of any Subcontractor or Supplier and shall ensure that each Subcontractor or Supplier has the same obligations.
- I. Contractor shall restrict all Subcontractors and Suppliers from communicating with City, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.09 *Wage Rates*

- A. *Duty to pay Prevailing Wage Rates:* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. The then current prevailing wage rates at the time of execution of the Agreement are included in these Contract Documents.
- B. *Penalty for Violation:* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code Section 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause:* On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being retained from successive progress payments pending a final determination of the violation.
- D. *Arbitration Required if Violation Not Resolved:* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph 7.09.C. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

- E. *Records to be Maintained:* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of Final Acceptance, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be available in Denton County, Texas at all reasonable hours for inspection by the City. The provisions of Paragraph 7.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments:* With each progress payment request or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates:* The Contractor shall post prevailing wage rates in a conspicuous place at the Site at all times.
- H. *Subcontractor Compliance:* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs 7.09.A through 7.09.G.

#### 7.10 *Patent Fees and Royalties*

- A. Contractor shall pay all patent or license fees and royalties and pay all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any patent or license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay said fees or, royalties or costs to others.
- B. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.***

#### 7.11 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Unless otherwise expressly provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. City shall provide reasonable assistance to Contractor, if necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work applicable at the time the Notice of Award is issued, except for permits provided by the City as specified in Paragraph 7.11.B. City shall pay the charges of utility service providers for connections for providing permanent service to the Work.

- B. *City obtained permits and licenses.* City will obtain and pay for those permits and licenses identified as City's responsibility in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to comply with and carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency, relating to the changes. The City will not reimburse the Contractor for any cost associated with the requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
  2. U.S. Army Corps of Engineers Permits
  3. Texas Commission on Environmental Quality Permits
  4. Railroad Company Permits
  5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

#### 7.12 Taxes

- A. On issuance of a Notice of Award by the City, an organization which qualifying for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to hisits Supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas tax permits and information may be obtained from:
1. Comptroller of Public Accounts  
Sales Tax Division  
Capitol Station  
Austin, TX 78711; or
  2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

#### 7.13 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, City shall not be responsible for monitoring Contractor's compliance with any Laws and Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall be liable for all resulting claims, costs losses, and damages, and shall indemnify and hold harmless City, and its officers, elected

and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

- C. Changes in Laws and Regulations not known at the time of the City's issuance of a Notice of Award having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

#### 7.14 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. Contractor shall include accurate locations for buried and imbedded items. These record documents, together with all approved Samples, will be available to City for reference. Upon completion of the Work, Contractor shall deliver these record documents to City prior to Final Inspection.

#### 7.15 *Safety and Protection*

- A. As between City and Contractor, Contractor shall be responsible for the safety of persons and property in the performance of the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. Contractor shall inform the City in writing of Contractor's designated safety representative at the Site.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.1515.C.2 or 7.1515.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of and remedied by Contractor at its expense.
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss;

and shall implement, erect and maintain all necessary safeguards for such safety and protection.

- F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- H. Contractor shall inform City in advance in writing of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed and City has issued a Letter of Final Acceptance.
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

#### 7.17 *Emergencies and/or Rectification*

- A. In the event of threatened or actual emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to immediately act to prevent damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If City determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take proper action within 24 hours to fulfill this written request or fails to show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire cost for such remedial action, plus 25% from any funds due or to become due the Contractor on the Project.

### 7.18 Submittals

- A. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.03).
1. Contractor shall submit the Submittals in accordance with Section 01 33 00 of the General Requirements.
  2. Data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 7.18.C.
  3. Submittals reviewed and accepted by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
  4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
  5. For-Information-Only submittals upon which the City is not expected to conduct a review or take responsive action may be so identified in the Contract Documents.
  6. Contractor shall submit the required number of Samples specified in the Specifications.
  7. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data as City may require to enable City to review the Submittal for the limited purposes set forth in Paragraph 7.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole risk, expense and responsibility of Contractor.
- C. City's Review
1. City will provide timely review of Submittals in accordance with the accepted Schedule of Submittals. City's review and acceptance will be to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents), or to safety precautions or programs incident thereto.
  3. City's review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 of the General

Requirements, and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

5. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.
6. City's review and acceptance of a Submittal, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Time or Contract Price, unless such changes are included in a Change Order.
7. Neither City's receipt, review, or acceptance of a Submittal will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in accepted Submittals, subject to the provisions of Section 01 33 00 of the General Requirements.

7.19 *Continuing the Work*

- A. Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

7.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Contractor's warranty and guarantee under this Paragraph 7.20:
  1. Observations by Engineer or City;
  2. Recommendation by Engineer or payment by City of any progress or final payment;
  3. The issuance of a letter or certificate of Final Acceptance by City or any payment related thereto by City;
  4. Use or occupancy of the Work or any part thereof by City;
  5. Any review and acceptance of a Submittal by City;



6. Any inspection, test, or acceptance by others; or
  7. Any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.

#### 7.21 Indemnification

- A. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM , FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL OR BODILY INJURY OR DEATH, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THESE CONTRACT DOCUMENTS. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY, OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR COSTS, EXPENSES AND LEGAL FEES INCURRED IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**
- B. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM FROM AND AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF PROPERTY OF THE CITY, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**

## 7.22 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Submittal related to the requirements indicated in Paragraph 7.22.B is prepared by Contractor, a Subcontractor, or others for submittal to City, then such Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to City.
- D. City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under the conditions indicated in Paragraph 7.22.B, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, City's review, acceptance, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to the conditions indicated in Paragraph 7.22.B, will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.22;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

## 7.23 *Right to Audit*

- A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract during the term of the Contract and for five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be made available, in Denton County, Texas within ten (10) Business Days of City's written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within Denton County, Texas. Except as otherwise provided herein, the cost of the audit will be borne by the City

unless the audit reveals an overpayment of 1% or greater. If the City is undertaking an audit or inspection pursuant to Paragraph 7.09 or if an overpayment of 1% or greater occurs, the City's reasonable cost of the audit, including any travel costs, must be paid by the Contractor within five (5) Business Days of receipt of City's invoice for such costs.

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

#### 7.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. Contractor shall comply with the requirements of *Title VI, Civil Rights Act of 1964 as amended* and the regulations promulgated thereunder, as may be further defined in the Supplementary Conditions, for any project receiving Federal assistance.

### **ARTICLE 8 – OTHER WORK AT THE SITE**

#### 8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work, if such other work is not noted in the Contract Documents.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and City, if City is performing other work with City's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with

Contractor's Work except for latent defects and deficiencies in such other work that could not have been discovered through a proper inspection.

- F. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with City, or that is performed without having been arranged by City. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.D.3.

#### 8.02 *Coordination*

- A. If City intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with City's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

#### 8.03 *Legal Relationships*

- A. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. When City is performing other work at or adjacent to the Site with City's employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work.
- B. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any Damage Claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, City, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, defend and hold harmless City and Engineer, and the officers, elected and appointed officials, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

**ARTICLE 9 – CITY’S RESPONSIBILITIES****9.01    *Communications to Contractor***

- A. Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

**9.02    *Furnish Data***

- A. City shall promptly furnish the data required of City under the Contract Documents.

**9.03    *Pay When Due***

- A. City shall make payments to Contractor when they are due in accordance with and subject to the provisions of Article 14.

