

ORDINANCE NO. 21-1265

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER, OR THEIR DESIGNEE, TO EXECUTE A TENDER AGREEMENT WITH TRAVELERS CASUALTY AND SURETY COMPANY AND MOUNTAIN CASCADE OF TEXAS, LLC FOR COMPLETION OF THE CONSTRUCTION OF THE NORTH/SOUTH WATER MAIN PHASE III PROJECT FOR THE CITY OF DENTON, WITH GEOGRAPHICAL LIMITS FROM I-35E SERVICE ROAD NORTH ALONG BONNIE BRAE TO PANHANDLE, FOR COMPLETION OF THE PREVIOUS CONSTRUCTION CONTRACT FOR SAID PROJECT WITH S & J CONSTRUCTION CO., INC. APPROVED BY CITY COUNCIL ON FEBRUARY 18, 2020, AND REPLACING S & J CONSTRUCTION CO., INC. WITH MOUNTAIN CASCADE OF TEXAS, LLC AS COMPLETION CONTRACTOR AS SET FORTH IN SAID TENDER AGREEMENT; PROVIDING FOR THE RECEIPT AND EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 7200-1 – TENDER AGREEMENT TO ACCEPT RECEIPT OF CONTRACT SHORTFALL IN THE AMOUNT OF \$1,907,041.84 FROM TRAVELERS CASUALTY AND SURETY COMPANY, AND EXPENDITURE TO MOUNTAIN CASCADE OF TEXAS, LLC IN THE NOT-TO-EXCEED AMOUNT OF \$3,963,902.04).

WHEREAS, on February 18, 2020, by Ordinance No. 20-361, the City awarded a contract to S & J Construction Co., Inc. in the amount of \$4,000,551.18, for the construction of the North/South Water Main Phase III project for the City of Denton, with geographical limits as follows: From I-35E Service road north on Bonnie Brae to Panhandle; and

WHEREAS, on December 21, 2020, the City terminated the contract to S & J Construction Co., Inc. and initiated a performance bond claim with Travelers Casualty and Surety Company to satisfy S & J Construction Co., Inc. obligations under the contract; and

WHEREAS, the attached Tender Agreement is the satisfaction of the City of Denton's claim on S & J Construction Co., Inc.'s performance bond with Travelers Casualty and Surety Company and tenders the completion of the original construction contract to Mountain Cascade of Texas, LLC; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That the City Manager is hereby authorized to enter into a Tender Agreement with Mountain Cascade of Texas, LLC and Travelers Casualty and Surety Company, for the completion of construction of the North/South Water Main Phase III project for the City of Denton, with geographical limits as follows: from I-35E Service road north on Bonnie Brae to Panhandle, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager, or their designee, is authorized to receive and expend funds pursuant to the Agreement for the purchase of various goods and services.

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

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

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

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vicki Byrd, District 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Beck, District 2:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jesse Davis, District 3:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alison Maguire, District 4:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deb Armintor, At Large Place 5:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paul Meltzer, At Large Place 6:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PASSED AND APPROVED this the 22nd day of June, 2021.


GERARD HUDSPETH, MAYOR

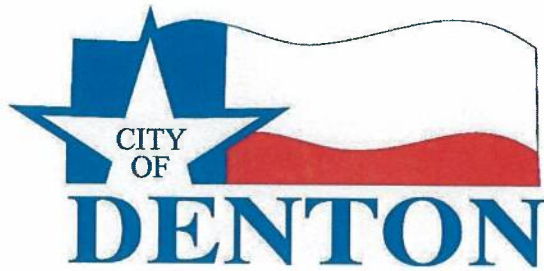
ATTEST:
ROSA RIOS, CITY SECRETARY

BY: Rosa Rios

APPROVED AS TO LEGAL FORM:
CATHERINE CLIFTON, INTERIM CITY ATTORNEY

BY: Mack Reinwand
Digitally signed by
Mack Reinwand
Date: 2021.06.17
01:10:09 -05'00'





DocuSign City Council Transmittal Coversheet

FILE	7200-1
File Name	North-South Water Main Ph 3 Tender Agreement
Purchasing Contact	Cori Power
City Council Target Date	JUNE 22, 2021
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	21-1265

TENDER AGREEMENT

This Tender Agreement ("Agreement") is made and entered into this 22ND day of June, 2021 by and between Travelers Casualty and Surety Company ("Surety"), the City of Denton, Texas ("Obligee") and Mountain Cascade of Texas LLC ("Completion Contractor").

RECITALS

A. On or about February 18, 2020, S&J Construction Company, Inc. ("Principal") entered into a construction contract with Obligee for North-South Phase III 42" Water Main ("Project"). That construction contract, together with all its incorporated documents including but not limited to: the original bid documents, plans, specifications, modifications and amendments, constitutes the "Original Contract". The Original Contract is incorporated into and made a part of this Agreement. Except as specifically provided in this Agreement, all terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the parties set forth in the Original Contract remain in full force and effect. Any capitalized terms used herein but undefined shall have the meaning ascribed to such term in the Original Contract.

B. The term "Completion Contract" as used in this Agreement is not a separate document but means the construction contract between Obligee and Completion Contractor, which includes this Agreement and the Original Contract all of which are incorporated into and made a part of this Agreement.

C. In connection with the Original Contract between Principal and Obligee, Surety executed and delivered to Obligee its Bonds numbered 107181787 with the Performance Bond in the amount of \$3,810,048.74 and the Payment Bond in the amount of \$3,810,048.74.

D. The Obligee declared the Principal in default and issued a Notice of Termination on or about December 21, 2020 and made a claim on the Performance Bond. The Surety solicited bids for the completion of the Project by a competent and qualified contractor acceptable to the Obligee. The Surety has obtained a quote from Completion Contractor to, subject to the terms of this Agreement, complete all the work in accordance with the Original Contract.

E. It is expressly acknowledged and agreed that no contract funds of any nature are due or to become due to the Principal by virtue of the above-mentioned default and termination, as those contract funds shall be disbursed in accordance with this Agreement. The summary of contract funds as of the date of this Agreement is as follows:

Original Contract Price	\$ 3,810,048.74
Change Orders Approved- Deductive Scope of Work	<u>\$ (82,576.25)</u>
Total Adjusted Original Contract Price	\$ 3,727,472.49
Total Payments Approved Through Pay App. No. 3	\$ 976,612.29
Earned Retainage	\$ 51,400.65
Other Contract Adjustments:	
Damages	\$ 694,000.00
Amount Paid to Principal	\$ 976,612.29
Unbilled Balance	\$ 2,699,459.55
Total Available Contract Balance (including retainage)	\$ 2,750,860.20
Completion Contractor Price	<u>\$ 3,963,902.04</u>
Contract (Shortfall) or Remaining Balance (including Damages)	\$ (1,907,041.84)
Supplemented Contract Balance	<u>\$ 3,963,902.04</u>

F. To fulfill its Performance Bond obligations, Surety (1) tenders the Completion Contractor to Obligee and arranges for Obligee to enter into the Completion Contract (as defined above) with Completion Contractor pursuant to the terms in this Agreement, and (2) agrees to pay the Contract Shortfall to Obligee as provided in Recital E.

COVENANTS

In consideration of the terms and conditions in this Agreement, the parties agree as follows:

1. The above Recitals are contractual and incorporated into these Covenants.
2. Completion Contractor examined the Original Contract and certifies that it is familiar with all of the terms and conditions of the Original Contract. Completion Contractor diligently investigated and inspected the Project jobsite and is familiar with the jobsite conditions including: the materials available but not yet incorporated into the Project, the nature and status of work previously performed by Principal and the work remaining to be performed on the Original Contract. Completion Contractor hereby confirms that it has investigated and is informed as to the status and conditions affecting the work to be done and that no representations with respect to same have been made by Surety, Obligee, or any of their representatives. Surety has made no warranties or representations, express or implied, to Completion Contractor with respect to the Original Contract or the Project. Surety makes no representation or warranty

regarding any future performance of any Subcontractor or Supplier, the availability of any leased equipment or facilities, or the availability of any materials supplied or to be supplied to the Project. Completion Contractor considered all of the Original Contract documents and jobsite conditions and observations in reaching its Completion Contractor Total Unit Price bid of \$3,963,902.04. Completion Contractor's unit price schedule is attached as **Exhibit A** and made part of this Agreement.

3. Surety shall pay the Contract Shortfall as provided for in Recital E above to Obligee within ten (10) business days of the execution of this Agreement by the last of the three parties to sign, Obligee, Completion Contractor or Surety.

4. Mountain Cascade of Texas LLC is tendered by Surety to Obligee as Completion Contractor under this Agreement. By this Agreement with Obligee, Completion Contractor promises to fully perform the Completion Contract for the price of \$3,963,902.04. Obligee shall make payments directly to Completion Contractor for performance of the work under the Completion Contract according to the payment terms of the Original Contract. Obligee recognizes the Completion Contractor as Principal's successor in interest to the Original Contract. Following the date of this Agreement, Obligee, Completion Contractor and Surety agree that the term "Contractor" as used in the Original Contract shall refer to Completion Contractor and not to Principal.

