

ORDINANCE NO. 21-2686

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION MANAGER AT RISK CONTRACT WITH MCCARTHY BUILDING COMPANIES, INC., FOR PRE-CONSTRUCTION SERVICES OF SOUTHEAST DENTON PACKAGE – B IMPROVEMENTS FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7714 – CMAR AWARDED TO MCCARTHY BUILDING COMPANIES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$174,955.00 FOR PRE-CONSTRUCTION SERVICES).

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is authorized to enter into the professional service contract attached hereto with McCarthy Building Companies, Inc., for pre-construction services of Southeast Denton Package – B Improvements for the Capital Projects Department.

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

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

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

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

The motion to approve this ordinance was made by Jesse Davis and seconded by Brian Beck. 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>
Deb Armintor, At Large Place 5:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Paul Meltzer, At Large Place 6:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>

PASSED AND APPROVED this the 14th day of December, 2021.



GERARD HUDSPETH, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

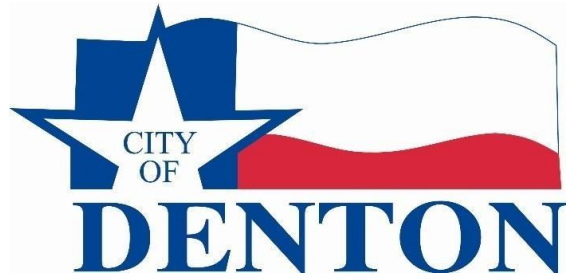
BY: Rosa Rios

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

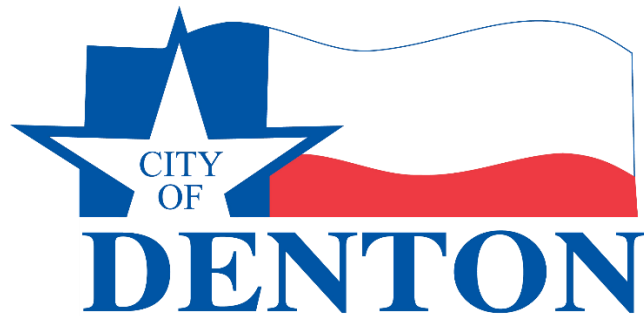
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DocuSign City Council Transmittal Coversheet

RFQ	7714
File Name	Construction Manager at Risk (CMAR) for SED-B
Purchasing Contact	Cori Power
City Council Target Date	DECEMBER 14, 2021
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	21-2686



CITY OF DENTON, TEXAS

**CONSTRUCTION MANAGER AT RISK FOR SOUTHEAST DENTON NEIGHBORHOOD
AREA B (SED-B)**

**CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES**

CONTRACT NO. 7714

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CONSTRUCTION MANAGER AT RISK FOR SOUTHEAST DENTON NEIGHBORHOOD AREA B (SED-B)
CONSTRUCTION MANAGER AT RISK DESIGN PHASE SERVICES
PROJECT NO. 210001-4
CONTRACT NO. 7714

THIS CONTRACT, made and entered into this by and between City of Denton, Texas, hereinafter designated the "CITY" and McCarthy Building Companies, Inc., hereinafter designated the "CONSTRUCTION MANAGER AT RISK" or "CM@Risk."

RECITALS

- A. The City Manager of the City of Denton, Texas, or their designee, is authorized and empowered by provisions of the City Charter to execute contracts for professional services and construction services.
- B. The City intends to construct Southeast Denton Neighborhood Area B (SED-B) as described in Exhibit A attached, hereinafter referred to as the "Project".
- C. To undertake the design of said Project the City has entered into a contract with FREESE AND NICHOLS, INC. hereinafter referred to as the "Design Professional."
- D. The CM@Risk has represented to the City the ability to provide design phase services and to construct the Project.
- E. Based on this representation, the City intends to enter into a contract with the CM@Risk for the design phase services identified in this contract. At the end of the design phase, at the City's discretion, the City may enter into a separate construction contract with the CM@Risk for construction phase services.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM@Risk as follows:

ARTICLE 1 – TERMS AND DEFINITIONS

Addenda - Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Agreement (Contract) – This written document signed by the City and CM@Risk covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

Change Order (Amendment) - A written instrument issued after execution of the Contract Documents signed by the City and CM@Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other contract terms.

City (Owner) - The City of Denton, a municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contract. Regulatory activities handled by the City of Denton Development Services, Fire and Planning Departments or any other City department are not subject to the responsibilities of the City under this Agreement.

City's Designated Project Manager – The City of Denton representative who is designated as project manager for the Project.

Construction Contract Time(s) - The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.

Construction Documents – The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

Construction Fee – The CM@Risk's administrative costs, home office overhead, and profit, whether at the CM@Risk's principal or branch offices.

Construction Manager at Risk (CM@Risk) - The firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract.

Construction Management Plan – Formal documentation prepared and maintained by the CM@Risk as identified in Section 2.2.

Contingency, CM@Risk's - A fund to cover cost growth during the Project used at the discretion of the CM@Risk usually for costs that result from Project circumstances. The amount of the CM@Risk's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@Risk's Contingency is described in Section 2.6.

Contingency, Owner's - A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the Owner's Contingency will be set by the City and will be in addition to the project costs included in the CM@Risk's GMP packages. Use and management of the Owner's Contingency is described in Section 2.6.

Contract Amount - The cost for services for this Contract as identified in Article 4.

Contract Documents - means the following items and documents in descending order of precedence executed by the City and the CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

Contract Time(s) - The number of days or the dates stated in this Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

Cost of the Work - The direct costs or stipulated rates necessarily incurred by the CM@Risk in the proper performance of the Work as set forth in Exhibit D. The Cost of the Work shall not include the CM@Risk's Construction Fee.

Critical Path Schedule - The sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

Day - Calendar day unless otherwise specifically noted in the Contract Documents.

Deliverables - The work products prepared by the CM@Risk in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by the CM@Risk during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE Utilization, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

Design Professional - The qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project.

Drawings (Plans) - Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Design Professional and the City. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but "*not for construction*". Shop Drawings are not Drawings as so defined.

Engineer - The qualified, licensed person, firm or corporation who furnishes engineering services required for the Project.