**9.04    *Lands and Easements; Reports, Tests, and Drawings***

- A. City’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Article 5 refers to City’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

**9.05    *Change Orders***

- A. City’s responsibilities with respect to Change Orders are set forth in Article 11.

**9.06    *Inspections, Tests, and Approvals***

- A. City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.02.DD.

**9.07    *Limitations on City’s Responsibilities***

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

**9.08    *Undisclosed Hazardous Environmental Condition***

- A. City’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

**9.09    *Compliance with Safety Program***

- A. While at the Site, City’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which City has been informed in advance in writing pursuant to Paragraph 7.15.

**ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION****10.01** *City’s Project Manager or Duly Authorized Representative*

- A. City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City’s Project Manager or duly appointed representative during construction are set forth in the Contract Documents.
- B. City’s Project Manager for these Contract Documents is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19 of the General Requirements.

**10.02** *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City’s efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City’s visits and observations are subject to all the limitations on City’s responsibility set forth in Paragraph 9.07. Particularly, but without limitation, during or as a result of City’s visits or observations of Contractor’s Work, City will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

**10.03** *Determinations for Work Performed*

- A. As applicable, Contractor will determine the actual quantities and classifications of Work performed.. City’s Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City’s written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

**10.04** *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. City will be the interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City’s written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 11.07.

**ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK****11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including in the Contract Price or Contract Time, but such amendment will be made by Change Order only.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one of the following ways:
  - 1. A Field Order; or
  - 2. City's review of a Submittal (subject to the provisions of Paragraph 7.18.C); or
  - 3. City's written interpretation or clarification.

**11.02 *Execution of Change Orders***

- A. City and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed..
  - 2. Changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.04, (b) required because of City's acceptance of defective Work under Paragraph 13.05 or City's correction of defective Work under Paragraph 13.08, or (c) as otherwise agreed to by the parties.

**11.03 *Field Orders***

- A. City may authorize minor variations and deviations in changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on both the City and Contractor, which shall perform the Work involved promptly.

**11.04 *Authorized Changes in the Work – Extra Work***

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra Work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by City.

**11.05 *Unauthorized Changes in the Work***

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract

Documents, as amended, modified, or supplemented as allowed herein, except in certain cases of an emergency as provided in Paragraph 7.17.A.

**11.06** *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment for such Extra Work, and the City requires its performance, the Contractor shall proceed with the Extra Work after making written request for a Change Order and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 11.07.
- B. The Contractor shall furnish the City such records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual work performed.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be the full, complete and final payment for all charges, fees and costs Contractor incurs as a result of or relating to the Extra Work, whether said charges, fees or costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any charges, fees or costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the Extra Work.

**11.07** *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
  - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
  - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City no later than 45 days after the start of the event giving rise thereto (unless the City notifies Contractor in writing that City will allow additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
  - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.08.
  - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 11.09.
  - 5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.



6. The City shall submit any response to the Contractor within 30 days after receipt of the Contractor's last submittal (unless in connection with the Contract Claim (unless Contractor allows the City additional time to submit a response).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor unless action by City's Council is required, take one of the following actions in writing:
  1. deny the Contract Claim in whole or in part;
  2. approve the Contract Claim; or
  3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under this Paragraph 11.07 will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 11.07.
- F. If the City fails to take any action pursuant to this Paragraph 11.07, the Contract Claim is considered to have been denied by the City.

#### 11.08 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. TheThe value of any Work covered by a Change Order will be determined as follows:
  1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.08.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum or unit price, then on the basis of the Cost of the Work (determined as provided in Paragraph 12.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.08.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit will be determined as follows:
  1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3, the Contractor's fee will be 15 percent except for:
  - 1) rental fees for Contractor's own equipment; and
  - 2) bonds and insurance;
- b. For costs incurred under Paragraph 12.01.B.4, the Contractor's fee will be 5 percent;
  - 1) Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.08.C.2.a and 11.08.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, in no case shall the cumulative total of fees paid be in excess of 25% of the Cost of the Work;
- c. No fee will be payable on the basis of costs itemized under Paragraphs 12.01.B.5, 12.01.B.6, and 12.01.C;
- d. The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

#### 11.09 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed under a Change Order for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.
- C. Delay, disruption, and interference in the Work, and any related changes in Contract Time, are addressed in and governed by Paragraph 4.03.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.

**ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT****12.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work:* The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 12.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. When needed to determine the value of a Change Order. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* The term, “Cost of the Work” means the sum of all costs, except those excluded in Paragraph 12.01.C, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall be in amounts no higher than those calculated based on the prevailing wage rates contained in the Contract Documents, shall not include any of the costs itemized in Paragraph 12.01.C, and may include as applicable, but not be limited to the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs shall include, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours on Business Days, during Weekend Working Hours, or on a state or federal holiday observed by the City, shall be included in the above to the extent authorized by City.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith.
  3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved in writing by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. and the Contract Documents. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City. Contractor shall deliver such bids to City, which will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 12.01 and Paragraph 11.08.C.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work and specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically included in the Contract.
6. Supplemental costs consisting of the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and temporary office or facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations, excluding those taxes for which an exemption is available as described in Paragraph 7.12.
  - d. Deposits lost for causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of CityCity. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - f. The cost of utilities, fuel, and sanitary facilities at the Site.
  - g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - h. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically covered in the Contract. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the acts, omissions, negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Agreement will be determined as set forth in the Contract.
  - b. for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as set forth in Paragraph 11.08.C.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.08.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 12, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices, and submit in a form acceptable to City an itemized cost breakdown together with supporting data. Subject to prior written notice, City will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by City. Contractor will be responsible for ensuring that pertinent Subcontractors will afford such access to City, and preserve such documents, to the same extent as is required of Contractor.

## 12.02 Allowances

- A. *Specified Allowance*: It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to City.
- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances, have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

## 12.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 10.03.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to Unit Price Work listed and the cost of incidental work included as part of the unit price.
- D. Adjustments in Contract Price
  - 1. City may make an adjustment in the Contract Price in accordance with Paragraph 11.08 if:
    - a. the quantity of the item of Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. there is no corresponding adjustment with respect to any other item of Work.
  - 2. Adjusted unit prices will apply to all units of that item.

- E. Increased or Decreased Quantities: The City reserves the right to order Extra Work in accordance with Paragraph 11.04.
1. If the changes in quantities or the alterations do not significantly change the character of the Work under the Contract Documents, the altered Work will be paid for at the Contract unit price.
  2. If the changes in quantities or alterations materially and significantly change the character of the Work, the Contract will be amended by a Change Order.
  3. If no unit prices exist, this any increase or decrease in quantities will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 11.
  4. A significant change in the character of Work occurs when:
    - a. the character of work for any Item as altered differs materially or significantly in kind or nature from that in the Contract; or
    - b. a Major Item of work varies by more than 25% from the original Contract quantity.
  5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
  6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

**12.04 Plans Quantity Measurement for Unclassified Excavation or Embankment**

- A. Plans quantities may or may not represent the exact quantity of Work performed or material moved, handled, or placed during the term of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised in accordance with the Contract.
- B. If the total actual quantity measured for an individual item varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized Work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 11.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount identified in the approved change, and the 25% variance provisions of Paragraph 12.04.B will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.

- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

### **13.01 Access to Work**

- A. City and its Engineer, consultants, representatives, employees, and independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

### **13.02 Tests and Inspections**

- A. Contractor shall give City timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. If the Contract Documents or any Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection, testing or approval, except that those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall will be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections, tests, re-tests, and approvals required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to City;
  - 2. to attain City's acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to City.

- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
  - 1. City will coordinate such Testing to the extent possible, with Contractor;



2. Should any Testing under this Section 13.03.D result in a “fail”, “did not pass” or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor’s cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
  3. Any amounts owed for any retest under this Section 13.02.D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
  4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If the Contract Documents require the Work (or part thereof) to be approved by City or another designated individual or entity, then Contractor shall assume full responsibility for seeking and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without the written approval of City, Contractor shall, if requested by City, uncover such Work for observation. Such uncovering and the recovering of such Work will be at Contractor’s expense.

### 13.03 *Defective Work*

- A. *Contractor’s Obligation:* It is Contractor’s obligation to assure that the Work is not defective.
- B. *City’s Authority:* City has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Written notice of all defective Work of which City has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if City has rejected the defective Work, shall remove the defective Work from the Project and replace it with Work that is not defective. Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair City’s warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Contractor or City by governmental authorities because the Work is defective, and the costs of repair, replacement or reconstruction of work of others resulting from defective Work.

### 13.04 *Rejecting Defective Work*

- A. City will have authority to reject Work which City believes to be defective or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing

of the Work as provided in this Article 13, whether or not the Work is fabricated, installed, or completed.

#### 13.05 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted.

#### 13.06 *Uncovering Work*

- A. City has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the Contract Documents or specific instructions of City and if requested by City, Contractor shall uncover such Work for City's observation, inspection or testing and then replace the covering, all at Contractor's expense.
- C. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, then Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). City shall be entitled to accept defective Work in accordance with Paragraph 13.05 and in such case Contractor shall still be responsible for all costs associated with exposing, observing, and testing defective Work.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

#### 13.07 *City May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or Contractor fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or any employee or agent of, any of them.

**13.08 City May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace defective Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then City may, after providing 7 days' advance written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, and City's other contractors access to the Site to enable City to exercise the rights and remedies under this Paragraph 13.08.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court, or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.08 will be the responsibility of and will be charged against Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.08.

**ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD****14.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.03 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 12.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
  - 1. Contractor is responsible for providing all information as required to become a vendor of the City.
  - 2. At least 20 days before the date established in the General Requirements for each progress payment (but not more often than once a month), Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) bill of sale, invoice, or purchase order payments, copies of cancelled checks or other documentation establishing full payment by Contractor for the materials and equipment; (b) at City's request, documentation warranting that City has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received on account of the Work by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.

C. Review of Applications

1. City will, after receipt of each Application for Payment, either indicate in writing it will proceed to process the Application for Payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that based City's actual knowledge:
  - a. the Work has progressed to the point indicated; and
  - b. the quality and/or quantity of the Work is generally in accordance with the Contract Documents (subject to any subsequent evaluations of the Work, an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests or inspections called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraphs 10.05 and 12.03, and any other qualifications stated).
3. Processing any such payment will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
  - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
  - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process or pay the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and

may revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:

- a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
- b. there are discrepancies in quantities contained in previous applications for payment;
- c. the Contract Price has been reduced by Change Orders;
- d. City has been required to correct defective Work in accordance with Paragraph 1313.08, or has accepted defective Work pursuant to Paragraph 13.05;
- e. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- f. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Retainage:

1. For all contracts, retainage shall be five percent (5%).

E. *Liquidated Damages*: For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be paid by the Contractor to the City, not as a penalty, but as liquidated damages suffered by the City. If feasible, the parties may agree to have the liquidated damages deducted from any amounts owned to Contractor by City instead of being paid directly to City by Contractor.

F. *Payment*: Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

G. Reduction in Payment

1. City may refuse to make payment of the of the amount requested because:
  - a. Claims have been made against City based on Contractor's performance or furnishing of the Work, or City has incurred costs, losses, or damages resulting from Contractor's performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. City has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;

- g. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones or Final Acceptance of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
  - l. Other items entitle City to a set-off against the payment amount requested; or
  - m. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, within a reasonable time after Contractor remedies the reasons for such action to the satisfaction of City and City has confirmed such action.

#### 14.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

#### 14.03 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to of any such part of the Work which City determines to be ready for its intended use. In addition, City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete, subject to the following conditions:
- 1. At any time, Contractor may notify City that Contractor considers any such part of the Work ready for its intended use.
  - 2. Within a reasonable time after notification as enumerated in Paragraph 14.03, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
  - 3. Partial Utilization by City will not constitute Final Acceptance by City.

#### 14.04 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
  - 1. City will promptly schedule a Final Inspection with Contractor.
  - 2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

#### 14.05 *Final Acceptance*

- A. Upon completion by Contractor to City's satisfaction, of any and all Work in accordance with the Contract Documents, including any corrections or additional Work identified in the Final Inspection and delivery of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurances, certificates of inspection, annotated record documents and other required documents in accordance with the Contract Documents, City will issue to Contractor a letter of Final Acceptance.

#### 14.06 *Final Payment*

- A. Application for Payment
  - 1. Upon receipt of a letter of Final Acceptance from City, Contractor may make application for Final Payment following the procedures for requesting payments in accordance with the Contract Documents.
  - 2. The final Application for Payment must be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 6.03;
    - b. consent of the surety, if any, to final payment;
    - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any Liens or other title defects or will so pass upon final payment.
    - d. a list of all Contract Claims or Damage Claims against City that Contractor believes are unsettled; and
    - e. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- B. Payment Becomes Due: The final payment requested by Contractor, less previous payments made and less any sum to which City is entitled, including but not limited to liquidated damages, will become due and payable:
  - 1. After City's acceptance of the Application for Payment and accompanying documentation; and

2. After all Damage Claims have been resolved:

- a. directly by the Contractor; or
- b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.

The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract that continue thereafter.

14.07 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.01.D, and if bonds have been furnished as required in Paragraph 6.02, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.
- B. *Partial Retainage Release.* If the Contract provides for separate establishment and maintenance periods and/or test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

14.08 *Waiver of Claims*

- A. The acceptance of final payment will constitute a waiver and release by Contractor of all claims, rights, causes of action, or liabilities, including Contract Claims, against City arising out of, related to or under the Contract or for any act, omission or neglect of City.

14.09 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the Contract Documents) any Work has been found to be defective, or Contractor's repair of any damages to the Site, adjacent areas, or areas made available for Contractor's use by City has been found to be defective, then after receipt of City's written notice of defect, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
  1. correct the defective repairs to the Site or such adjacent areas, or areas made available for Contractor's use by City;
  2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by City, and



4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected, repaired or removed and replaced under this Paragraph 14.09, the correction period hereunder with respect to such Work may be extended for an additional period of one year after the end of the initial correction period.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this Paragraph 14.09 are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

### 15.01 *City May Suspend Work*

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor. City may fix the date on which Work will be resumed in such notice, and Contractor shall resume the Work on the date so fixed. During a temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way; Contractor shall take every precaution to prevent damage or deterioration of the work performed; and Contractor shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the

equipment and no profit or overhead will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

15.02 *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Project Schedule established under Paragraph 2.06 as adjusted from time to time pursuant to Paragraph 7.05);
  2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract; or
  3. Contractor's disregard of Laws and Regulations of any public body having jurisdiction; or
  4. Contractor's repeated disregard of the authority of City; or
  5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
  6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
  7. Substantial indication that the Contractor has become insolvent or bankrupt, or otherwise financially unable to perform the Work satisfactorily; or
  8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. The conference shall be held not later than 15 days after receipt of notice. by both Contractor and surety.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of the conference to address Contractor's failure to perform the Work.
  2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
    - a. If City completes the Work, City may exclude Contractor and Surety from the Site and take possession of the Work, and all materials and equipment stored at the Site

or for which City has paid Contractor, but which are stored elsewhere, and the Work as City may deem expedient.