5. Completion Contractor shall furnish to Obligee Performance and Payment Bonds in the amount of \$3,963,902.04 issued by a commercial surety authorized to do business in the State of Texas with an AM Best rating of A- or better and a financial size category of VI or larger approved by the U.S. Treasury to issue a bond to the Federal Government in an amount at least equal to the Completion Contractor's Price. The Completion Contractor shall furnish those bonds on forms designed by the Obligee within ten (10) calendar days of executing this Agreement in the form attached hereto as Exhibit B. The City of Denton shall be named as the sole Obligee.

6. Excluding Latent Defects relating to any Work performed by the Principal, Completion Contractor warrants all work performed under the Completion Contract, whether such work was performed by Principal or Completion Contractor, according to the warranty terms of the Original Contract. The term "Latent Defects" shall mean any Work, including but not limited to materials on hand, or condition(s) prior to issuing the Notice to Proceed that are not reasonably discoverable under the circumstances, except for any matters that were disclosed in the February 5, 2021 Solicitation for Offers and any Addendums thereto, including but not limited to, Section II., Paragraph 13.0, Appendices Nos. 1-19, Addendum Nos. 1-3 and the Freese and Nichols May 4, 2021 Report which is attached hereto as **Exhibit C**. Notwithstanding anything to the contrary, or that may or could be read to the contrary, herein or in the Original Contract, Completion Contractor shall not have or bear any responsibility for any Latent Defects in any Work performed by Principal. Notwithstanding anything to the contrary, or that may or could be read to the contrary, herein or in the Original Contract, Completion Contractor shall not be responsible for (i) payment for any work, labor, material, or equipment performed at, or supplied to, the Project by any Subcontractors and suppliers prior to the execution of this Agreement; or (ii) any third party claims (for personal injury, property damage, or otherwise) based on any events, acts, or omissions that occurred, in whole or in part, prior to the execution of this Agreement.

7. Obligee may direct Completion Contractor to perform extra, additional or changed work or to delete work ("Change Order") pursuant to the terms of the Original Contract.

8. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE COMPLETION CONTRACTOR SHALL ASSUME LIABILITY FOR DAMAGE OR INJURY (INCLUDING DEATH) TO PERSONS AND PROPERTY, INCLUDING INTANGIBLE PROPERTY, ARISING OUT OF THE EXECUTION OR PERFORMANCE OF THE COMPLETION CONTRACT, AND HEREBY EXPRESSLY WAIVES ANY WORKMAN'S COMPENSATION IMMUNITY, WHETHER GRANTED BY STATUTE OR OTHERWISE, AND AGREES TO DEFEND (IF REQUIRED BY SURETY), INDEMNIFY AND HOLD HARMLESS SURETY AND THE OBLIGEE AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, SERVANTS, EMPLOYEES, AFFILIATES AND SUBSIDIARIES ("THE INDEMNITEES"), FROM DEMANDS, CLAIMS, AND CAUSES OF ACTION ARISING OUT OF THE PERFORMANCE OF THE COMPLETION CONTRACT, OR ASSERTED AGAINST ANY OF THE INDEMNITEES BY REASON OF THE ACTS OR OMISSIONS OF THE COMPLETION CONTRACTOR, OR ANY ENTITY DIRECTLY ENGAGED BY THE COMPLETION CONTRACTOR IN CONNECTION WITH THE COMPLETION CONTRACT, REGARDLESS OF WHETHER THE ACTS OR OMISSIONS COMPLAINED OF WERE CAUSED, IN PART, BY ONE OR MORE OF THE INDEMNITEES. THE COMPLETION CONTRACTOR'S INDEMNITY OBLIGATION INCLUDES, BUT IS NOT LIMITED TO, ALL DAMAGES OF ANY NATURE OR DESCRIPTION, ALL LOSS, COST OR EXPENSE, AND ANY AND ALL CLAIMS FOR PAYMENT OR OTHERWISE BY ANY OF COMPLETION CONTRACTOR'S SUBCONTRACTORS, SUPPLIERS, EMPLOYEES AND LABORERS. IN JURISDICTIONS IN WHICH THE INDEMNIFICATION PROVIDED FOR IN THIS PARAGRAPH IS BROADER THAN THAT ALLOWED BY APPLICABLE LAW, THIS PARAGRAPH SHALL BE INTERPRETED AS PROVIDING THE BROADEST INDEMNIFICATION PERMITTED AND SHOULD BE LIMITED ONLY TO THE EXTENT NECESSARY TO COMPLY WITH THAT LAW.**

9. The Completion Contractor must comply with all insurance requirements in the Original Contract. The Completion Contractor shall obtain and maintain the insurances required under the Original Contract, with the coverages and in the amounts specified in the Original Contract. The Completion Contractor shall provide the evidence of insurance required by this Paragraph within five (5) calendar days of executing this Agreement. The Obligee and Surety shall be included as named additional insureds by endorsement under all policies of insurance required of the Completion Contractor. Such endorsements shall be in the form in **Exhibit D** attached hereto, or the insurer's form if it is the same. Further, the Completion Contractor shall ensure that its insurers waive all rights of subrogation against the Obligee and Surety. The Completion Contractor shall deliver certificates of insurance and endorsements confirming that the insurances required under the Original Contract have been obtained and that the Obligee and Surety have been included as a named additional insured. Certificates of Insurance alone are not sufficient. Further, the Completion Contractor shall cause its insurer(s) to issue endorsements providing that the policies shall not be canceled without at least a thirty (30) day prior written notice to the Obligee and the Surety. Such endorsements shall be in the form in **Exhibit E** the attached hereto, or the insurer's form if it is substantially the same. Failure to obtain this insurance, or permitting this insurance to lapse, or failing to provide the endorsements and

certificates, required by this Paragraph shall constitute a material breach of this Agreement justifying termination. The Completion Contractor shall not proceed with any work until the insurances, certificates and endorsements have been obtained and provided to the Oblige and Surety.

10. The prosecution of the work will commence no later than five (5) calendar days from the Completion Contractor's receipt of the Notice to Proceed from the Oblige. The Completion Contractor's Performance and Payment Bonds and evidence of insurance shall be submitted and approved by the Oblige prior to Completion Contractor being permitted to commence performance. Any delay in procuring these bonds and evidence of insurance shall be the fault of the Completion Contractor. Subject to the terms of this Agreement, the Completion Contractor agrees to diligently proceed with and to substantially complete the work in accordance with the terms and conditions of the Completion Contract within 265 calendar days from its receipt of Oblige's Notice to Proceed. Time is of the essence. In the event Completion Contractor fails to complete the work within the time specified in this Agreement, or any extension thereof, pursuant to the processes provided in the Original Contract or a relevant Change Order, the Completion Contractor shall pay to Oblige liquidated damages as specified in the Original Contract.

11. OBLIGE EXPRESSLY RELEASES, ACQUITS AND FOREVER DISCHARGES Surety from any and all claims, rights, demands or causes of action of whatever kind or nature, including latent defects in the Project, whether in law or equity or otherwise which Oblige has or may ever have against Surety under or by reason of Surety's Performance Bond and Surety's Maintenance Bond, subject only to Surety's obligation to pay the Contract Shortfall pursuant to Paragraph 3 of this Agreement. Within five (5) days of Oblige's receipt of the payment of the Contract Shortfall, the Oblige shall return to Surety the original of the Surety's Performance Bond issued for the Project.

12. SURETY EXPRESSLY RELEASES, ACQUITS, AND FOREVER DISCHARGES the Oblige from any and all claims, demands, causes of action, damages, and/or expenses arising out of or in any way related to the Original Contract entered into between the Oblige and Principal and/or the Surety's statutory Performance Bond, whether its own claim, or the subrogated claim(s), or any other claim, if any, of the Principal.

13. The Completion Contractor agrees to make demand and look solely and exclusively to the Oblige in the event of any breach or default by the Oblige of this Agreement. With the sole exception of the payment to be made by the Surety under paragraph number three (3) of this Agreement, the Oblige agrees to make demand and look solely and exclusively to the Completion Contractor and/or its surety in the event of any breach or default by the Completion Contractor under this Agreement and/or the Original Contract.

14. Surety's Payment Bond remains in full force and effect for work performed by Principal under the Original Contract and Surety retains all obligations, rights, and defenses pursuant to the Payment Bond and nothing herein shall alter such obligations. Surety's Payment Bond shall not apply to or cover Completion Contractor or any of Completion Contractor's Subcontractors and suppliers for any work, labor, material, or equipment performed at, or supplied to, the Project after the execution of this Agreement, and Surety shall not be a co-surety with Completion Contractor's surety. The Surety's Payment Bond obligations run solely to

those claimants who performed work, labor or supplied material or equipment to the Project, in accordance with the contract or at the direction of the Principal. All payments made by Surety relating to claims on its Payment Bond shall be credited against and applied to reduce the penal limit of the Payment Bond. Surety shall not, under any circumstances, be obligated to expend more than the penal limit of its Payment Bond. The Completion Contractor and its surety hereby agree to indemnify, defend and hold the Surety harmless in connection with any claim and/or civil action relating to any Subcontractors and suppliers for any work, labor, material, or equipment performed at, or supplied to, the Project after the execution of this Agreement, but any expense incurred by Completion Contractor and its surety related its obligation to indemnify, defend and hold the Surety harmless shall not decrease the penal sum of the Performance and Payment Bonds provided by Completion Contractor and its surety. The Completion Contractor assumes responsibility for any and all billing effective upon the date of execution of this Agreement by the parties.