Float - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

General Conditions Costs - Includes, but is not limited to the following types of costs for the CM@Risk during the construction phase: payroll costs for project manager or construction manager for Work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for other management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); administrative office personnel; costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses; utilities, fuel, sanitary facilities and telephone services at the site; costs of liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the CM@Risk or Subcontractors; and fees for licenses. The General Conditions Costs shall be included in the Cost of the Work.

Guaranteed Maximum Price (GMP) - The sum of the maximum Cost of the Work, the CM@Risk's Construction Fee, and CM@Risk Contingency.

GMP Plans and Specifications - The plans and specifications provided pursuant to paragraph 2.6.5 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CM@Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.

Laws and Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Milestones - A principal event in the performance of the Work that the Contract requires CM@Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

Notice of Intent to Award—The written notice by City to a respondent to the City's solicitation of the Project of City's intent to accept a certain respondent's proposal.

Notice to Proceed (NTP) Letter - A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this Contract.

Payment Request - The form that is accepted by the City and used by the CM@Risk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents.

Project - The works to be completed in the execution of this Contract as described in the Recitals above and Exhibit "A" attached.

Project Budget - The amount budgeted by the City for the Project and the Work.

Project Schedule - A schedule, prepared and maintained by CM@Risk, describing the sequence and duration of the activities comprising the CM@Risk's plan to accomplish the Work within the Contract Times.

Project Team - Design phase services team consisting of the Design Professional, CM@Risk, City's Project Manager, City's Client Department representatives and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values (SOV) - Document specified in the construction phase Contract, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price.

Shop Drawings - All drawings, diagrams, schedules, and other data specifically prepared for the Work by the CM@Risk or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Site— The land or premises on which the Project is located.

Specifications - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subconsultant - A person, firm or corporation having a contract with the CM@Risk to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor - An individual or firm having a direct contract with the CM@Risk who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.7 of this Contract.

Sub-subcontractor or Sub-consultant - An individual or firm having a direct contract with any Subcontractor or any other individual firm having a contract with aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible or furnishes services required as its independent professional associate or consultant with respect to the Project, as applicable.

Substantial Completion - When the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by City Fire Marshall and local authorities; (ii) all systems in place, functional, and displayed to the City or its representative; (iii) all materials and equipment installed; (iv) all systems reviewed and accepted by the City; (v) draft O&M manuals and record documents reviewed and accepted by the City; (vi) City operation and maintenance training complete; (vii) landscaping and site work; and (viii) final cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to the Construction Phase contract.

Supplier - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CM@Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

Work - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor, services and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

ARTICLE 2 – BASIC DESIGN PHASE SERVICES

2.1 GENERAL

- 2.1.1 The CM@Risk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the City's Designated Project Manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Denton, Texas would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the City.
- 2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@Risk will provide to the City and Design Professional a written evaluation of the Project and Project Budget, with recommendations as to the appropriateness of each.
- 2.1.3 Project Meetings: The CM@Risk will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.
- 2.1.4 The CM@Risk will provide design phase services described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM@Risk, when requested by the City, will attend, make presentations, and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.
- 2.1.6 Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CM@Risk will prepare a Construction Management Plan (CMP), which may include the CM@Risk's professional opinions concerning: (a) Project Milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The CM@Risk may add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional, or the CM@Risk, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

2.3 PROJECT SCHEDULE

- 2.3.1 The fundamental purpose of the "Project Schedule" is to identify, coordinate, and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the City. The CM@Risk will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.
- 2.3.2. The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

- 2.3.2.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities.
- 2.3.2.3 The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 2.3.2.4 The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values but the Project Schedule is not required to be cost-loaded.
- 2.3.2.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 2.3.2.6 The schedule shall show Milestones, including Milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.
- 2.3.2.7 The schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.
- 2.3.3 The Project Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 2.3.4 Float time shall be as prescribed below:
 - 2.3.4.1 The total Float within the overall schedule, is not for the exclusive use of either the City or the CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
 - 2.3.4.2 The CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.
 - 2.3.4.3 Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.
- 2.3.5 The Project Schedule will be updated and maintained by the CM@Risk throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM@Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.6 Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, the CM@Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The CM@Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.
- 2.4.2 The CM@Risk will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CM@Risk to construct the Project. Before initiating construction operations, the CM@Risk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 2.4.3 The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will

familiarize itself with the evolving documents through the various design phases. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@Risk will furthermore maintain a project decision and trend log as design develops and advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.

- 2.4.4 The CM@Risk will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
- 2.4.4.1 Constructability Reviews: The CM@Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown, and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 2.4.4.2 Bidability Reviews: The CM@Risk will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, and (c) Specifications include alternatives in the event a requirement cannot be met in the field.
- 2.4.4.3 The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications, and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CM@Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.
- 2.4.5 Notification of Variance or Deficiency: It is the CM@Risk's responsibility to assist the Design Professional in ascertaining that, in the CM@Risk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM@Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.