3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by City, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph 15.02, City shall not be required to obtain the lowest price for the Work performed.
  4. Neither City, nor any of its respective consultants, agents, officers, elected or appointed officials, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
  5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim, counterclaim or offset on account of the method used by City in completing the Contract.
  6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise under the Contract or prescribed by law.
- C. Notwithstanding Paragraph 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or Surety. Any retention or payment of money due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.02, the termination procedures of that bond shall not supersede the provisions of this Article 15.

#### 15.03 *City May Terminate for Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract, in whole or in part. Any termination shall be affected by giving notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Notice shall be deemed validly given if given in accordance with Paragraph 17.01.A.

- B. After a notice of termination, has been given, and except as otherwise directed by the City, the Contractor shall:
1. stop work under the Contract on the date and to the extent specified in the notice of termination;
  2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
  3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
  4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
    - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
    - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
  5. complete performance of such Work as shall not have been terminated by the notice of termination; and
  6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the City has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of in accordance with the Contract, exclusive of items the disposition of which has been directed or authorized by City.
- D. Not later than 15 days after Contractor's submission of the certified list to City pursuant to Paragraph 15.03.C, the City shall accept title to such items, subject to verification of the list by the City upon removal of the items or, If the items are stored, then City shall have 45 days after submission of the list, to verify the list submitted and accept title to such items. Any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination has been given, the Contractor shall submit a termination claim to the City in the form and with the certification prescribed by the City. Unless an extension request is made in writing within such 60-day period by the Contractor, and granted by the City, any and all such claims of Contractor that are not submitted to City within such 60-day period shall be conclusively deemed waived.
- F. Should a termination claim be timely submitted to the City, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead

- and profit on such Work calculated and determined in accordance with the Contract Documents;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses calculated and determined in accordance with the Contract Documents; and
  3. reasonable expenses directly attributable to reasonable and necessary wind-down and termination activities, without any overhead or profit.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information submitted and available to it, the amount, if any, due to the Contractor by reason of the termination and City shall pay to the Contractor the amounts so determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, related to or resulting from such termination.

## **ARTICLE 16 – RESOLUTION OF DISPUTES**

### **16.01 *Methods and Procedures***

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 11.07 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 11.07.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 calendar days of filing of the request.
- C. The parties shall agree on a mediator; however, if they cannot agree within 14 calendar days then the Denton County Alternative Dispute Resolution Program (“DCAP”) shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party, or the mediator, states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. All costs of mediation shall be borne equally by the parties.
- D. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.
- E. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

- F. If the Contract Claim is not resolved by mediation, City's action under Paragraph 11.07.C or a denial pursuant to Paragraphs 11.07.C.3 or 11.07.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction as set forth within the Contract Documents.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice, it will be deemed to have been validly given if delivered:
1. in person, by a commercial courier service or otherwise, if to City, to the duly authorized representative of City identified in the Contract Documents or to City's Project Manager or, if to Contractor, to a member of the firm or to an officer of the corporation for whom it is intended; or
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient.

### 17.02 *Computation of Time*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a state or federal holiday observed by the City, the next Business Day shall become the last day of the period.

### 17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, in equity, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph 17.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.04 *Limitation of Damages*

- A. With respect to any and all claims, disputes subject to final resolution, and other matters at issue, neither City, nor any of its officers, directors, elected or appointed officials, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project. Further, the Contractor may only claim and the City may only be liable for those damages that are set forth in Subchapter I, Chapter 271 of the Texas

Local Government Code and the City shall not be liable for any consequential damages, exemplary damages or damages for unabsorbed home office overhead.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- B. The City has not waived its sovereign immunity except as expressly set forth in Subchapter I, Chapter 271 of the Texas Local Government Code or as expressly waived by other statute.

17.06 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and Final Acceptance of the Work or termination of the Contract or of the services of Contractor.

17.07 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

17.08 *Successors and Assigns*

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

17.09 *Governing Law*

- A. The Contract shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

17.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**SECTION 00 73 00**  
**SUPPLEMENTARY CONDITIONS**  
**TO**  
**GENERAL CONDITIONS**

**Supplementary Conditions**

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

**Defined Terms**

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

**Modifications and Supplements**

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

**SC-2.02A**

The Drawings shall consist of two Volumes: Volume 1 Plan Set and Volume 2 Plan set. The contractor shall sequence their work to begin with Volume 1. Volume 2 areas may be worked on without sacrificing manpower or schedule delays/extensions to Volume 1 work. See work sequence as shown on Drawing Sheet 7 of Volume 1 plan set.

**SC-5.01A**

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

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

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of **December 2024.**

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

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
074-01A	NORTHBRIDGE/TLB3A (formerly Blue Beacon)	March 2025
074-04A	HARLAN PROP INC	March 2025
074-06	JEJM DENTON PROPERTY LLC	November 2025

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



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

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

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

The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of **December 2024**

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
-------------------	----------------------	------------------------------

None

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

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

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

A **Geotechnical Engineering Study** Report No. **103-23-467**, dated **August 09, 2023**, prepared by **CMJ Engineering, Inc.** a sub-consultant of **Kimley-Horn**, a consultant of the City, providing additional information on **Geotechnical Engineering Study**.

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

None

#### **SC-5.05 A., "Underground Facilities"**

The following are additional resources for identification of Underground Facilities which are at or contiguous to the site of the Work, and which are not necessarily shown in the Drawings:

None

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

The following are reports and drawings of existing hazardous environmental conditions known to the City:

None

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

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

#### **SC-6.03A., "Certificates of Insurance"**

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

(1) City

(2) Consultant: **Kimley-Horn and Associates, Inc.**

(3) Other: **NONE**

**SC-6.04A., “Contractor’s Insurance”**

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

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

*Statutory limits*

*Employer's liability*

*\$500,000 each accident/occurrence*

*\$500,000 Disease - each employee*

*\$500,000 Disease - policy limit*

**SC-6.04B., “Contractor’s Insurance”**

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

*\$2,000,000 each occurrence*

*\$4,000,000 aggregate limit*

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

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

**SC 6.04C., “Contractor’s Insurance”**

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

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

*\$1,000,000 each accident on a combined single limit basis. Split limits are acceptable if limits are at least:*

*\$250,000 Bodily Injury per person /*

*\$500,000 Bodily Injury per accident /*

*\$100,000 Property Damage*

**SC-6.04D., “Contractor’s Insurance”**

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

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

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

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

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

     Required for this Contract     X     Not required for this Contract

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

1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.
2. Where more than one railroad company is operating on the same right-of-way or where several railroad companies are involved and operated on their own separate rights-of-way, the Contractor may be required to provide separate insurance policies in the name of each railroad company.
3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a railroad company's right-of-way at a location entirely separate from the grade separation or at-grade crossing, insurance coverage for this work must be included in the policy covering the grade separation.
4. If no grade separation is involved but other work is proposed on a railroad company's right-of-way, all such other work may be covered in a single policy for that railroad, even though the work may be at two or more separate locations.