15. This Agreement is expressly contingent on the Completion Contractor's timely execution of this Agreement. If after executing this Agreement the Completion Contractor does not timely furnish the bonds and insurance required by this Agreement's Paragraphs 5, 9 and 10, then that failure is a material breach of this Agreement. If after receiving a five (5) calendar day notice to cure, the Completion Contractor does not cure its breach by providing the required bonds and insurance, then this Agreement may be terminated by the Surety or Obligees without prejudice to any rights or remedies of the Surety or Obligees, and the Completion Contractor shall be liable to the Surety and the Obligees for any and all damages, direct or indirect, actual or consequential, including, but not limited to, all costs of re-bidding the Project, any cost or price difference between the Completion Contractor's Price and any new contractor's price to complete the Project, along with any and all damages of the Surety and/or the Obligees, related to or arising from the Completion Contractor's termination.

16. Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Obligees or Surety against Principal.

17. It is understood and agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas.

18. This Agreement (and all its Exhibits), the Completion Contract and the Original Contract are intended to be complementary and are intended to require all work and services by the Completion Contractor necessary to complete the remaining work in compliance with this Agreement (and all its Exhibits), the Completion Contract and the Original Contract. In the case of conflict between the terms of the Agreement, the Completion Contract and the Original Contract:

a. This Agreement has priority over the Original Contract, the Solicitation for Offers, the Completion Contractor's Offer and any other agreement or document;

b. The Original Contract has priority over the Solicitation for Offers, the Completion Contractor's Offer and any other agreement or document except for this Agreement;

c. The Solicitation for Offers has priority over the Completion Contractor's Offer and any other agreement or document except for this Agreement or the Original Contract.

19. This Agreement may be independently executed in any number of counterparts each of which when executed and delivered, shall constitute an agreement which shall be binding upon all parties notwithstanding that the signatures of all parties and/or their designated representatives do not appear on the same page. Electronic signatures shall have the same effect as original signatures.

20. This Agreement has been drafted equally by all parties and shall not be subject to the rule of construction that a written agreement is construed against the party preparing or drafting the agreement.

21. This Agreement shall extend to and be binding on the parties, their respective successors, heirs and assigns.

22. This Agreement is fully integrated and its incorporated documents constitute the complete agreement between the parties. No prior statements, oral or written, course of dealing or trade usage shall supplement or alter the terms of this Agreement. All discussions and prior agreements are merged herein. This Agreement replaces and supersedes any statements or representations the Surety, its consultants, agents, and/or attorneys have made to the Completion Contractor or Oblige.

23. Surety's actions under this Agreement and its Performance and Payment Bonds shall forever be construed and considered as those of a surety and not a contractor.

24. This Agreement is strictly for the benefit of the parties to this Agreement and they expressly declare that they do not intend to confer any rights or benefit whatsoever on any third party.

25. Any notice, consent, approval, or other communication which is provided for or required by either the Completion Contract or this Agreement must be in writing and may be delivered in person to any party or may be sent by a facsimile transmission, telegraph, courier, or registered or certified U.S. mail, with postage prepaid, return receipt requested. E-mail is an acceptable communication method. Any such notice or other written communication shall be deemed received by the party to whom it is sent (i) in the case of delivery by hand or delivery by reputable national or local courier (such as United Parcel Service or Federal Express), on the date of delivery to the party to whom such notice as addressed, (ii) in the case of facsimile transmission, e-mail or telegram, one working day after the date of successful transmission (provided that an additional copy of such notice is subsequently received within three (3) days of the facsimile transmission using the methods in (i) or (iii)), and (iii) in the case of registered or certified mail, the date receipt is acknowledged on the return receipt for such notice. All such notices and other written communication shall be sent to the persons and addresses listed below:

If to Oblige:

The City of Denton, Texas
Development Services Building
401 North Elm

Denton, TX 76201
Attention: Robin Davis
Email: Robin.Davis@cityofdenton.com

If to Surety: Travelers Casualty and Surety Company
111 Schilling Road
Hunt Valley, MD 21030
Attention: Ryan J. Slepisky
Claim Counsel, Bond & SI
Email: rjslepisky@travelers.com

If to Completion Contractor: Mountain Cascade of Texas LLC
11729 E. FM 917
Alvarado, TX 76009
Attention: Andrew McCulloch
Email: AMcCulloch@mountaincascade.com

The addresses and persons listed may be changed at any time by giving written notice in accordance with this Paragraph.

26. The parties and their signatories warrant that each has the power and authority to execute this Agreement. The parties voluntarily executed this Agreement based on their own independent investigations. The provisions of this Agreement shall be interpreted in a manner consistent with each other to carry out the purposes and intentions of the parties. If for any reason any provision of this Agreement is held unenforceable or invalid, that provision shall be deemed severed from this Agreement and the remaining provisions shall not be affected.

Executed this 22ND day of JUNE, 2021.

OBLIGEE

DocuSigned by:
By: Sara Hensley
The City of Denton Texas

Its: SARA HENSLEY, INTERIM CITY MANAGER

SURETY

DocuSigned by:
By: Leslie Alvarado
Managing Director &
Counsel, Bond &
Specialty Insurance Cons

COMPLETION CONTRACTOR

DocuSigned by:
By: Andy McCulloch
Mountain Cascade of Texas LLC

Its: Vice-President

APPROVED AS TO LEGAL FORM:

DocuSigned by:
Marcella Lunn
4B070831B4AA438...

DocuSigned by:
Rebecca Diviney
CE9F2B4E4B6745F...
Rebecca Diviney

Director of Capital Projects/City Engineer

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

City Secretary

EXHIBIT A

NORTH-SOUTH PHASE 3 - 42" WATER TRANSMISSION MAIN										
CITY OF DENTON PURCHASE ORDER NO. 192897										
4.14.21 Mountain Cascade Proposal										
Bid Line Item	Item Code	Description	Unit	Bid Quantity	CO Quantity	Adjusted Quantity	Approved Installed to Date Qty	Remaining Quantity	Bid Unit Price	Bid Amount
1	COD NCTCOG AM ITEM 203.3	Mobilization	LS	1.00		1.00	0.50	1.00	\$300,000.00	\$300,000.00
2	COD NCTCOG AM ITEM 203.3	General Site Preparation	LS	1.00		1.00	0.70	1.00	\$25,000.00	\$25,000.00
3	13 47 13	Corrosion Protection	LS	1.00		1.00	0.00	1.00	\$160,000.00	\$160,000.00
4	COD NCTCOG AM ITEM 201	SWPPP Plan and Implementation	LS	1.00		1.00	0.75	1.00	\$25,000.00	\$25,000.00
5	COD NCTCOG AM ITEM 201	Traffic Control Plan and Implementation	LS	1.00		1.00	0.75	1.00	\$50,000.00	\$50,000.00
6		2 Portable Changeable Message Sign	DAY	270.00		270.00	97.00	200.00	\$100.00	\$20,000.00
7	COD NCTCOG AM ITEM 501.14	6" C900 DR-14 PVC Water Line	LF	21.00		21.00	0.00	21.00	\$350.00	\$7,350.00
8	COD NCTCOG AM ITEM 501.14	12" C900 DR-14 PVC Water Line	LF	918.00		918.00	828.20	89.80	\$110.00	\$9,878.00
9	COD NCTCOG AM ITEM 503.3	60"x3/4" Thick Steel Casing By Bore	LF	274.00		274.00	274.00	0.00	\$2,400.00	\$0.00
10	COD NCTCOG AM ITEM 503.3	60"x3/4" Thick Steel Casing By Open Cut	LF	172.00	-125.00	47.00	0.00	47.00	\$1,800.00	\$84,600.00
11	COD NCTCOG AM 107.19.3	Excavation Protection (Trench Safety)	LF	4,910.00		4,910.00	828.20	4,081.80	\$1.00	\$4,081.80
12		8" Blowoff Valve Assembly	EA	1.00		1.00	0.00	1.00	\$9,000.00	\$9,000.00
13	COD NCTCOG AM ITEM 502.3	Fire Hydrant Assembly	EA	3.00		3.00	0.00	3.00	\$6,800.00	\$20,400.00
14		Connect to Existing Fire Hydrant Assembly	EA	1.00		1.00	1.00	0.00	\$2,500.00	\$0.00
15	33 12 16.23	6" Gate Valve and Box	EA	1.00		1.00	1.00	0.00	\$1,300.00	\$0.00
16	33 12 16.23	12" Gate Valve and Box	EA	1.00		1.00	1.00	0.00	\$3,000.00	\$0.00
17	33 12 16.26	42" Butterfly Valve Assembly	EA	3.00		3.00	0.00	3.00	\$69,500.00	\$208,500.00
18	COD NCTCOG AM ITEM 502.6.3	2" Type 1 CAV Assembly	EA	1.00		1.00	0.00	1.00	\$10,000.00	\$10,000.00
19	COD NCTCOG AM ITEM 502.6.3	4" Type 2 CAV Assembly	EA	2.00		2.00	0.00	2.00	\$12,000.00	\$24,000.00
20		Connect to Existing 16" Water Line	EA	2.00		2.00	0.00	2.00	\$6,500.00	\$13,000.00
21		Connect to Existing 12" Water Line	EA	2.00		2.00	0.00	2.00	\$1,000.00	\$2,000.00
22		Connect to Existing 42" Water Line	EA	2.00		2.00	0.00	2.00	\$10,000.00	\$20,000.00
23	COD NCTCOG AM ITEM 502.10.3A	Reconnect Water Meter (long)	EA	2.00		2.00	0.00	2.00	\$5,000.00	\$10,000.00
24	COD NCTCOG AM ITEM 502.10.3A	Reconnect Water Meter (short)	EA	3.00		3.00	0.00	3.00	\$5,000.00	\$15,000.00
25		Remove existing 16" and 20" Water Line	LF	1,475.00		1,475.00	0.00	1,475.00	\$1.00	\$1,475.00
26		Asphalt Pavement Repair	SY	7,200.00		7,200.00	0.00	7,200.00	\$46.00	\$331,200.00
27		Sidewalk Replacement	SY	13.00		13.00	0.00	13.00	\$212.00	\$2,756.00
28		Curb and Gutter Replacement	LF	1,601.00		1,601.00	0.00	1,601.00	\$30.00	\$48,030.00
29		Manway Vault	EA	2.00		2.00	0.00	2.00	\$8,800.00	\$17,600.00
30		Temporary Asphalt Repair	SY	500.00		500.00	0.00	500.00	\$57.00	\$28,500.00
31		Asbestos Removal from Property	EA	3.00		3.00	3.00	0.00	\$30,000.00	\$0.00
32		Remove existing Buildings from Property	EA	3.00		3.00	3.00	0.00	\$2,500.00	\$0.00
33		16" DIP Special Class 52	LF	20.00		20.00	0.00	20.00	\$1,000.00	\$20,000.00
34		Ductile Iron Fittings	TON	4.00		4.00	2.00	2.00	\$1.00	\$2.00
35		Material Testing	LS	1.00		1.00	0.00	1.00	\$120,000.00	\$120,000.00
1A	33 11 13.13 & 09 97 16	42 Inch Water Line (Poly Coated Steel)	LF	4,225.00		4,225.00	0.00	4,225.00	\$687.00	\$2,902,575.00
147		CREDIT FOR MATERIAL ON HAND (MOH)	LS	1.00		1.00	0.00	1.00	-\$904,344.35	-\$904,344.35
		BASE BID TOTAL								\$3,585,603.45