2.5 COST ESTIMATES

- 2.5.1 Unless otherwise agreed by both parties, within 21 Days after receipt of the documents for the various phases of design, the CM@Risk shall provide a complete and detailed cost estimate and a written review of the documents. The cost estimate should include all cost categories except Owner's Contingency included in the GMP Proposal identified in Exhibit "C" attached. The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.
- 2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project Budget, the CM@Risk shall make appropriate recommendations on methods and materials to the City and Design Professional that he believes will bring the project back into the Project Budget.
- 2.5.3 In between these Milestone estimates, the CM@Risk shall periodically provide a tracking report which identifies the upward or downward movements of costs due to design development, value engineering or scope changes. It shall be the responsibility of the CM@Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.
- 2.5.4 If requested by the City, the CM@Risk shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 2.6.1.1 The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit "C" attached). CM@Risk must use the attached Exhibit C requirements and procedures when entering into these services.
- 2.6.1.2 The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by the CM@Risk will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 2.6.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.
- 2.6.2.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.
- 2.6.2.2 The General Conditions Costs are a firm fixed lump sum amount included as a Cost of the Work and that will include bonds and insurance premiums based on the full contract price for construction.
- 2.6.2.3 The Construction Fee is 6.95 % of the Cost of the Work.
- 2.6.2.4 CM@Risk's Contingency is an amount the CM@Risk may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. CM@Risk's Contingency is assumed to be a direct project cost so will receive all markups at the time such costs are charged to CM@Risk's Contingency.
- 2.6.2.5 Taxes are deemed to include all sales, use, consumer, and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are included as a Cost of the Work.
- 2.6.3 Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@Risk, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@Risk at the time that Owner's Contingency is used.
- 2.6.4 GMPs are cumulative including CM@Risk Contingency. The amount of CM@Risk Contingency for each GMP amendment will be negotiated separately and shall reflect the CM@Risk's risk from that point in the project forward.
- 2.6.5 The CM@Risk will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@Risk shall provide a list of drawings and specifications upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications.
- 2.6.6 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.6.7 GMP savings resulting from a lower actual cost of work than anticipated by the CM@Risk remaining at the end of the project will be negotiated in the construction phase agreement between the City and the CM@Risk.
- 2.6.7.1 GMP Proposal(s) Review and Approval
- 2.6.7.2 The CM@Risk will meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. As part of the statement of basis, the CM@Risk shall identify and justify any costs that are significantly different than the latest cost estimate provided by the CM@Risk. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.6.7.3 The City upon receipt of any GMP proposal from the CM@Risk, may submit the GMP Plans and Specifications to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.
- 2.6.7.4 If the CM@Risk GMP Proposal is greater than the independent third party or Design Professional's estimate, the City may require the CM@Risk to reconfirm its GMP Proposal. The CM@Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of his GMP or present a report within seven days of a written request to the City identifying, explaining, and substantiating the differences. The CM@Risk may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City. At that time, the City may do one of the following.

- (a) Accept the CM@Risk original or revised GMP Proposal, if within the City's budget, without comment.
- (b) Accept the CM@Risk original or revised GMP Proposal that exceeds the City's budget and indicate in writing to the CM@Risk that the Project Budget has been increased to fund the differences.
- (c) Reject the CM@Risk's original or revised GMP Proposal because it exceeds the City's budget, the independent third parties or Design Professional's estimate, in which event, the City may terminate this Contract and/or elect to not enter into a separate contract with the CM@Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal.

2.6.7.5 If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM@Risk. The CM@Risk will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

2.7 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

2.7.1 The selection of major Subcontractors and major Suppliers may occur prior to submission of a GMP Proposal. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CM@Risk. In any case, the CM@Risk is solely responsible for the performance of the selected Subcontractors/Suppliers.

2.7.1.1 The CM@Risk will prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be pre-qualified by qualifications and competitive bid in accordance with Section 2.7.2 and subcontractor trades will not be pre-qualified through a formalized qualifications-based selection process (competitively bid only). The subcontractor selection plan must be consistent with the selection requirements included in this Contract and the provisions of Chapter 2269 of the Texas Government Code.

2.7.2 Selection by qualifications and competitive bid - The CM@Risk shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major Subconsultants and major Suppliers shall then be competitively bid to the prequalified Subcontractors. Competitive bids may occur prior to or after the GMP Proposal(s).

2.7.2.1 The CM@Risk will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by the City and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CM@Risk may request approval by the City to submit less than three names. Without prior written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.

2.7.2.2 If the City objects to any nominated Subcontractor/Supplier or to any recommended self-performed Work bidding opportunities for good reason, the CM@Risk will nominate a substitute Subcontractor/Supplier that is acceptable to the City.

2.7.2.3 The CM@Risk will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.

2.7.2.4 If the CM@Risk desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CM@Risk's bid will be evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to ensure compliance with the Project Schedule and/or cost, or if a Subcontractor is terminated the CM@Risk may self-perform Work without re-bidding the Work.

2.7.2.5 The CM@Risk shall request the pre-qualified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CM@Risk shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CM@Risk, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the City Representative in attendance to observe and witness the process. The CM@Risk will resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

2.7.3 The CM@Risk will be required to prepare two different reports on the subcontracting process.

2.7.3.1 Within fifteen Days after each major Subcontractor/Supplier bid opening process, the CM@Risk will prepare a report for the City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement,

(b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each Subcontractor, and (d) trade work and its cost that the CM@Risk intends to self-perform, if any.

- 2.7.3.2 Upon completion of the Subcontractor/Supplier bidding process, the CM@Risk shall submit a summary report to the City of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received, and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.
- 2.7.4 The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- 2.7.5 If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor or Supplier, preferably, if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the City, the CM@Risk's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 2.7.6 Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CM@Risk and other Project Team members. At the pre-award conference, the CM@Risk will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the CM@Risk's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CM@Risk Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of commencement of the Contract Time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

ARTICLE 3 – PERIOD OF SERVICES

- 3.1 The design phase services described in this Contract will be performed by CM@Risk in accordance with the most current update/revised Project Schedule. Failure on the part of the CM@Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the City.
- 3.1.1 Upon failure to adhere to the approved schedule, City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Denton time) on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1 Based on the design phase services fee proposal submitted by the CM@Risk and accepted by the City (which by reference is made a part of this Contract); the City will pay the CM@Risk a lump sum fee in the amount of \$ 134,955 as follows:

Additional services allowance, as described in subsection 4.3:

\$ 40,000

Total Contract Amount, not to exceed, \$ 174,955

4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CM@Risk for design phase services will be submitted in a form acceptable to the City and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.
- 4.2.2 The fees for additional design phase services provided by the CM@Risk and any Subconsultants will be based upon the hourly rate schedule included as Exhibit B, attached.

- 4.2.3 The CM@Risk will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CM@Risk has received payment for those services from the City. In no event will the City pay more than 95 percent of the Contract Amount until final acceptance of all design phase services.
- 4.2.4 The CM@Risk agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@Risk to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights herein.
- 4.2.5 If any service(s) executed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL DESIGN PHASE SERVICES

- 4.3.1 If additional services are required, such services shall be billed at the stipulated hourly rates set forth on Exhibit B.
- 4.3.1.1 When authorized by the City for additional design phase services, the CM@Risk will be entitled to reimbursement at cost for direct expenses related to its performance of additional design phase services.