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

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

#### **SC 6.04F., "Contractor's Insurance"**

Add Paragraph 6.04F. Environmental Impairment/Pollution

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

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

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

#### Required Subcontractors

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
----------------------------	-------------------------------------

None

#### SC-7.11., "Permits and Utilities"

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

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

None

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

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

1. TxDOT - RULIS Permit # 00002/20240509/43058/98302/UP (formerly Utility Installation Request (UIR))

##### SC-7.11C. "Outstanding permits and licenses"

The following is a list of known outstanding permits and/or licenses to be acquired, if any as of **December 2024**

#### Outstanding Permits and/or Licenses to Be Acquired

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
-------	--------------------------------	---------------------------

TxDOT	RULIS	January 2025
Targa	No Objection Letter	March 2025
Atmos Energy	No Objection Letter	March 2025
Eagle Ridge Gas	No Objection Letter	March 2025

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

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

1. **Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter,

“DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by City or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the City, or the Texas Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, City shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:
  - a. withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
  - b. cancellation, termination or suspension of the Contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as City or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request City to enter into such litigation to protect the interests of City, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Additional Title VI requirements can be found in the Appendix.

#### SC-8.02., “Coordination”

The individuals or entities listed below have contracts with the City for the performance of other work at the Site:

1

<b>Vendor</b>	<b>Scope of Work</b>	<b>Coordination Authority</b>
<i>Texas Department of Transportation</i>	<i>Highway and Frontage Road Construction</i>	<i>Contractor/City</i>
<i>Coserv</i>	<i>Power to Lift Station Site</i>	<i>Contractor</i>
<i>Various Franchise Utility Companies</i>	<i>Utility Construction</i>	<i>Contractor</i>
<i>City of Denton</i>	<i>The City may allow sewage to flow into the wet well (after successful water tightness test) prior to generator or pumps are finally installed, allowing for a pump and haul, or utilization of a above ground pumping system to pump into the force main</i>	<i>Contractor will be required to allow access to City and City use of items that have been installed while project finish out occurs.</i>
<i>Kimley-Horn and Associates, Inc</i>	<i>IH-35 Construction Phase Services/Design</i>	<i>Contractor/City</i>

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**SC-9.01, "Communications to Contractor"**

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

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

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**SC-13.02B., "Tests and Inspections"**

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**None**

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**SC-14.01G, "Reduction in Payment"**

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Add Paragraph 14.01G.3:

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City may reduce payments to the Contractor, if the number of Days that have passed after the date listed on the Notice to Proceed exceeds the Contract Time for Substantial Completion.

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

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**None**

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**SC – 17.01, "Documents"**

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

3  
4 **SC-17.02 – “BUY AMERICA” REQUIREMENTS”**

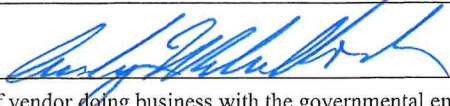
5  
6 NOTICE TO CONTRACTORS and SUPPLIERS:

7  
8 **The project requires certification from the contractor’s suppliers that all manufacturing processes**  
9 **for steel and iron materials or for the application of coatings (epoxy, galvanizing, painting or any**  
10 **other coating that protects or enhances the value of the steel or iron metal) to these materials**  
11 **occurred in the United States of America. For the purpose of the certifications, manufacturing**  
12 **processes are defined as all processes required to change the raw ore or scrap metal into the finished**  
13 **in-place steel or iron product. The successful contractor will be required to complete the Texas**  
14 **Department of Transportation Material Statement Certification Form 1818 with for each**  
15 **appropriate shop drawing submittal. TxDOT Form 1818 is included in the APPENDIX of this**  
16 **project manual.**  
17  
18  
19

**END OF SECTION**

Revision Log		
DATE	NAME	SUMMARY OF CHANGE
12/3/2024	SC - 17.02	Added the TxDOT Buy America Requirements

1  
2**SECTION 00 35 13**  
**CONFLICT OF INTEREST AFFIDAVIT**

	<b>CONFLICT OF INTEREST QUESTIONNAIRE -</b>	<b>FORM CIQ</b>
	<b>For vendor or other person doing business with local governmental entity</b>	
	<b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b>	
	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. <i>See</i> 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.	
	Mountain Cascade of Texas, LLC.	
2	<input checked="" type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.  (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7 <sup>th</sup> 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? <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input checked="" type="checkbox"/> No         </div>	
	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? <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input checked="" type="checkbox"/> No         </div>	
	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? <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input checked="" type="checkbox"/> No         </div>	
	D. Describe each employment or business and family relationship with the local government officer named in this section.	
4	<input checked="" type="checkbox"/> I have no Conflict of Interest to disclose.	
5	<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 45%;">             _____            Signature of vendor doing business with the governmental entity         </div> <div style="width: 45%; text-align: right;">           02/12/2025            _____            Date         </div> </div>	

3

**END OF SECTION**



## Certificate Of Completion

Envelope Id: AFC3A1DB-13DF-4C61-875B-E45F318B343E

Status: Sent

Subject: Please DocuSign: City Council Contract 7968-005 - I35 Utility Relocation (Split to Milam Creek Ph 2)

Source Envelope:

Document Pages: 105

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

IP Address: 198.49.140.104

## Record Tracking

Status: Original

Holder: Cori Power

Location: DocuSign

3/18/2025 9:35:43 AM

cori.power@cityofdenton.com

## Signer Events

### Signature

### Timestamp

Cori Power

**Completed**

Sent: 3/18/2025 9:45:04 AM

cori.power@cityofdenton.com

Viewed: 3/18/2025 9:46:23 AM

Purchasing Supervisor

Signed: 3/18/2025 9:46:33 AM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication (None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Lori Hewell



Sent: 3/18/2025 9:46:36 AM

lori.hewell@cityofdenton.com

Viewed: 3/18/2025 9:48:04 AM

Purchasing Manager

Signed: 3/18/2025 9:49:00 AM

City of Denton

Security Level: Email, Account Authentication (None)

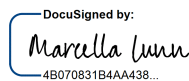
Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 3/18/2025 9:49:02 AM

marcella.lunn@cityofdenton.com

Viewed: 3/20/2025 9:22:43 AM

Senior Deputy City Attorney

Signed: 3/20/2025 9:30:51 AM

City of Denton

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Andrew McCulloch



Sent: 3/20/2025 9:30:55 AM

AMcCulloch@mountaincascade.com

Viewed: 3/20/2025 9:33:10 AM

Vice-President

Signed: 3/20/2025 9:40:23 AM

Harber Co.Inc. dba Mountain Cascade of Nevada

Security Level: Email, Account Authentication (None)


Signature Adoption: Pre-selected Style

Using IP Address: 32.132.177.214

### Electronic Record and Signature Disclosure:

Accepted: 3/20/2025 9:33:10 AM

ID: 7c3c89a4-c75c-4cfd-a82c-be6c201f1ed7

Signer Events	Signature	Timestamp
<p>Seth Garcia</p> <p>Seth.Garcia@cityofdenton.com</p> <p>Interim Director of Capital Projects</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 3/20/2025 9:53:54 AM ID: 5198bce9-3dcc-421c-9c2e-8a94681ebbbd</p>	<p>Signed by:  A13701F6BC954FC...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 107.77.218.5 Signed using mobile</p>	<p>Sent: 3/20/2025 9:40:27 AM Viewed: 3/20/2025 9:53:54 AM Signed: 3/20/2025 9:55:09 AM</p>
<p>Cori Power</p> <p>cori.power@cityofdenton.com</p> <p>Purchasing Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p><b>Completed</b></p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 3/20/2025 9:55:14 AM Viewed: 3/20/2025 2:27:13 PM Signed: 3/20/2025 2:27:39 PM</p>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		<p>Sent: 3/20/2025 2:27:43 PM</p>
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		
<p>Lauren Thoden</p> <p>lauren.thoden@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>		