REMEDIAL WORK										
7R	COD NCTCOG AM ITEM 501.14	Remove/Replace - 6" C900 DR-14 PVC Water Line. Price to include any Trench Safety costs, if any, in proposal number	LS					1.00	\$10,000.00	\$10,000.00
8R	COD NCTCOG AM 107.19.3	Remove/Replace - 12" C900 DR-14 PVC Water Line. Price to include any Trench Safety costs, if any, in proposal number	LS					1.00	\$235,000.00	\$235,000.00
										\$245,000.00

CHANGE ORDER WORK										
36	Hickory St.	Existing bore was required to be lowered, Project EOR Field Directive 1. Provide all costs, if any, to adjust the 42" water line to accommodate the adjusted bore depth	LS					1.00	\$25,000.00	\$25,000.00
37	Oak St.	Existing bore was required to be lowered, Project EOR Field Directive 1. Provide all costs, if any, to adjust the 42" water line to accommodate the adjusted bore depth	LS					1.00	\$25,000.00	\$25,000.00
38	Scripture St.	Existing bore was required to be adjusted due to multiple unknown conflicts. Engineer of Record (DRAFT) sheets PL-7 and PL-8. Provide all costs associated with this change in elevations	LS					1.00	\$25,000.00	\$25,000.00
	Bonnie Brae	Remove and Replace Additional Curb & Gutter damaged by S&J, not shown on drawings to be removed and replaced	LF					214.00	\$30.00	\$6,420.00
	Bonnie Brae	Remove & Replace Additional Sidewalk damaged by S&J, not shown on drawings to be removed and replaced	SY					52.00	\$212.00	\$11,024.00
	Bonnie Brae	Remove & Replace Additional Driveway Approach damaged by S&J, not shown on drawings to be removed and replaced.	SY					11.00	\$212.00	\$2,332.00
	Bonnie Brae	Remove and Replace Curb inlet top damaged by S&J, not shown on drawings to be removed and replaced.	EA					1.00	\$19,200.00	\$10,000.00
43	Bid Item 1A. 42" Water Line (Poly Coated Steel)	Part of Bid Item 1A. Provide material costs including shipping to provide a new 42" replacement pipe for the project - Pipe #32	EA					1.00	\$12,000.00	\$12,000.00

NORTH-SOUTH PHASE 3 - 42" WATER TRANSMISSION MAIN										4.14.21	Mountain Cascade Proposal
CITY OF DENTON PURCHASE ORDER NO. 192897											
Bid Line Item	Item Code	Description	Unit	Bid Quantity	CO Quantity	Adjusted Quantity	Approved Installed to Date Qty	Remaining Quantity	Bid Unit Price	Bid Amount	
	At Casing Installations	Grouting costs for casing installed by others	LF					399.00	\$41.41	\$16,522.59	
										\$133,298.59	

		REVISED BID TOTAL						\$3,963,902.04
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MOBILIZATION BREAKDOWN					
110	a	Bonds and Insurance	1.00	LS	\$50,000.00
110	b	Mobilization	1.00	LS	\$200,000.00
110	c	Field Overhead (Paid Prorated Monthly)	1.00	LS	
110	d	Home Office Overhead (Paid Prorated Monthly)	1.00	LS	
110	e	Other (Specify)	1.00	LS	
110	f	Other (Specify)	1.00	LS	
110	g	Other (Specify)	1.00	LS	
110	h	Demobilization, includes any costs to remediate existing laydown yards (2) and all construction areas disturbed by original contractor	1.00	LS	\$50,000.00
TOTAL FOR MOBILIZATION (LINE ITEM 110)					\$300,000.00

MATERIALS ON HAND (MOH) BREAKDOWN		Unit	Quantity	Qty Rate	MOH Value	Bid Value
1A	42" Water Line (Poly Coated Steel)	LF	4,225.00	\$241.60	\$1,020,747.71	\$816,600.00
10	60" x 3/4" Steel Casing	LF	172.00	\$419.00	\$72,068.00	\$16,395.35
17	42" Butterfly Valve Assembly	EA	3.00	\$42,176.00	\$126,528.00	\$71,349.00
TOTAL FOR MATERIALS ON HAND (LINE ITEM 147)						\$904,344.35

EXHIBIT B

SECTION 00 61 13
PERFORMANCE BOND

THE STATE OF TEXAS §
§ KNOW ALL BY THESE PRESENTS:
COUNTY OF DENTON §

That we, S & J Construction Co., Inc., known as
"Principal" herein and Travelers Casualty and Surety Company Of America, a corporate
surety(sureties, if more than one) duly authorized to do business in the State of Texas, known as
"Surety" herein (whether one or more), are held and firmly bound unto the City of Denton, a
municipal corporation created pursuant to the laws of Texas, known as "City" herein, in the
penal sum of, Three Million Eight Hundred Ten Thousand and Forty Eight and 74/100 Dollars
(\$3,810,048.74), lawful money of the United States, to be paid in Denton, Denton
County, Texas for the payment of which sum well and truly to be made, we bind ourselves, our
heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

WHEREAS, the Principal has entered into a certain written contract with the City
awarded the 18th day of February, 2020, which Contract is hereby referred to and
made a part hereof for all purposes as if fully set forth herein, to furnish all materials,
equipment labor and other accessories defined by law, in the prosecution of the Work, including
any Change Orders, as provided for in said Contract designated as NORTH-SOUTH PHASE III 42-
INCH WATER TRANSMISSION MAIN.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall
faithfully perform it obligations under the Contract and shall in all respects duly and faithfully
perform the Work, including Change Orders, under the Contract, according to the plans,
specifications, and contract documents therein referred to, and as well during any period of

1 extension of the Contract that may be granted on the part of the City, then this obligation shall
2 be and become null and void, otherwise to remain in full force and effect.

3 **PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in
4 Denton County, Texas or the United States District Court for the Eastern District of Texas,
5 Sherman Division.

6 This bond is made and executed in compliance with the provisions of Chapter 2253 of
7 the Texas Government Code, as amended, and all liabilities on this bond shall be determined in
8 accordance with the provisions of said statute.

9 **IN WITNESS WHEREOF**, the Principal and the Surety have SIGNED and SEALED this
10 instrument by duly authorized agents and officers on this the 24th day of February
11 2020.