ARTICLE 5 - CITY'S RESPONSIBILITIES

- 5.1 The City, at no cost to the CM@Risk, will furnish the following information:
 - 5.1.1 One copy of data the City determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.
 - 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
 - 5.1.3 The name of the City employee or City's representative who will serve as the Project Manager during the term of this Contract. The Project Manager has the authority to administer this Contract and will monitor the CM@Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.
- 5.2 The City additionally will:
 - 5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM@Risk for its information. The CM@Risk will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.
 - 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@Risk except for those copies whose cost has been reimbursed by the City.
 - 5.2.3 Provide the CM@Risk with adequate information in its possession or control regarding the City's requirements for the Project.
 - 5.2.4 Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.
 - 5.2.5 Notify the CM@Risk of changes affecting the budget allocations or schedule.
- 5.3 The City's Project Manager will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the City's Project Manager deems appropriate to the CM@Risk.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 6.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, Computer Aided Drafting and Design (CADD) digital files, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final

payment is made to the CM@Risk. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold, the City agrees to hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Project Documents.

- 6.1.2 **CM@Risk to Retain Copyrights:** The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@Risk, but will remain available for use by the City for this Project under the terms of this Contract.
- 6.1.3 **License to City for Reasonable Use:** The CM@Risk hereby grants, and will require its Subconsultants to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Project Documents, then paragraph 6.1.1 applies.
- 6.1.4 **Documents to Bear Seal:** When applicable and required by state law, the CM@Risk and its Subconsultants will endorse by a Texas professional seal all plans, works, and Deliverables prepared by them for this Contract.

6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

- 6.2.1 The CM@Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables. Any damage incurred by the City as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the CM@Risk to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CM@Risk in Denton, Texas would exercise under similar conditions. The fact that the City has accepted or approved the CM@Risk's work or Deliverables will in no way relieve the CM@Risk of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the City. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design Professional.

6.3 ALTERATION IN CHARACTER OF WORK

- 6.3.1 In the event an alteration or modification in the character of Work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the Work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified Work begins, a Change Order or amendment will be approved and executed by the City and the CM@Risk. Such Change Order or amendment will not be effective until approved by the City.
- 6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties.
- 6.3.3 No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be the CM@Risk's sole jeopardy, cost, and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

6.4 DATA CONFIDENTIALITY

- 6.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence, and any other similar documents or information prepared by or obtained by the CM@Risk in the performance of this Contract.
- 6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Contract is confidential and proprietary information belonging to the City to the extent allowed by Texas law.
- 6.4.3 The CM@Risk will not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
 - 6.4.3.1 Data which was known to the CM@Risk prior to its performance under this Contract unless such data was acquired in connection with work performed for the City.
 - 6.4.3.2 Data which was acquired by the CM@Risk in its performance under this Contract and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or

6.4.3.3 Data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court, including but not limited to the Texas Public Information Act, Texas Government Code Chapter 552.

6.4.4 In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other contract with the City, the CM@Risk will first notify the City as set forth in this Article of the request or demand for the data. The CM@Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

6.4.5 The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.

6.4.6 The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

6.5 PROJECT STAFFING

6.5.1 Prior to the start of any work or Deliverable under this Contract, the CM@Risk will submit to the City, an organization chart for the CM@Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM@Risk desires to change such key personnel from performing such services under this Contract, the CM@Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

6.5.2 The CM@Risk will maintain an adequate number of competent and qualified persons to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

6.6 INDEPENDENT CONTRACTOR

6.6.1 The CM@Risk is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give the City the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

6.7 SUBCONSULTANTS

6.7.1 Prior to beginning the work or Deliverable, the CM@Risk will furnish the City for approval, the names of all Subconsultants, if any, to be used on this Project. Subsequent changes are subject to the approval of the City.

6.8 TERMINATION

6.8.1 The City and the CM@Risk hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CM@Risk.

6.8.2 In the event the City abandons any or all of the services or any part of the services as herein provided, the City will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice is to discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.

6.8.3 The CM@Risk, upon such termination or abandonment, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the City.

6.8.4 The CM@Risk will appraise the work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CM@Risk's work or Deliverable to appraise the work completed.

6.8.5 The CM@Risk will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable costs and expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract and will be an amount mutually agreed upon by the CM@Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will

make the final payment within sixty Days after the CM@Risk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 DISPUTES

- 6.9.1 In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the City Manager or their designee.

6.10 WITHHOLDING PAYMENT

- 6.10.1 The City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CM@Risk, until such time that a settlement on those claims has been reached.

6.11 RECORDS/AUDIT

- 6.11.1 Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project, and records of accounts between the City and CM@Risk will be kept on a generally recognized accounting basis and shall be available for up to three years following final completion of the Project. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. Notwithstanding the foregoing, the composition of any stipulated rates shall not be subject to audit. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data.
- 6.11.2 The CM@Risk will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts, and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

6.12 INDEMNIFICATION

- 6.12.1 **The CM@Risk agrees to defend, indemnify and hold harmless the City of Denton, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter individually and collectively referred to as "indemnitee", from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the Work or Deliverable done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workers' Compensation Law, or arising out of the failure of the CM@Risk to conform to any statutes, ordinances, regulation, law or court decree; provided, however such indemnification obligation shall not apply to the extent such suits, claims, losses, and expenses are caused by the negligence or willful misconduct of an indemnitee. It is agreed that the CM@Risk will be responsible for primary loss investigation, defense, and judgment costs where this Contract of indemnity applies. In consideration of the award of this contract, the CM@Risk agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the CM@Risk for the City.**

6.13 NOTICES

- 6.13.1 Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	City of Denton Purchasing Manager – File 7714 901B Texas Street Denton, TX 76201
To CM@Risk	Dave Wallace McCarthy Building Companies, Inc. 12001 N Central Expressway, Suite 400 Dallas, TX 75243
Copy to: Design Professional (if applicable)	Colton Hermes Kimley-Horn and Associates, Inc. 100 W. Oak Street, Suite 203 Denton, TX 76201

Or to other such place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

6.14 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

- 6.14.1 The CM@Risk will comply with the provisions of this Contract, pertaining to discrimination and accepting applications or hiring employees. The CM@Risk will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. The CM@Risk will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action will include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract. The CM@Risk further agrees that this clause will be incorporated in all Subcontracts, and Subconsultants and Suppliers contracts associated with the Project and entered into by the CM@Risk.