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<p><b>COPIED</b></p>	<p>Sent: 3/18/2025 9:46:36 AM</p>

Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 3/20/2025 9:55:13 AM Viewed: 3/20/2025 3:28:53 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Shawn Messick Shawn.Messick@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 2/24/2025 3:26:24 PM ID: 6aeefd4e-87d1-4c66-bfbc-ff14f30b70e4		
Cody Sears codys@mountaincascade.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 7/23/2024 12:55:55 PM ID: 3a366198-6255-43f3-a3e5-76e20e3c525d		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/18/2025 9:45:04 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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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](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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

**Acknowledging your access and consent to receive materials electronically**

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

By checking the 'I Agree' box, I confirm that:

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



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

---

**File #: PUB25-052, Version: 1**

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### **AGENDA CAPTION**

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 Kirby-Smith Machinery, Inc., through the Buy Board Cooperative Purchasing Network Contract Nos. 685-22, 687-22, and 740-24, for the purchase, repairs, and rental of construction equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (File 8786 - awarded to Kirby-Smith Machinery, 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 \$7,749,000.00).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Christine Taylor  
**DATE:** April 14, 2025

### **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 Kirby-Smith Machinery, Inc., through the Buy Board Cooperative Purchasing Network Contract Nos. 685-22, 687-22, and 740-24, for the purchase, repairs, and rental of construction equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (File 8786 – awarded to Kirby-Smith Machinery, 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 \$7,749,000.00).

### **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 purchase, repairs, and rental of equipment for various departments including, but not limited to, Solid Waste, Water Distribution, and Beneficial Reuse. Examples of equipment to be acquired encompass articulated trucks, loaders, excavators, compactors, graders, and spreaders to be used for the construction and movement of bulk materials such as landfill waste, dirt, and other debris. The City has been utilizing Komatsu-branded construction equipment since 2010. We currently have 13 pieces of Komatsu branded equipment in use, which are sold by Kirby-Smith.

Additionally, the contract includes rental and repair of associated equipment. Repair services, including warranty maintenance, help to minimize downtime for essential equipment and services while rental options allow departments to respond to fluctuating demands and project-specific needs without incurring unnecessary long-term commitments. Some repairs, such as internal engine repairs, and warranty maintenance must be performed by authorized factory-trained technicians. Rental periods will vary depending on project needs. This contract ensures uninterrupted service delivery, critical for departments with operational responsibilities that directly impact the City's infrastructure and services.

The asset replacement projections are determined through a combination of asset lifecycle analysis, operational demands, and budget considerations. Fleet Services utilizes a 15-point maintenance system to track the age, usage, and maintenance history of assets to identify when replacements are necessary to a maintain cost-efficient and safe fleet. Additions are based on projected department growth, service



expansions, or new operational requirements that necessitate increased fleet capacity. The contract value is based on historical spending levels and includes estimates for future assets and services.

<b>Estimated Contract Expenses</b>						
<b>Category</b>	<b>FY 24/25</b>	<b>FY 25/26</b>	<b>FY 26/27</b>	<b>FY 27/28</b>	<b>FY 28/29</b>	<b>Total</b>
Asset Additions	\$0	\$310,000	\$320,000	\$660,000	\$680,000	\$1,970,000
Asset Replacements	900,000	620,000	640,000	660,000	680,000	3,500,000
Repair Services	340,000	340,000	360,000	410,000	460,000	1,910,000
<b>Sub Total</b>	<b>\$1,240,000</b>	<b>\$1,270,000</b>	<b>\$1,320,000</b>	<b>\$1,730,000</b>	<b>\$1,820,000</b>	<b>\$7,380,000</b>
Contingency 5%	62,000	63,500	66,000	86,500	91,000	369,000
<b>Total</b>	<b>\$1,302,000</b>	<b>\$1,333,500</b>	<b>\$1,386,000</b>	<b>\$1,816,500</b>	<b>\$1,911,000</b>	<b>\$7,749,000</b>

Pricing obtained through the Buy Board 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 February 1, 2005, City Council approved the interlocal agreement with the Buy Board Cooperative Purchasing Network (Ordinance 2005-034).

### **RECOMMENDATION**

Award a contract with Kirby-Smith Machinery, Inc., for the purchase, repairs, and rental of construction equipment for the Fleet Services Department, 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 \$7,749,000.

### **PRINCIPAL PLACE OF BUSINESS**

Kirby-Smith Machinery, Inc.  
Tulsa, OK

### **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. Buy Board contract 685-22 expires on November 30, 2025, 687-22 expires on November 30, 2025, and 740-24 expires on June 30, 2027.

### **FISCAL INFORMATION**

These products and services will be funded through Capital Fund accounts. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$7,749,000. 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: Presentation  
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: Marcella Lunn at 940-349-8333.



**Refuse Truck, Emergency Vehicle  
Repair, and Equipment Services  
Kirby-Smith Machinery, Inc.  
Fleet Services - 8786**

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**Tom Gramer**

**Director of Facilities & Fleet**

**4/14/2025**

**File ID PUB25-052**

# Buy Board Cooperative Network Construction Equipment Purchase, Repair, and Rental

- The City of Denton Fleet Services Department purchases, repairs, maintains, and rents various types of Construction Equipment utilized by several departments that supports City's services.
- Departments use various pieces of equipment for construction related services including bulk materials movement, street grading, and excavation.
- The proposed contract allows for the purchase, repair, and rental of assets utilized by several departments; such as Solid Waste, Water Distribution, Wastewater, Fleet Services and Beneficial Reuse.
- The repair services provided by this contract ensure that assets requiring specialized diagnostic equipment and technical knowledge remain operational.
- All vehicle and equipment acquisitions will be processed through the City's budgeting processes.
- The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.



April 14, 2025

PUB25-052

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# Contract Estimate

## Contract Estimate by Year

Category	FY 24/25	FY 25/26	FY 26/27	FY 27/28	FY 28/29	Total
Asset Additions	\$ -	\$ 310,000	\$ 320,000	\$ 660,000	\$ 680,000	\$ 1,970,000
Asset Replacements	\$ 900,000	\$ 620,000	\$ 640,000	\$ 660,000	\$ 680,000	\$ 3,500,000
Repair Services	\$ 340,000	\$ 340,000	\$ 360,000	\$ 410,000	\$ 460,000	\$ 1,910,000
<b>Sub Total</b>	<b>\$ 1,240,000</b>	<b>\$ 1,270,000</b>	<b>\$ 1,320,000</b>	<b>\$ 1,730,000</b>	<b>\$ 1,820,000</b>	<b>\$ 7,380,000</b>
Contingency 5%	\$ 62,000	\$ 63,500	\$ 66,000	\$ 86,500	\$ 91,000	\$ 369,000
<b>Total</b>	<b>\$ 1,302,000</b>	<b>\$ 1,333,500</b>	<b>\$ 1,386,000</b>	<b>\$ 1,816,500</b>	<b>\$ 1,911,000</b>	<b>\$ 7,749,000</b>

## Acquisitions by Department

Department	FY 24/25	FY 25/26	FY 26/27	FY 27/28	FY 28/29	Total
Solid Waste	2	2	2	2	1	9
Water Distribution		1	1	1	1	4
Waste Water				1	1	2
Fleet Services	1				1	2
<b>Total</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>17</b>

## Contract Estimate by Fund

Fund	Repair Services	Asset Additions	Asset Replacements
General Fund	0%	0%	0%
Utilities	92%	83%	91%
Internal Service Funds	8%	17%	9%
Special Revenue Fund	0%	0%	0%

The charts highlight the contract's estimated cost breakdown by fiscal year, the projected acquisition schedule based on the addition and replacement of assets, and the utilization rate by fund for acquisitions and services, all of which will be routed through the City's collaborative budgeting process.