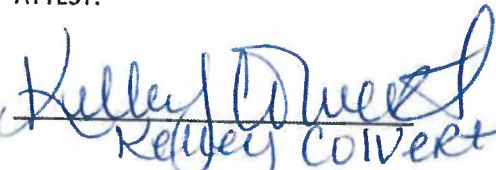
12 PRINCIPAL:

13 S & J Construction Co., Inc.
14

15 
16
17 BY: Jerry Smith, President
18
19

20 Signature

21 ATTEST:

22 
23
24

25 (Principal) Secretary

26 Name and Title

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Address:

P.O. Box 5003

Jacksonville, AR 72078


Charles Bullock
Witness as to Principal

SURETY:

Travelers Casualty and Surety Company Of America

BY:

Signature



Bradley D. Johnson, Attorney in Fact
Name and Title

Address:

1501 Mart Drive

Little Rock, AR 72202

00 61 13 - 4

PERFORMANCE BOND

Page 4 of 4

1 Witness as to Surety
2 M. J. [Signature]

Telephone 501-819-3288

Number:

3

4

5

6 *Note: If signed by an officer of the Surety Company, there must be on file a certified extract
7 from the by-laws showing that this person has authority to sign such obligation. If
8 Surety's physical address is different from its mailing address, both must be provided.
9 The date of the bond shall not be prior to the date the Contract is awarded.

10

00 61 14 - 1

PAYMENT BOND

Page 1 of 4

Bond Number: 107181787

SECTION 00 61 14

PAYMENT BOND

THE STATE OF TEXAS §
COUNTY OF DENTON § KNOW ALL BY THESE PRESENTS:

That we, S & J Construction Co., Inc., known as
"Principal" herein, and Travelers Casualty and Surety Company Of America, a
corporate surety (sureties), duly authorized to do business in the State of Texas, known as
"Surety" herein (whether one or more), are held and firmly bound unto the City of Denton, a
municipal corporation created pursuant to the laws of the State of Texas, known as "City"
herein, in the penal sum of Three Million Eight Hundred Ten Thousand and Forty Eight and 74/100 Dollars
(\$ 3,810,048.74), lawful money of the United States, to be paid in Denton, Denton
County, Texas, for the payment of which sum well and truly be made, we bind ourselves, our
heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
presents:

WHEREAS, Principal has entered into a certain written Contract with City, awarded the
18th day of February, 2020, which Contract is hereby referred to and
made a part hereof for all purposes as if fully set forth herein, to furnish all materials,
equipment, labor and other accessories as defined by law, in the prosecution of the Work as
provided for in said Contract and designated as NORTH-SOUTH PHASE III 42-INCH WATER
TRANSMISSION MAIN.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Principal shall
pay all monies owing to any (and all) payment bond beneficiary (as defined in Chapter 2253 of
the Texas Government Code, as amended) in the prosecution of the Work under the Contract,

CITY OF DENTON

Invitation for Bid No. 7200

STANDARD CONSTRUCTION SPECIFICATION DOCUMENTS North-South Phase III 42-Inch Water Transmission Main
Revised September 20, 2018

00 61 14 - 2

PAYMENT BOND

Page 2 of 4

1 then this obligation shall be and become null and void; otherwise to remain in full force and
2 effect.

3 This bond is made and executed in compliance with the provisions of Chapter 2253 of
4 the Texas Government Code, as amended, and all liabilities on this bond shall be determined in
5 accordance with the provisions of said statute.

6

CITY OF DENTON

Invitation for Bid No. 7200

STANDARD CONSTRUCTION SPECIFICATION DOCUMENTS North-South Phase III 42-Inch Water Transmission Main
Revised September 20, 2018

00 61 14 - 3

PAYMENT BOND

Page 3 of 4

1 **IN WITNESS WHEREOF**, the Principal and Surety have each SIGNED and SEALED this
2 instrument by duly authorized agents and officers on this the 24th day of
3 February, 2020.

4

PRINCIPAL:

S & J Construction Co., Inc.

ATTEST:

BY: 

Signature


(Principal) Secretary Kelley Colvert

Jerry Smith, President

Name and Title

Address: P.O. BOX 5003
Jacksonville, AR 72078


CHRIS BULLOCK
Witness as to Principal

SURETY:

Travelers Casualty and Surety Company Of America

ATTEST:

BY: 

Signature

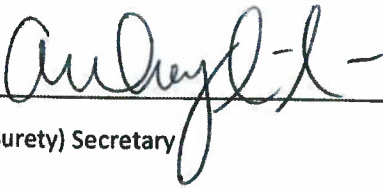
CITY OF DENTON

Invitation for Bid No. 7200

00 61 14 - 4

PAYMENT BOND

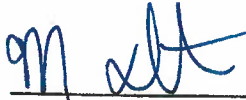
Page 4 of 4


(Surety) Secretary

Bradley D. Johnson, Attorney In Fact
Name and Title

Address: 1501 Mart Drive

Little Rock, AR 72202



Witness as to Surety

Telephone Number: 501-819-3288

1

2 Note: If signed by an officer of the Surety, there must be on file a certified extract from the
3 bylaws showing that this person has authority to sign such obligation. If Surety's physical
4 address is different from its mailing address, both must be provided.

5

6 **THE DATE OF THE BOND SHALL NOT BE PRIOR**
7 **TO THE DATE THE CONTRACT IS AWARDED.**

8

END OF SECTION

9



CITY OF DENTON

Invitation for Bid No. 7200

STANDARD CONSTRUCTION SPECIFICATION DOCUMENTS North-South Phase III 42-Inch Water Transmission Main
Revised September 20, 2018

00 61 19 - 1

MAINTENANCE BOND

Page 1 of 4

Bond Number: 107181787

SECTION 00 61 19
MAINTENANCE BOND

THE STATE OF TEXAS §
COUNTY OF TARRANT § KNOW ALL BY THESE PRESENTS:

That we S & J Construction Co., Inc., known as
"Principal" herein and Travelers Casualty and Surety Company Of America, a corporate surety
(sureties, if more than one) duly authorized to do business in the State of Texas, known as
"Surety" herein (whether one or more), are held and firmly bound unto the City of Denton, a
municipal corporation created pursuant to the laws of the State of Texas, known as "City"
herein, in the sum of Three Million Eight Hundred Ten Thousand and Forty Eight and 74/100 Dollars
(\$ 3,810,048.74), lawful money of the United States, to be paid in Denton, Denton
County, Texas, for payment of which sum well and truly be made unto the City and its
successors, we bind ourselves, our heirs, executors, administrators, successors and assigns,
jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the City awarded
the 18th day of February, 2020, which Contract is hereby
referred to and a made part hereof for all purposes as if fully set forth herein, to furnish all
materials, equipment labor and other accessories as defined by law, in the prosecution of the
Work, including any Work resulting from a duly authorized Change Order (collectively herein,
the "Work") as provided for in said contract and designated as NORTH-SOUTH PHASE III 42-INCH
WATER TRANSMISSION MAIN.; and

WHEREAS, Principal binds itself to use such materials and to so construct the Work in
accordance with the plans, specifications and Contract Documents that the Work is and will

1 remain free from defects in materials or workmanship for and during the period of **two (2) years**
2 after the date of Final Acceptance of the Work by the City ("Maintenance Period"); and
3

4 **WHEREAS**, Principal binds itself to repair or reconstruct the Work in whole or in part upon
5 receiving notice from the City of the need therefor at any time within the Maintenance Period.
6

7 **NOW THEREFORE**, the condition of this obligation is such that if Principal shall remedy
8 any defective Work, for which timely notice was provided by City, to a completion satisfactory to
9 the City, then this obligation shall become null and void; otherwise to remain in full force and
10 effect.
11

12 **PROVIDED, HOWEVER**, if Principal shall fail so to repair or reconstruct any timely
13 noticed defective Work, it is agreed that the City may cause any and all such defective Work to
14 be repaired and/or reconstructed with all associated costs thereof being borne by the Principal
15 and the Surety under this Maintenance bond; and
16

17 **PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in
18 Denton County, Texas or the United States District Court for the Eastern District of Texas,
19 Sherman Division; and
20

21 **PROVIDED FURTHER**, that this obligation shall be continuous in nature and successive
22 recoveries may be had hereon for successive breaches.
23
24
25

00 61 19 - 3

MAINTENANCE BOND

Page 3 of 4

1 IN WITNESS WHEREOF, the Principal and the Surety have each SIGNED and SEALED this
2 instrument by duly authorized agents and officers on this the 24th day of February
3 2020.