6.15 COMPLIANCE WITH FEDERAL LAWS

- 6.15.1 The CM@Risk understands and acknowledges the applicability of the Americans With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these and all laws in performing this Contract and to permit the City to verify such compliance.

6.16 CONFLICT OF INTEREST

- 6.16.1 To evaluate and avoid potential conflicts of interest, the CM@Risk will provide written notice to the City, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CM@Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City of Denton
Attn: Purchasing Manager
Materials Management
901B Texas Street
Denton, TX 76209

- 6.16.2 Actions considered to be adverse to the City under this Contract include but are not limited to:

- (a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City.
- (b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
- (c) Using data to produce income for the CM@Risk or its employees independently of performing the services under this Contract, without the prior written consent of the City.

- 6.16.3 The CM@Risk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CM@Risk under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

- 6.16.4 The CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute

a material breach of this Contract.

6.17 CONTRACTOR'S LICENSE

- 6.17.1 Prior to award of the Contract, the CM@Risk must provide to the City's Project Manager, its Contractor's License Classification and number, if any, and its Federal Tax I.D. number.

6.18 SUCCESSORS AND ASSIGNS

- 6.18.1 The City and the CM@Risk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CM@Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

6.19 FORCE MAJEURE

- 6.19 The City of Denton, the CM@Risk, and any Subcontractors or Sub-Subcontractors shall not be responsible for performance under this Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton, the CM@Risk, and any Subcontractors or Sub-Subcontractors, as applicable. In the event of an occurrence under this Section, the City of Denton, the CM@Risk, and any Subcontractors or Sub-Subcontractors, as applicable, will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the City of Denton, the CM@Risk, and any Subcontractors or Sub-Subcontractors, as applicable, continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The CM@Risk and any Subcontractors or Sub-Subcontractors, as applicable, shall immediately notify the City of Denton Project 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.

6.20 COVENANT AGAINST CONTINGENT FEES

- 6.20.1 The CM@Risk warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Denton has any interest, financially, or otherwise, in the firm. The City of Denton will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

6.21 NON-WAIVER PROVISION

- 6.21.1 The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

6.22 JURISDICTION

- 6.22.1 This Contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Texas, without regard to the conflicts or choice of law provisions thereof. Under the provisions of Chapter 272 of the Texas Local Government Code, the City has waived its immunity by entering into this Contract. However, the City's sovereign immunity is waived only to the extent set forth by statute. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought and tried in the State District Courts located in Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court.

6.23 SURVIVAL

- 6.23.1 All warranties, representations, and indemnifications by the CM@Risk will survive the completion or termination of this Contract.

6.24 MODIFICATION

- 6.24.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

6.25 SEVERABILITY

- 6.25.1 If any provision of this Contract or the application thereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

6.26 INTEGRATION

- 6.26.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

6.27 TIME IS OF THE ESSENCE

- 6.27.1 Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

6.28 THIRD PARTY BENEFICIARY

- 6.28.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CM@Risk. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CM@Risk and not for the benefit of any other party.

6.29 COOPERATION AND FURTHER DOCUMENTATION

- 6.29.1 The CM@Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

6.30 CONFLICT IN LANGUAGE

- 6.30.1 All work or Deliverables performed will conform to all applicable City of Denton codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

6.31 CITY'S RIGHT OF CANCELLATION

- 6.31.1 All parties hereto acknowledge that this Contract is subject to cancellation by the City of Denton pursuant to the provisions of Texas Local Government Code Chapters 252 and 272, Texas Government Code Chapter 2269, and the general laws of the State of Texas.

6.32 CONFIDENTIALITY OF PLANS & SPECIFICATIONS

- 6.32.1 Any plans or specifications received by the CM@Risk regarding this project are for official use only. The CM@Risk may not share them with others except as required to fulfill contract obligations with the City of Denton.
- 6.32.2 Any plans the CM@Risk generates must include the following statement in the Title Block on every page: "These plans are for Official use only and may not be shared with others except as required to fulfill the obligations of CM@Risk's contract with the City of Denton. This document must be kept secure at all times."

ARTICLE 7 – INSURANCE REQUIREMENTS

The CM@Risk. Subcontractors and Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CM@Risk, its agents, representatives, employees, or Subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of the work under this Contract by the CM@Risk, his agents, representative, employees, or Subconsultants. CM@Risk is free to purchase such additional insurance as may be determined necessary.

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

- 7.1.1 CM@Risk will provide coverage at least as broad and with limits of liability not less than those stated below.

7.1.1.1 Commercial General Liability-Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- (a) The policy shall be endorsed to include the following additional insured language: "The City of Denton shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk". Policy shall contain waiver of subrogation against the City of Denton.

7.1.1.2 Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- (a) The policy shall be endorsed to include the following additional insured language: "The City of Denton shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk", including automobiles owned, leased or hired or borrowed by the CM@Risk".

7.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability	
Each Accident	\$ 100,000
Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 500,000

- (a) Policy shall contain waiver of subrogation against the City of Denton.

7.2 ADDITIONAL INSURANCE REQUIREMENTS

7.2.1 The policies shall include, or be endorsed to include, the following provisions.

7.2.2 On insurance policies where the City of Denton is named as additional insured, the City of Denton shall be an additional insured to the full limits of liability purchased by the CM@Risk even if those limits of liability are in excess of those required by this Contract.

7.2.3 The CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

7.2.4 Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Contract.

7.3 SUBCONSULTANT INSURANCE

7.3.1 CM@Risk's certificate(s) shall include all subcontractors as additional insureds under its policies or subconsultants shall maintain separate insurance as determined by the CM@Risk, however, subconsultants limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.

7.4 NOTICE OF CANCELLATION

7.4.1 Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent by certified mail, return receipt requested and sent directly to the City's Purchasing Manager at:

City of Denton
Attn: Purchasing Manager
Materials Management
901B Texas Street
Denton, TX 76209

7.5 ACCEPTABILITY OF INSURERS

7.5.1 Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Texas, and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

7.6 VERIFICATION OF COVERAGE

7.6.1 The CM@Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind

coverage on its behalf.