## Asset Acquisition Example



2025 Komatsu HM400-5.  
Acquisition Price: \$ 1,027,678



April 14, 2025

PUB25-052

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# Recommendation

Staff recommends approval of a one-year, with four additional one-year extension, in the total five-year not-to-exceed amount with Kirby-Smith Machinery, Inc, of \$7,749,000.



# Questions?



April 14, 2025

PUB25-052

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH KIRBY-SMITH MACHINERY, INC., THROUGH THE BUY BOARD COOPERATIVE PURCHASING NETWORK CONTRACT NOS. 685-22, 687-22, AND 740-24, FOR THE PURCHASE, REPAIRS, AND RENTAL OF CONSTRUCTION EQUIPMENT FOR THE FLEET SERVICES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8786 – AWARDED TO KIRBY-SMITH MACHINERY, 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 \$7,749,000.00).

WHEREAS, pursuant to Ordinance 2005-034, the Buy Board Cooperative Purchasing Network has solicited, received, and tabulated competitive bids for the purchase of necessary materials, equipment, supplies, or services in accordance with the procedures of state law and city ordinances; and

WHEREAS, the City Manager, or a designated employee, has reviewed and recommended that the herein described materials, equipment, supplies, or services can be purchased by the City through the Buy Board Cooperative Purchasing Network programs 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:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8786	Kirby-Smith Machinery, Inc.	\$7,749,000.00

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 the Buy Board Cooperative Purchasing Network for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, conditions, specifications, standards,



quantities, and for the specified sums contained in the bid documents and related documents filed with the Buy Board Cooperative Purchasing Network and the purchase orders issued by the City.

**SECTION 3.** Should the City and persons submitting approved and accepted items set forth in the referenced file number wish to enter into a formal written agreement as a result of the City's ratification of bids awarded by the Buy Board Cooperative Purchasing Network, 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 the Buy Board Cooperative Purchasing Network, 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 of 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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

COOP	8786
File Name	kirby smith
Purchasing Contact	kayla clark
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND KIRBY - SMITH MACHINERY, INC.  
(File # 8786)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between Kirby – Smith Machinery, INC. an Oklahoma Corporation, whose address is PO BOX 270300 Oklahoma City, OK 73127, hereinafter referred to as "Supplier," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

**SCOPE OF SERVICES**

Supplier shall provide products in accordance with the Supplier's quote, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "B"**. 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) Buyboard Cooperative Purchasing Contract #687-22, 685-22, 740-24 with Kirby – Smith Machinery, INC., (**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 written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company"

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

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

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

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

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

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

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

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

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

SUPPLIER

Signed by:  
BY: Chuck Riddle  
65AF4DEBD5C544B...  
AUTHORIZED SIGNATURE

Printed Name: Chuck Riddle

Title: Sales manager

918-210-6095

PHONE NUMBER

criddle@kirby-smith.com

EMAIL ADDRESS

criddle@kirby-smith.com

TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
SARA HENSLEY, CITY MANAGER

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

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

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

DocuSigned by:  
Thomas Gramer  
F704F88617504DC...  
SIGNATURE  
PRINTED NAME  
Director  
TITLE  
Fleet  
DEPARTMENT

**Exhibit A**  
**Special Terms and Conditions**

**1. Contract Term**

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. At the sole option of the City of Denton, the contract may be further extended as needed, not to exceed a total of six (6) months.

**2. Total Contract Amount**

The contract total shall not exceed **\$7,749,000.00**. Pricing shall be per Exhibit B on file at the office of the Purchasing Agent.

**Exhibit C**  
**City of Denton**  
**Standard Purchase Terms and Conditions**

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent herein after referred to as Contractor. 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.



**6. DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Solicitation or Contractor's Offer. Unless otherwise stated in the Contractor's Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the purchase order.

**7. RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

**8. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract to perform but not afterward. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

**9. PLACE AND CONDITION OF WORK:** This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

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

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

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

B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not (1) while engaged in, participating, or responding to a solicitation; or (2) while in the course and scope of delivering goods or services under a City of Denton contract; or (3) on the City's property.

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

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

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

**IMMIGRATION: THE CONTRACTOR REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE REQUIREMENTS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 AND 1990 REGARDING EMPLOYMENT VERIFICATION AND RETENTION OF VERIFICATION FORMS FOR ANY INDIVIDUALS HIRED ON OR AFTER NOVEMBER 6, 1986, WHO WILL PERFORM ANY LABOR OR SERVICES UNDER THE CONTRACT AND THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 ("IIRIRA") ENACTED ON SEPTEMBER 30, 1996, AND SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY ACTION ARISING RELATED THERETO.**

**11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules, and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**

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

## **12. INVOICES:**

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

**B. Proper Invoices must include a unique invoice number, invoice date, the purchase order number, and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if

applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

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](mailto:accountspayable@cityofdenton.com). Approved invoices will be paid within thirty (30) calendar days of the invoice being received in Accounts Payable.

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

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

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

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

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

F. Payment will be made by check unless the parties mutually agree to payment by credit card or File 8786

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<sup>th</sup>) 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

File 8786

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

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

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.

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,



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

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

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

**30. DELAYS:**

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

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

**31. TIME OF COMPLETION AND LIQUIDATED DAMAGES:** Contractor agrees and acknowledges that completing the services and/or delivering the goods described in this Contract in a timely manner is very important to the City. Contractor agrees to perform all obligations within the timeframes required. As it is impracticable and extremely difficult to fix the actual damages, if any, that may proximately result from a failure by Contractor to provide the goods or

perform the service, should Contractor fail to timely perform its obligations, Contractor agrees to pay to City, or have withheld and offset from monies due it, the amount stated in the Contract Documents as liquidated damages for each calendar day of delay or nonperformance. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract. Execution of the Contract shall constitute agreement by the City and Contractor that said amount is the minimum value of the costs and actual damage caused by the Contractor's failure to timely perform. Adjustments to the contract times can only be made as provided in the Contract Documents and any conditions or specifications referenced therein.

### **32. INDEMNITY:**

#### **A. Definitions:**

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

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

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

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

**B. Specific Coverage Requirements:** Specific insurance requirements are contained in the File 8786

Solicitation and the Insurance Exhibit.