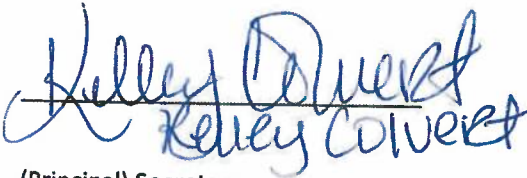
4
5 PRINCIPAL:

6
7 S & J Construction Co., Inc.
8
9
10

11 BY: 
12
13

Signature

14 ATTEST:

15
16 
17 Kelley Colver

18 (Principal) Secretary

19
20
21
22
23 Jerry Smith, President

Name and Title

24 Address:
25
26

27 P.O. BOX 5003

28 Jacksonville, AR 72078


CHRIS BULLOCK

Witness as to Principal

SURETY:

CITY OF DENTON

STANDARD CONSTRUCTION SPECIFICATION DOCUMENTS North-South Phase III 42-Inch Water Transmission Main

Revised September 20, 2018

Invitation for Bid No. 7200

00 61 19 - 4

MAINTENANCE BOND

Page 4 of 4

Travelers Casualty and Surety Company Of America

BY:

Signature



Bradley D. Johnson, Attorney In Fact

Name and Title

Address:

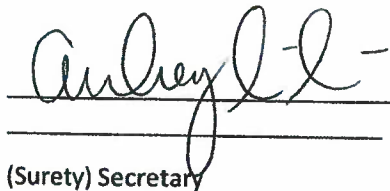
1501 Mart Drive

Little Rock, AR 72202

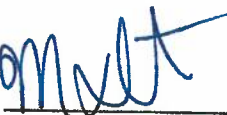
Telephone 501-819-3288

Number:

ATTEST:



(Surety) Secretary



Witness as to Surety

*Note: If signed by an officer of the Surety Company, there must be on file a certified extract from the by-laws showing that this person has authority to sign such obligation. If Surety's physical address is different from its mailing address, both must be provided. The date of the bond shall not be prior to the date the Contract is awarded.

CITY OF DENTON

STANDARD CONSTRUCTION SPECIFICATION DOCUMENTS North-South Phase III 42-inch Water Transmission Main
Revised September 20, 2018

Invitation for Bid No. 7200

TRAVELERS

Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Bradley D. Johnson**, of Little Rock, Arkansas, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.



State of Connecticut

City of Hartford ss.

By: 

Robert L. Raney, Senior Vice President

On this the 3rd day of February, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021




 Marie C. Tetraault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 24th

day of February

, 2020




 Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.

EXHIBIT C



Client: City of Denton

Project: City: No. 180006/ IFB No.

Document: North-South Phase III 42-Inch Water Transmission Main - Pipe Walk

FNI: DTN12314

Date: May 4, 2021

Item #	Pipe	Comments
1	GENERAL	Comments below denote observed conditions but do not constitute an exhausted list of concerns. Each pipe joint is to be properly inspected and issues addressed before being installed.
2	GENERAL	A lot of pipe in the park is sitting on the ground
3	GENERAL	Rust to be wire brushed off of all pipe ends
4	GENERAL	All coating to be inspected before installation (per spec)
5	GENERAL	All lining to be inspected for cracks per specs
6	GENERAL	New gaskets to be provided
7	GENERAL	Where have Covalence shrink sleeves been stored? Did not see them on site
8	GENERAL	Thoroughly inspect pipe in park due to extended public access and vandalism
9	MK 2, 11	On ground
10	MK 64	Cover off, touching MK 2
11	MK 1	Cover off with trash inside, crack in mortar
12	MK 7	Cover off, crack in mortar
13	MK 13	Close to curb (about an inch from curb)
14	MK 17	On curb
15	MK 18	On ground
16	MK 20	Lining concern
17	MK 21	Close to ground
18	MK 22	On curb
19	MK 23	Lining concern
20	MK 24	Looks moved, rocks, off cradle
21	MK 25	Close to curb
22	MK 28	Lining concern
23	MK 32	Reject - car hit
24	MK 36	Chunks of mortar laying pipe
25	MK 38	Mortar concern
26	MK 41	Chunks of mortar laying pipe
27	MK 43	Mortar concern
28	MK 45	Coating concern
29	MK 45, 47	Bells touching each other
30	MK 53	Welding outlet to be repatched
31	MK 55	Mortar concern
32	MK 89	Welding outlet to be repatched
33	MK 61	No cover
34	MK 85, 74	Touching at end
35	MK 118	No cover
36	MK 112	Crack in mortar
37	MK 134, 132	Touching each other
38	MK 138, 139	Touching each other
39	MK 136	Cover open
40	MK 154	Sitting on ground
41	MK 152, 137	Touching each other
42	MK 124	Sitting on ground
43	MK 159	Sitting on ground
44	MK 175	Mortar concern
45	MK 155	Cover off
46	MK 184	Mortar cracking
47	MK 187	Cover off, crack in mortar
48	MK 161, 162	Touching each other
49	MK 111, 119	Touching each other
50	MK 129, 142	Touching each other
51	MK 169	Cracking
52	MK 169, 172	Touching each other
53	MK 83	No cover
54	MK 143	No cover

EXHIBIT D

EXHIBIT D

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY

ADDITIONAL INSURED ENDORSEMENT

Policy No: _____ [the "POLICY"]

Insured: _____ [the "CONTRACTOR"]

Project: North-South Phase III 42-Inch Water Transmission Main IFB #7200, Engineering
Project No. 180006, DTN12314 [the "PROJECT"]

Policy Type: _____

The POLICY, and all coverage parts thereunder, is hereby amended to include The City of Denton, Texas ("City of Denton") and Travelers Casualty and Surety Company of America ("Travelers"), as an insured, as that term is defined in the POLICY, for purposes of all coverage afforded by the POLICY, but only with respect to liability arising out of CONTRACTOR's ongoing operations performed for the City of Denton on the PROJECT. The POLICY, and all coverage parts thereunder, is hereby amended to provide that in the City of Denton's or Travelers' sole and absolute discretion the City of Denton or Travelers may satisfy by payment any deductible or self-insured amounts that are conditions precedent to coverage under the POLICY. The POLICY is primary to and non-contributory with the insurance issued directly to the persons or organizations mentioned in this endorsement.

EXHIBIT E

EXHIBIT E

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY

NOTICE OF CANCELLATION OR MODIFICATION ENDORSEMENT

Policy No: _____ [the "POLICY"]

Insured: _____ [the "CONTRACTOR"]

Project: North-South Phase III 42-Inch Water Transmission Main IFB #7200,
Engineering Project No. 180006, DTN12314 [the "PROJECT"]

Policy Type: _____

Number of Days' Notice: 30 Calendar Days

If any change (a "Change") in the POLICY is requested, or will be made for any reason, or if the POLICY will be cancelled for any reason (a "Cancellation"), or if the POLICY will lapse or expire by its own terms (an "Expiration"), the insurer who provided the POLICY agrees that the Change, Cancellation, or Expiration shall not be effective until thirty (30) calendar days after written notice of the Change, Cancellation, or Expiration has been provided to:

The City of Denton, Texas – Development Services Building
Robin Davis, Project Manager
401 North Elm
Denton, TX 76201

AND

Travelers Casualty and Surety Company of America
Ryan J. Slepisky, Claim Counsel
111 Schilling Road
Hunt Valley, MD 21031

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. Mountain Cascade of Texas LLC

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

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

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

N/A

Name of Officer

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

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

4 ☒ I have no Conflict of Interest to disclose.

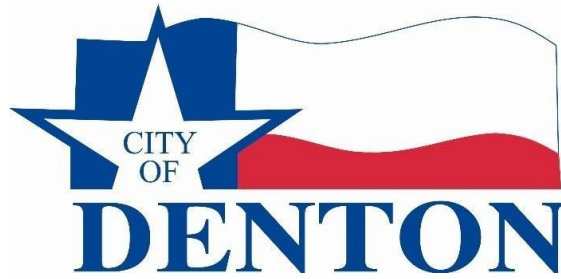
5 DocuSigned by:

Andy McCulloch

6/17/2021

Signature of Vendor doing business with the governmental entity

Date



DocuSign City Council Transmittal Coversheet

FILE	7200-1
File Name	North-South Water Main Ph 3 Tender Agreement
Purchasing Contact	Cori Power
City Council Target Date	JUNE 22, 2021
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	21-1265

TENDER AGREEMENT

This Tender Agreement ("Agreement") is made and entered into this 22ND day of June, 2021 by and between Travelers Casualty and Surety Company ("Surety"), the City of Denton, Texas ("Obligee") and Mountain Cascade of Texas LLC ("Completion Contractor").

RECITALS

A. On or about February 18, 2020, S&J Construction Company, Inc. ("Principal") entered into a construction contract with Obligee for North-South Phase III 42" Water Main ("Project"). That construction contract, together with all its incorporated documents including but not limited to: the original bid documents, plans, specifications, modifications and amendments, constitutes the "Original Contract". The Original Contract is incorporated into and made a part of this Agreement. Except as specifically provided in this Agreement, all terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the parties set forth in the Original Contract remain in full force and effect. Any capitalized terms used herein but undefined shall have the meaning ascribed to such term in the Original Contract.

B. The term "Completion Contract" as used in this Agreement is not a separate document but means the construction contract between Obligee and Completion Contractor, which includes this Agreement and the Original Contract all of which are incorporated into and made a part of this Agreement.

C. In connection with the Original Contract between Principal and Obligee, Surety executed and delivered to Obligee its Bonds numbered 107181787 with the Performance Bond in the amount of \$3,810,048.74 and the Payment Bond in the amount of \$3,810,048.74.