- 7.6.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- 7.6.3 All certificates required by this Contract will be sent directly to the Engineering and Architectural Services Department Contracts Administration Section contracts officer for this Project. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.


7.7 APPROVAL

- 7.7.1 Any modification or variation from the insurance requirements in this Contract must be approved by the Law Department, whose decision will be final. Such action will not require a formal contract amendment but may be made by administrative action.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.


IN WITNESS WHEREOF, the parties hereto have executed this Contract on 12/14/2021.

CITY OF DENTON, TEXAS

BY: DocuSigned by:

5236DB296270423...
Sara Hensley
 Printed Name

INTERIM CITY MANAGER
 Title

CM@Risk

BY: DocuSigned by:

CB42275035AC4F3
Nathan Kowallis
 Printed Name

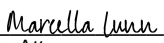
Sr. Vice President
 Title

ATTEST:

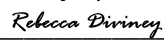
City Clerk DocuSigned by:

1C5CA8C5E175493...

APPROVED AS TO FORM:
 MACK REINWAND, CITY ATTORNEY

DocuSigned by:

City Attorney 438...

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

DocuSigned by:

CITY ATTORNEY
Rebecca Diviney
 SIGNATURE PRINTED NAME

Director of Capital Projects/City Engineer
 TITLE
Capital Projects - Engineer
 DEPARTMENT

EXHIBIT A – PROJECT DESCRIPTION

Following is a brief description of the Project for which the design phase service services specified in this Contract are to be performed:

Design Phase Services will include the CM@Risk working with the City and its Design Engineer to share ideas and experience in assisting the Design Engineer in developing construction documents suitable for construction and suitable for preparing a Guaranteed Maximum Price.

The Preconstruction Phase Services will include:

1. Prepare a Construction Management Plan (CMP), which may include the CM@Risk's professional opinions concerning: (a) Project Milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
2. Provide a Project Manager, all Key Personnel, and all other associated personnel necessary to fully meet the CMAR obligations for the Design Phase Services; In providing such Design Phase Services, Contractor does not assume any responsibility for design errors, omissions, or inconsistencies.
3. Consult with, advise and provide recommendations to the City and the Design Engineer on all aspects of the planning, design, and proposed construction and drawings and specifications;
4. Provide constructability review and consult on constructability issues in the development of the 30%, 60% and 90% final design review plans and specifications, including recommendations on design packaging to advance construction, material availability and independent quantity calculations to verify quantities provided by Design Engineer;
5. Provide list of additional details needed on the 30%, 60% and 90% final design review plans that would be needed to complete the project in the allotted time or to accelerate aspects of the work;
6. Preconstruction lead, along with any other necessary personnel shall attend review workshops with the City and the Design Engineer at the 30%, 60% and 90% final design review milestones, assume each workshop is one complete eight (8) hour day;
7. Provide on-going value engineering review, including written reports and recommendations on the 30%, 60% and 90% final design review, as applicable;
8. Identify, evaluate and propose cost-effective alternatives;
9. Develop independent detailed construction cost estimates for the Project and Critical Path Method schedules at the 30%, 60% and 90% final design review milestones;
10. Identify long-lead equipment procurement needs and submit a report to the City;
11. Identify, evaluate and recommend elements of the Project that may require less than 100% design;
12. Make recommendations to the City regarding the division of the Work to facilitate bids and proposals for the major elements of the Work;
13. Advise the City of ways to gain efficiency in Project delivery;
14. Provide a complete, detailed, written GMP proposal including line item cost breakdowns with conditions, assumptions, and CMAR contingency;
15. Provide a construction emergency response plan;
16. Prepare and submit a construction site safety plan;
17. Develop, implement and maintain a quality management plan that assures conformance to every section of the specifications.
18. Provide an environmental management plan detailing programs for a storm water pollution prevention plan and handling other environmental issues (dust, on site chemicals and fuel, etc.) required to comply with permits and regulations applicable to the Project;
19. Incorporate the City's standard specifications and provisions relating to quality, safety, community, and environmental factors. (This pertains to the construction phase general conditions contract and applicable City standards, requirements, and ordinances as relating to quality, safety, community, and environmental factors);
20. Schedule all Project construction related activities;
21. Identify Work which the Proposer intends to self-perform. Identify and recommend which work, if any, should be procured through value based competitive selections, in lieu of low bid;
22. Identify and recommend Early Works Packages;
23. Participate in one Project kick off meeting for Design Phase Services;

24. Participate in up to 10 additional meetings or workshops with the Design Engineer, Owner or others as needed.

Upon conclusion of evaluating input from CM@R on the 90% documents, Design Engineer will incorporate such items as it deems appropriate, with the resulting modified 90% documents constituting the Final Pricing Package for use in calculating GMP.

Upon receipt of the Final Pricing Package, the CMAR shall:

1. Thoroughly review these documents;
2. Develop a Guaranteed Maximum Price;
3. Prepare a detailed schedule of construction of the project;
4. Prepare a list of additional details needed to supplement the 90% complete construction documents and when such details would be needed to complete the project within the allotted time.
5. Attend a minimum of two all-day meetings at the offices of the City in Denton, Texas, to present the basis of the amount of the Guaranteed Maximum Construction Cost and negotiate in good faith based on open book cost estimates;
6. Attend two all-day workshop meetings, in addition to those listed above, excluding the effort for GMP pricing and negotiation, at the offices of the City or Design Engineer in Denton, Texas.

EXHIBIT B - HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the CM@Risk and its Subconsultants follow and are based on the approved proposal submitted to the City.