**35. CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

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

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

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

**RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF. FURTHER, CONTRACTOR AGREES THAT THE CITY'S SPECIFICATIONS REGARDING THE DELIVERABLES SHALL IN NO WAY DIMINISH CONTRACTOR'S WARRANTIES OR OBLIGATIONS UNDER THIS PARAGRAPH AND THE CITY MAKES NO WARRANTY THAT THE PRODUCTION, DEVELOPMENT, OR DELIVERY OF SUCH DELIVERABLES WILL NOT IMPACT SUCH WARRANTIES OF CONTRACTOR. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

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

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

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

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

delivery of such deliverables to the City or at such other time as the City may request.

C. **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 41 A., B., and C. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 40 above.

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

42. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, State, or local government.

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

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

45. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** The Contractor agrees to comply with the conflict of interest provisions of the City of Denon Code of Ordinances and/or State law. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that

solicitation as defined in the City's Ethic Ordinance codified at Chapter 2, Article XI and in the City Charter Section 14.04, as amended. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire. The Contractor agrees to maintain current, updated disclosure of information on file with the Procurement Department throughout the term of this Contract.

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

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

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

**49. ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

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

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the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

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

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

**53. DISPUTE RESOLUTION:**

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

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

for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

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

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

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

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

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

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

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**58. NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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

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

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

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

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or  
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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](http://www.wdol.gov) for Denton County, Texas (WD-2509).

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

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

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

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

**68. CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

**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 Contract; (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.

**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](mailto: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.

## 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,

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. GARAGE LIABILITY**

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 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.

**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.

**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.**

KIRBY - SMITH MACHINERY, 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 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

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

\_\_\_\_\_  
Name of Officer

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

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

☐

Yes

☒

No

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

☐

Yes

☒

No

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

☐

Yes

☒

No

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

**4 ☒ I have no Conflict of Interest to disclose.****5** Signed by:*Chuck Riddle*

3/20/2025

Signature of Vendor doing business with the governmental entity

Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

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

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

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

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

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

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

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

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> 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: 46CA22B4-84C1-4FC8-B098-0A501C3AFB90

Status: Sent

Subject: Please DocuSign: City Council Contract 8786- Kirby Smith

Source Envelope:

Document Pages: 33

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Kayla Clark

AutoNav: Enabled

901B Texas Street

Envelope Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

kayla.clark@cityofdenton.com

IP Address: 198.49.140.10

## Record Tracking

Status: Original

Holder: Kayla Clark

Location: DocuSign

3/19/2025 7:52:18 AM

kayla.clark@cityofdenton.com

## Signer Events

### Signature

### Timestamp

Kayla Clark

**Completed**

Sent: 3/19/2025 8:00:01 AM

kayla.clark@cityofdenton.com

Viewed: 3/19/2025 8:00:10 AM

Buyer

Signed: 3/19/2025 8:00:28 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication (None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Lori Hewell



Sent: 3/19/2025 8:00:32 AM

lori.hewell@cityofdenton.com

Viewed: 3/19/2025 10:38:59 AM

Purchasing Manager

Signed: 3/19/2025 10:47:06 AM

City of Denton

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 3/19/2025 10:47:09 AM

marcella.lunn@cityofdenton.com

Viewed: 3/20/2025 7:17:10 AM

Senior Deputy City Attorney

Signed: 3/20/2025 7:19:06 AM

City of Denton

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Chuck Riddle



Sent: 3/20/2025 7:19:09 AM

criddle@kirby-smith.com

Viewed: 3/20/2025 11:14:27 AM

Sales manager

Signed: 3/20/2025 11:21:28 AM

Security Level: Email, Account Authentication (None)

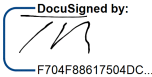
Signature Adoption: Pre-selected Style

Using IP Address: 74.112.94.202

### Electronic Record and Signature Disclosure:

Accepted: 3/20/2025 11:14:27 AM

ID: f2cbd857-f029-4271-9948-ed79566b26ad

Signer Events	Signature	Timestamp
Thomas Gramer Tom.Gramer@cityofdenton.com Director Facilities and Fleet Security Level: Email, Account Authentication (None)	 Signature Adoption: Drawn on Device Using IP Address: 198.49.140.10	Sent: 3/20/2025 11:21:34 AM Viewed: 3/20/2025 11:36:52 AM Signed: 3/20/2025 11:37:06 AM

**Electronic Record and Signature Disclosure:**  
Accepted: 3/20/2025 11:36:52 AM  
ID: 80981224-a169-4cfd-99c8-ea29768c44f3

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	Sent: 3/20/2025 11:37:10 AM
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**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

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

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lauren Thoden  
lauren.thoden@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)	<div>COPIED</div>	Sent: 3/19/2025 8:00:32 AM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 3/20/2025 11:37:10 AM Viewed: 3/20/2025 1:25:46 PM
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Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Sarah Cochran Sarah.cochran@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/19/2025 8:00:01 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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**How to contact City of Denton:**

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

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto: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](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

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- 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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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



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

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



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB25-056, **Version:** 1

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### AGENDA CAPTION

#### Management Reports

1. Southeast Denton Package B Change Order Inquiry
2. Future Agenda Items
3. New Business Action Items



## MEMORANDUM

DATE: April 4, 2025  
TO: City of Denton Public Utilities Board  
FROM: Scott Fetting, Capital Projects Sr. Project Manager  
SUBJECT: Southeast Denton Package B Change Order Inquiry

This memo serves as a response to board member Riback's request for information on April 4, 2025, regarding the \$544,000.00 Change Order on work in progress for Capital Improvement project Southeast Denton Package B (SED-B).

Item B on the consent agenda for the March 24, 2025 Public Utilities Board meeting included a \$544,000.00 change order to fund additional scope required to complete the Southeast Denton Package - B project. During construction additional scope was identified which included extending the wastewater collection mains on Bradshaw, Myrtle and Austin Streets. Additional water services, fire hydrants, and fire lines were added to several streets including Sycamore, Wainwright, and Prairie. The unidentified sewer mains were clay tile pipe that had reached the end of its life expectancy. The water services, hydrants and fire lines were added due to being found in the field during construction. The existing condition warranted them being replaced with new infrastructure to keep residents and businesses in service. In a coordination effort with the City of Denton Parks Department, an additional water and wastewater service was installed for the Carl Young Sr. Park expansions. All additional scope and work completed with this change order were unforeseen and not included in the original project design. Due to the items being found towards the end of construction, the contractor in good faith kept the project moving forward completing the additional work for an on-time completion. This action also mitigated unnecessary delay costs as pricing was developed. The final change order was brought before PUB and City Council before the final payment was made to the contractor.

## OUR CORE VALUES

Inclusion ☐ Collaboration ☐ Quality Service ☐ Strategic Focus ☐ Fiscal Responsibility

## 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 14, 2025		
April 28, 2025		
May 5, 2025		
May 19, 2025	Denton Renewable Resource Plan Update	DME
June 9, 2025		
June 23, 2025	Financial Update	Finance
July 14, 2025	Budget Workshop	Finance
July 28, 2025	PUB to Consider recommending Utility Rates & Budget to Council	Finance
August 11, 2025		
August 25, 2025		
September 15, 2025		
September 29, 2025		
October 13, 2025		
October 27, 2025		

November 17, 2025		
December 15, 2025		
Codes: Work Session WS, Consent Agenda CA, Individual Consideration IC		

**PUBLIC UTILITIES BOARD - NEW BUSINESS ACTION ITEMS**

	DATE REQUESTED	REQUESTOR	ITEM	DEPT	STATUS
1.	3/24/25	Parker	Recycling Cart Auditing Program - February 2025 Contamination Map	Solid Waste	4/28/25
2.					