D. The Obligee declared the Principal in default and issued a Notice of Termination on or about December 21, 2020 and made a claim on the Performance Bond. The Surety solicited bids for the completion of the Project by a competent and qualified contractor acceptable to the Obligee. The Surety has obtained a quote from Completion Contractor to, subject to the terms of this Agreement, complete all the work in accordance with the Original Contract.

E. It is expressly acknowledged and agreed that no contract funds of any nature are due or to become due to the Principal by virtue of the above-mentioned default and termination, as those contract funds shall be disbursed in accordance with this Agreement. The summary of contract funds as of the date of this Agreement is as follows:

Original Contract Price	\$ 3,810,048.74
Change Orders Approved- Deductive Scope of Work	<u>\$ (82,576.25)</u>
Total Adjusted Original Contract Price	\$ 3,727,472.49
Total Payments Approved Through Pay App. No. 3	\$ 976,612.29
Earned Retainage	\$ 51,400.65
Other Contract Adjustments:	
Damages	\$ 694,000.00
Amount Paid to Principal	\$ 976,612.29
Unbilled Balance	\$ 2,699,459.55
Total Available Contract Balance (including retainage)	\$ 2,750,860.20
Completion Contractor Price	<u>\$ 3,963,902.04</u>
Contract (Shortfall) or Remaining Balance (including Damages)	\$ (1,907,041.84)
Supplemented Contract Balance	<u>\$ 3,963,902.04</u>

F. To fulfill its Performance Bond obligations, Surety (1) tenders the Completion Contractor to Obligee and arranges for Obligee to enter into the Completion Contract (as defined above) with Completion Contractor pursuant to the terms in this Agreement, and (2) agrees to pay the Contract Shortfall to Obligee as provided in Recital E.

COVENANTS

In consideration of the terms and conditions in this Agreement, the parties agree as follows:

1. The above Recitals are contractual and incorporated into these Covenants.
2. Completion Contractor examined the Original Contract and certifies that it is familiar with all of the terms and conditions of the Original Contract. Completion Contractor diligently investigated and inspected the Project jobsite and is familiar with the jobsite conditions including: the materials available but not yet incorporated into the Project, the nature and status of work previously performed by Principal and the work remaining to be performed on the Original Contract. Completion Contractor hereby confirms that it has investigated and is informed as to the status and conditions affecting the work to be done and that no representations with respect to same have been made by Surety, Obligee, or any of their representatives. Surety has made no warranties or representations, express or implied, to Completion Contractor with respect to the Original Contract or the Project. Surety makes no representation or warranty

regarding any future performance of any Subcontractor or Supplier, the availability of any leased equipment or facilities, or the availability of any materials supplied or to be supplied to the Project. Completion Contractor considered all of the Original Contract documents and jobsite conditions and observations in reaching its Completion Contractor Total Unit Price bid of \$3,963,902.04. Completion Contractor's unit price schedule is attached as **Exhibit A** and made part of this Agreement.

3. Surety shall pay the Contract Shortfall as provided for in Recital E above to Oblige within ten (10) business days of the execution of this Agreement by the last of the three parties to sign, Oblige, Completion Contractor or Surety.

4. Mountain Cascade of Texas LLC is tendered by Surety to Oblige as Completion Contractor under this Agreement. By this Agreement with Oblige, Completion Contractor promises to fully perform the Completion Contract for the price of \$3,963,902.04. Oblige shall make payments directly to Completion Contractor for performance of the work under the Completion Contract according to the payment terms of the Original Contract. Oblige recognizes the Completion Contractor as Principal's successor in interest to the Original Contract. Following the date of this Agreement, Oblige, Completion Contractor and Surety agree that the term "Contractor" as used in the Original Contract shall refer to Completion Contractor and not to Principal.

5. Completion Contractor shall furnish to Oblige Performance and Payment Bonds in the amount of \$3,963,902.04 issued by a commercial surety authorized to do business in the State of Texas with an AM Best rating of A- or better and a financial size category of VI or larger approved by the U.S. Treasury to issue a bond to the Federal Government in an amount at least equal to the Completion Contractor's Price. The Completion Contractor shall furnish those bonds on forms designed by the Oblige within ten (10) calendar days of executing this Agreement in the form attached hereto as Exhibit B. The City of Denton shall be named as the sole Oblige.

6. Excluding Latent Defects relating to any Work performed by the Principal, Completion Contractor warrants all work performed under the Completion Contract, whether such work was performed by Principal or Completion Contractor, according to the warranty terms of the Original Contract. The term "Latent Defects" shall mean any Work, including but not limited to materials on hand, or condition(s) prior to issuing the Notice to Proceed that are not reasonably discoverable under the circumstances, except for any matters that were disclosed in the February 5, 2021 Solicitation for Offers and any Addendums thereto, including but not limited to, Section II., Paragraph 13.0, Appendices Nos. 1-19, Addendum Nos. 1-3 and the Freese and Nichols May 4, 2021 Report which is attached hereto as **Exhibit C**. Notwithstanding anything to the contrary, or that may or could be read to the contrary, herein or in the Original Contract, Completion Contractor shall not have or bear any responsibility for any Latent Defects in any Work performed by Principal. Notwithstanding anything to the contrary, or that may or could be read to the contrary, herein or in the Original Contract, Completion Contractor shall not be responsible for (i) payment for any work, labor, material, or equipment performed at, or supplied to, the Project by any Subcontractors and suppliers prior to the execution of this Agreement; or (ii) any third party claims (for personal injury, property damage, or otherwise) based on any events, acts, or omissions that occurred, in whole or in part, prior to the execution of this Agreement.

7. Obligee may direct Completion Contractor to perform extra, additional or changed work or to delete work ("Change Order") pursuant to the terms of the Original Contract.

8. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE COMPLETION CONTRACTOR SHALL ASSUME LIABILITY FOR DAMAGE OR INJURY (INCLUDING DEATH) TO PERSONS AND PROPERTY, INCLUDING INTANGIBLE PROPERTY, ARISING OUT OF THE EXECUTION OR PERFORMANCE OF THE COMPLETION CONTRACT, AND HEREBY EXPRESSLY WAIVES ANY WORKMAN'S COMPENSATION IMMUNITY, WHETHER GRANTED BY STATUTE OR OTHERWISE, AND AGREES TO DEFEND (IF REQUIRED BY SURETY), INDEMNIFY AND HOLD HARMLESS SURETY AND THE OBLIGEE AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, SERVANTS, EMPLOYEES, AFFILIATES AND SUBSIDIARIES ("THE INDEMNITEES"), FROM DEMANDS, CLAIMS, AND CAUSES OF ACTION ARISING OUT OF THE PERFORMANCE OF THE COMPLETION CONTRACT, OR ASSERTED AGAINST ANY OF THE INDEMNITEES BY REASON OF THE ACTS OR OMISSIONS OF THE COMPLETION CONTRACTOR, OR ANY ENTITY DIRECTLY ENGAGED BY THE COMPLETION CONTRACTOR IN CONNECTION WITH THE COMPLETION CONTRACT, REGARDLESS OF WHETHER THE ACTS OR OMISSIONS COMPLAINED OF WERE CAUSED, IN PART, BY ONE OR MORE OF THE INDEMNITEES. THE COMPLETION CONTRACTOR'S INDEMNITY OBLIGATION INCLUDES, BUT IS NOT LIMITED TO, ALL DAMAGES OF ANY NATURE OR DESCRIPTION, ALL LOSS, COST OR EXPENSE, AND ANY AND ALL CLAIMS FOR PAYMENT OR OTHERWISE BY ANY OF COMPLETION CONTRACTOR'S SUBCONTRACTORS, SUPPLIERS, EMPLOYEES AND LABORERS. IN JURISDICTIONS IN WHICH THE INDEMNIFICATION PROVIDED FOR IN THIS PARAGRAPH IS BROADER THAN THAT ALLOWED BY APPLICABLE LAW, THIS PARAGRAPH SHALL BE INTERPRETED AS PROVIDING THE BROADEST INDEMNIFICATION PERMITTED AND SHOULD BE LIMITED ONLY TO THE EXTENT NECESSARY TO COMPLY WITH THAT LAW.**

9. The Completion Contractor must comply with all insurance requirements in the Original Contract. The Completion Contractor shall obtain and maintain the insurances required under the Original Contract, with the coverages and in the amounts specified in the Original Contract. The Completion Contractor shall provide the evidence of insurance required by this Paragraph within five (5) calendar days of executing this Agreement. The Obligee and Surety shall be included as named additional insureds by endorsement under all policies of insurance required of the Completion Contractor. Such endorsements shall be in the form in **Exhibit D** attached hereto, or the insurer's form if it is the same. Further, the Completion Contractor shall ensure that its insurers waive all rights of subrogation against the Obligee and Surety. The Completion Contractor shall deliver certificates of insurance and endorsements confirming that the insurances required under the Original Contract have been obtained and that the Obligee and Surety have been included as a named additional insured. Certificates of Insurance alone are not sufficient. Further, the Completion Contractor shall cause its insurer(s) to issue endorsements providing that the policies shall not be canceled without at least a thirty (30) day prior written notice to the Obligee and the Surety. Such endorsements shall be in the form in **Exhibit E** attached hereto, or the insurer's form if it is substantially the same. Failure to obtain this insurance, or permitting this insurance to lapse, or failing to provide the endorsements and

certificates, required by this Paragraph shall constitute a material breach of this Agreement justifying termination. The Completion Contractor shall not proceed with any work until the insurances, certificates and endorsements have been obtained and provided to the Oblige and Surety.