LIST OF CLASSIFICATIONS:

<u>Classification</u>	<u>Direct Labor Rate</u>	<u>Total Labor Rate</u>
Chief Estimator/VP	\$ 145.00	\$ 160.00
Project Director	\$ 125.00	\$ 140.00
Preconstruction Director	\$ 114.00	\$ 129.00
Preconstruction Manager	\$ 100.00	\$ 115.00
Sr. Estimator/Estimator	\$ 85.00	\$ 93.00
Project Manager	\$ 111.00	\$ 126.00
Superintendent	\$ 121.50	\$ 136.50
Scheduler	\$ 105.75	\$ 120.75
Project Engineer	\$ 62.35	\$ 70.35
Administrator	\$ 47.00	\$ 55.00

SUE Personnel Rates

Director	\$ 125.00	\$ 140.00
Project Manager	\$ 111.00	\$ 126.00
Senior Utility Designator	\$ 105.00	\$ 120.00
Utility Designator	\$ 97.00	\$ 112.00
Field Engineer	\$ 100.00	\$ 115.00
VDC/BIM Engineer	\$ 90.00	\$ 105.00

SUE Equipment Rates

Equipment Type	Hourly Rate
Total Station	\$18.75/Hr
GNSS Equipment	\$22/Hr
Ground Penetrating Radar (GPR)	\$35/Hr
Electromagnetic Locator (EM)	\$18.75/Hr
Sewer Camera (CCTV)	\$27/Hr
¾ Ton Pickup Truck	\$18.50

EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP**GMP submittal, one copy for review.**

One printed, signed original copy and a digital copy in searchable PDF format will be requested by the City of Denton prior to contract execution.

Table of Contents:

1. Scope of Work
 2. Summary of the GMP
 3. Schedule of Values – summary spreadsheet and backup documents
 4. List of Plans and Specifications used for GMP Proposal
 5. List of clarification and assumptions
 6. Project Schedule
1. Scope of work will consist of a brief description of the work to be performed by CM@Risk and major points that the CM@Risk and the City must be aware of pertaining to the scope. (normally one paragraph is sufficient.)
 2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

The general conditions fee includes bond and insurance cost. All costs should be listed individually for future use.

PROJECT #:**DATE:****PROJECT NAME:**

GMP Summary					AMOUNT	
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)				\$	
B.	CM@Risk's Contingency				\$	
INDIRECT COSTS					RATE	
C.	Construction Fee				%	\$
D.	General Conditions				%	\$
	D1	Payment and Performance Bond	\$		%	
	D2	Insurance	\$		%	
E.	Sales Taxes				%	\$
				F. TOTAL GMP		\$
				G. Owner's Contingency		\$
H. Contract Amount						\$

Formulas:

Total GMP: $A+B+C+D+E = F$

Rates (Percentages) are calculated by dividing each amount by F, such as B/F , D/F , and $D1/F$

(Do not acquire bond or insurance until notified by the City of Denton Project Manager.)

3. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM@Risk's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.
4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CM@Risk, Design Consultant, and Project Manager using the format below.

Plans Used For Preparation of GMP No.

CM@Risk	Date
Design Consultant	Date
Project Manager	Date

5. A list of the clarifications and assumptions made by the CM@Risk in the preparation of the GMP proposal, to supplement the information contained in the documents.
6. A Critical Path Method (CPM) diagram construction schedule.

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final GMP submittal will consist of the following:

1. One printed copy of the GMP and one digital copy in searchable PDF format.
2. One copy of the list of plans and technical specifications used to arrive at the GMP.

For questions regarding the submittal requirements, please contact City of Denton Project Manager.

EXHIBIT D - COST OF THE WORK FOR CONSTRUCTION PHASE

§ 1.1 Costs to Be Reimbursed

§ 1.1.1 The term Cost of the Work shall mean costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 1.1 through 1.7.

§ 1.1.2 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the City. "Cost(s)" shall be defined as the CM@Risk's rate as provided in this Agreement. Where no rate is stated, "Cost(s)" shall be the actual price paid by the CM@Risk.

§ 1.2 Labor Costs

§ 1.2.1 Rates as listed on Exhibit __, attached to the GMP Proposal, for construction workers directly employed by the CM@Risk to perform the construction of the Work at the site or, with the City's prior approval, at off-site workshops.

§ 1.2.2 Rates as listed on Exhibit __, attached to the GMP Proposal, for CM@Risk's supervisory and administrative personnel when stationed at the site and performing Work, with the City's prior approval.

§ 1.2.2.1 Rates as listed on Exhibit __, attached to the GMP Proposal, for CM@Risk's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work.

§ 1.2.3 Rates as listed on Exhibit __, attached to the GMP Proposal, for CM@Risk's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 1.2.4 Costs paid or incurred by the CM@Risk for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, are included in the rates referenced under Sections 1.2.1 through 1.2.3.

§ 1.3 Subcontract Costs

Payments made by the CM@Risk to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 1.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 1.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 1.4.2 Costs of materials described in the preceding Section 1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the City's property at the completion of the Work or, at the City's option, shall be sold by the CM@Risk. Any amounts realized from such sales shall be credited to the City as a deduction from the Cost of the Work.

§ 1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 1.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the CM@Risk at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the CM@Risk shall mean fair market value.

§ 1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the CM@Risk at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the CM@Risk, or a related party as defined in Section 1.8, shall be subject to the City's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. Approved rates are as listed on Exhibit __, attached to the GMP Proposal, or prevailing rental rate if not listed on Exhibit 1.

§ 1.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 1.5.4 Costs of the CM@Risk's site office, including general office equipment and supplies, vehicles, reproduction costs, postage and express delivery charges, telephone and mobile phone services, data lines, internet and associated charges at the site, radio/communications systems and equipment, reproducible interference background drawings, storage of records and reasonable petty cash expenses in connection with the Project.

§ 1.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the City's prior approval.

§ 1.5.6 CM@Risk's lump sum General Conditions Costs as defined in the Contract. Any costs included in the Lump Sum General Conditions Costs shall not be charged by CM@Risk separately as a Cost of the Work.

§ 1.6 Miscellaneous Costs

§ 1.6.1 Insurance for CM@Risk and contractor default insurance shall be in accordance with rates established in Exhibit _ attached to the GMP Proposal, applicable deductibles for Builder's Risk insurance and performance and payment bond premiums for CM@Risk (if City requires CM@Risk to provide a performance and payment bond), and its subcontractors and suppliers that can be attributed to this Contract.

§ 1.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the City's prior approval.

§ 1.6.1.2 Costs for insurance through a captive insurer owned or controlled by the CM@Risk, with the City's prior approval.

§ 1.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the CM@Risk is liable.

§ 1.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the CM@Risk is required by the Contract Documents to pay.

§ 1.6.4 Fees of laboratories for tests required by the Contract Documents.

§ 1.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 1.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the CM@Risk resulting from such suits or claims, and payments of settlements made with the City's consent, unless the CM@Risk had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the CM@Risk failed to promptly furnish such information to the Design Professional. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the CM@Risk's Fee or subject to the Guaranteed Maximum Price.

§ 1.6.6 Rates as listed on Exhibit _, attached to the GMP Proposal, for communications services, electronic equipment, and software, and maintenance of same, directly related to the Work and located at the site, with the City's prior approval.

§ 1.6.7 Costs of document reproductions and delivery charges.

§ 1.6.8 Deposits lost for causes other than the CM@Risk's gross negligence or material failure to fulfill a specific responsibility in the Contract Documents.

§ 1.6.9 Legal, mediation and arbitration costs, including attorneys' and consultants' fees, other than those arising from disputes between the City and CM@Risk, reasonably incurred by the CM@Risk after the execution of this Agreement in the performance of the Work and with the City's prior approval, which shall not be unreasonably withheld. However, such costs shall not be included in the calculation of the CM@Risk's Fee and shall not be included in the Costs of the Work for purposes of calculating the Guaranteed Maximum Price.

§ 1.6.10 Expenses incurred in accordance with the CM@Risk's standard written personnel policy for relocation and temporary living allowances of the CM@Risk's personnel required for the Work, with the City's prior approval.

§ 1.6.11 That portion of the reasonable expenses of the CM@Risk's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, including attending training and company seminars.

§ 1.6.12 The Safety, Quality and Substance Abuse Programs.

§ 1.6.13 Additional overhead expenses and cost of investment of labor resources and cash for self-perform trade Work performed by McCarthy's own forces on a cost reimbursable basis at the rate of fifteen percent (15%) of the cost of such Work, including, but not limited to, materials, labor and equipment.

§ 1.7 Other Costs and Emergencies

§ 1.7.1 Other costs incurred in the performance of the Work, with the City's prior approval.

§ 1.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property.

§ 1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the CM@Risk, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the gross negligence of, or willful failure to fulfill a specific responsibility by, the CM@Risk, and only to the extent that the cost of repair or correction is not recovered by the CM@Risk from insurance, sureties, Subcontractors, suppliers, or others.

Exhibit CIQ

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 Name of vendor who has a business relationship with local governmental entity. McCarthy Building Companies, Inc.

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

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

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

City of Denton

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.

I have no conflict of interest with anyone at the City of Denton.

4 ☒ I have no Conflict of Interest to disclose.

5 DocuSigned by:



11/12/2021

Signature of vendor doing business with the governmental entity

Date

Certificate Of Completion

Envelope Id: 32AF2EEDBB384CCC90C3E9A89A3CD56D

Status: Completed

Subject: Please DocuSign: City Council Contract 7714 CMAR for SED-B

Source Envelope:

Document Pages: 32

Signatures: 6

Envelope Originator:

Certificate Pages: 7

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelopel 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

11/11/2021 4:31:20 PM

cori.power@cityofdenton.com

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

Cori Power

Completed

Sent: 11/11/2021 4:35:53 PM

cori.power@cityofdenton.com

Viewed: 11/11/2021 4:36:04 PM

Senior Buyer

Signed: 11/11/2021 4:37:05 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: 11/11/2021 4:37:08 PM

lori.hewell@cityofdenton.com

Viewed: 11/12/2021 7:42:06 AM

Purchasing Manager

Signed: 11/12/2021 7:42:19 AM

City of Denton

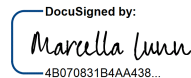
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Using IP Address: 198.49.140.104

Electronic Record and Signature Disclosure:
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Marcella Lunn



Sent: 11/12/2021 7:42:21 AM

marcella.lunn@cityofdenton.com

Viewed: 11/12/2021 11:34:08 AM

Catherine Clifton, Interim City Attorney

Signed: 11/12/2021 11:39:28 AM

City of Denton

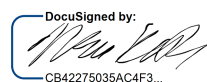
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Using IP Address: 68.185.202.16

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Nathan Kowallis



Sent: 11/12/2021 11:39:34 AM

nkowallis@mccarthy.com

Viewed: 11/12/2021 1:35:52 PM

Sr. Vice President

Signed: 11/12/2021 3:22:02 PM

Security Level: Email, Account Authentication
(None)


Signature Adoption: Drawn on Device

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Electronic Record and Signature Disclosure:

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Signer Events	Signature	Timestamp
Rebecca Diviney Rebecca.Diviney@cityofdenton.com Director of Capital Projects/City Engineer Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 47.222.11.1	Sent: 11/12/2021 3:22:08 PM Viewed: 11/12/2021 3:23:31 PM Signed: 11/12/2021 3:24:39 PM

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ID: 8ea53c5a-a8cb-4fd3-9e67-a578df3906b0

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

Completed

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Signed: 12/15/2021 8:08:25 AM

Electronic Record and Signature Disclosure:
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Sara Hensley
sara.hensley@cityofdenton.com
Interim City 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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Signed: 12/15/2021 8:16:36 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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



Signature Adoption: Pre-selected Style
Using IP Address: 198.49.140.10

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Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

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

COPIED

Sent: 11/11/2021 4:37:08 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
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City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:11:23 AM
Seth Garcia Seth.Garcia@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 11/24/2021 5:08:53 PM ID: 6d742198-7a10-4510-ac7b-9e1cbf868da0	COPIED	Sent: 12/15/2021 9:11:24 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:11:25 AM
Jeromy Shaw JShaw@mccarthy.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:11:26 AM
Steve Wilson SWilson@McCarthy.com Vice President Operations Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:11:26 AM
Colleen Martindale CMartindale@mccarthy.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:11:27 AM Viewed: 12/15/2021 9:20:38 AM
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Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

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- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, 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">•Allow per session cookies•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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

Acknowledging your access and consent to receive materials electronically

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

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- 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.