10. The prosecution of the work will commence no later than five (5) calendar days from the Completion Contractor's receipt of the Notice to Proceed from the Oblige. The Completion Contractor's Performance and Payment Bonds and evidence of insurance shall be submitted and approved by the Oblige prior to Completion Contractor being permitted to commence performance. Any delay in procuring these bonds and evidence of insurance shall be the fault of the Completion Contractor. Subject to the terms of this Agreement, the Completion Contractor agrees to diligently proceed with and to substantially complete the work in accordance with the terms and conditions of the Completion Contract within 265 calendar days from its receipt of Oblige's Notice to Proceed. Time is of the essence. In the event Completion Contractor fails to complete the work within the time specified in this Agreement, or any extension thereof, pursuant to the processes provided in the Original Contract or a relevant Change Order, the Completion Contractor shall pay to Oblige liquidated damages as specified in the Original Contract.

11. OBLIGE EXPRESSLY RELEASES, ACQUITS AND FOREVER DISCHARGES Surety from any and all claims, rights, demands or causes of action of whatever kind or nature, including latent defects in the Project, whether in law or equity or otherwise which Oblige has or may ever have against Surety under or by reason of Surety's Performance Bond and Surety's Maintenance Bond, subject only to Surety's obligation to pay the Contract Shortfall pursuant to Paragraph 3 of this Agreement. Within five (5) days of Oblige's receipt of the payment of the Contract Shortfall, the Oblige shall return to Surety the original of the Surety's Performance Bond issued for the Project.

12. SURETY EXPRESSLY RELEASES, ACQUITS, AND FOREVER DISCHARGES the Oblige from any and all claims, demands, causes of action, damages, and/or expenses arising out of or in any way related to the Original Contract entered into between the Oblige and Principal and/or the Surety's statutory Performance Bond, whether its own claim, or the subrogated claim(s), or any other claim, if any, of the Principal.

13. The Completion Contractor agrees to make demand and look solely and exclusively to the Oblige in the event of any breach or default by the Oblige of this Agreement. With the sole exception of the payment to be made by the Surety under paragraph number three (3) of this Agreement, the Oblige agrees to make demand and look solely and exclusively to the Completion Contractor and/or its surety in the event of any breach or default by the Completion Contractor under this Agreement and/or the Original Contract.

14. Surety's Payment Bond remains in full force and effect for work performed by Principal under the Original Contract and Surety retains all obligations, rights, and defenses pursuant to the Payment Bond and nothing herein shall alter such obligations. Surety's Payment Bond shall not apply to or cover Completion Contractor or any of Completion Contractor's Subcontractors and suppliers for any work, labor, material, or equipment performed at, or supplied to, the Project after the execution of this Agreement, and Surety shall not be a co-surety with Completion Contractor's surety. The Surety's Payment Bond obligations run solely to

those claimants who performed work, labor or supplied material or equipment to the Project, in accordance with the contract or at the direction of the Principal. All payments made by Surety relating to claims on its Payment Bond shall be credited against and applied to reduce the penal limit of the Payment Bond. Surety shall not, under any circumstances, be obligated to expend more than the penal limit of its Payment Bond. The Completion Contractor and its surety hereby agree to indemnify, defend and hold the Surety harmless in connection with any claim and/or civil action relating to any Subcontractors and suppliers for any work, labor, material, or equipment performed at, or supplied to, the Project after the execution of this Agreement, but any expense incurred by Completion Contractor and its surety related its obligation to indemnify, defend and hold the Surety harmless shall not decrease the penal sum of the Performance and Payment Bonds provided by Completion Contractor and its surety. The Completion Contractor assumes responsibility for any and all billing effective upon the date of execution of this Agreement by the parties.

15. This Agreement is expressly contingent on the Completion Contractor's timely execution of this Agreement. If after executing this Agreement the Completion Contractor does not timely furnish the bonds and insurance required by this Agreement's Paragraphs 5, 9 and 10, then that failure is a material breach of this Agreement. If after receiving a five (5) calendar day notice to cure, the Completion Contractor does not cure its breach by providing the required bonds and insurance, then this Agreement may be terminated by the Surety or Obligee without prejudice to any rights or remedies of the Surety or Obligee, and the Completion Contractor shall be liable to the Surety and the Obligee for any and all damages, direct or indirect, actual or consequential, including, but not limited to, all costs of re-bidding the Project, any cost or price difference between the Completion Contractor's Price and any new contractor's price to complete the Project, along with any and all damages of the Surety and/or the Obligee, related to or arising from the Completion Contractor's termination.

16. Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Obligee or Surety against Principal.

17. It is understood and agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas.

18. This Agreement (and all its Exhibits), the Completion Contract and the Original Contract are intended to be complementary and are intended to require all work and services by the Completion Contractor necessary to complete the remaining work in compliance with this Agreement (and all its Exhibits), the Completion Contract and the Original Contract. In the case of conflict between the terms of the Agreement, the Completion Contract and the Original Contract:

a. This Agreement has priority over the Original Contract, the Solicitation for Offers, the Completion Contractor's Offer-and any other agreement or document;

b. The Original Contract has priority over the Solicitation for Offers, the Completion Contractor's Offer and any other agreement or document except for this Agreement;

c. The Solicitation for Offers has priority over the Completion Contractor's Offer and any other agreement or document except for this Agreement or the Original Contract.

19. This Agreement may be independently executed in any number of counterparts each of which when executed and delivered, shall constitute an agreement which shall be binding upon all parties notwithstanding that the signatures of all parties and/or their designated representatives do not appear on the same page. Electronic signatures shall have the same effect as original signatures.

20. This Agreement has been drafted equally by all parties and shall not be subject to the rule of construction that a written agreement is construed against the party preparing or drafting the agreement.

21. This Agreement shall extend to and be binding on the parties, their respective successors, heirs and assigns.

22. This Agreement is fully integrated and its incorporated documents constitute the complete agreement between the parties. No prior statements, oral or written, course of dealing or trade usage shall supplement or alter the terms of this Agreement. All discussions and prior agreements are merged herein. This Agreement replaces and supersedes any statements or representations the Surety, its consultants, agents, and/or attorneys have made to the Completion Contractor or Obligee.

23. Surety's actions under this Agreement and its Performance and Payment Bonds shall forever be construed and considered as those of a surety and not a contractor.

24. This Agreement is strictly for the benefit of the parties to this Agreement and they expressly declare that they do not intend to confer any rights or benefit whatsoever on any third party.

25. Any notice, consent, approval, or other communication which is provided for or required by either the Completion Contract or this Agreement must be in writing and may be delivered in person to any party or may be sent by a facsimile transmission, telegraph, courier, or registered or certified U.S. mail, with postage prepaid, return receipt requested. E-mail is an acceptable communication method. Any such notice or other written communication shall be deemed received by the party to whom it is sent (i) in the case of delivery by hand or delivery by reputable national or local courier (such as United Parcel Service or Federal Express), on the date of delivery to the party to whom such notice as addressed, (ii) in the case of facsimile transmission, e-mail or telegram, one working day after the date of successful transmission (provided that an additional copy of such notice is subsequently received within three (3) days of the facsimile transmission using the methods in (i) or (iii)), and (iii) in the case of registered or certified mail, the date receipt is acknowledged on the return receipt for such notice. All such notices and other written communication shall be sent to the persons and addresses listed below:

If to Obligee:

The City of Denton, Texas
Development Services Building
401 North Elm

Denton, TX 76201
Attention: Robin Davis
Email: Robin.Davis@cityofdenton.com

If to Surety:

Travelers Casualty and Surety Company
111 Schilling Road
Hunt Valley, MD 21030
Attention: Ryan J. Slepisky
Claim Counsel, Bond & SI
Email: rjslepisky@travelers.com

If to Completion Contractor: Mountain Cascade of Texas LLC
11729 E. FM 917
Alvarado, TX 76009
Attention: Andrew McCulloch
Email: AMcCulloch@mountaincascade.com

The addresses and persons listed may be changed at any time by giving written notice in accordance with this Paragraph.

26. The parties and their signatories warrant that each has the power and authority to execute this Agreement. The parties voluntarily executed this Agreement based on their own independent investigations. The provisions of this Agreement shall be interpreted in a manner consistent with each other to carry out the purposes and intentions of the parties. If for any reason any provision of this Agreement is held unenforceable or invalid, that provision shall be deemed severed from this Agreement and the remaining provisions shall not be affected.

Executed this 22ND day of JUNE, 2021.

OBLIGEE

By:  DocuSigned by:
Sara Hensley

The City of Denton Texas

Its: SARA HENSLEY, INTERIM CITY MANAGER

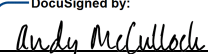
SURETY

By:  DocuSigned by:
Leslie Alvarado

**Managing Director &
Counsel, Bond &
Specialty Insurance Cons**

Its: tbd

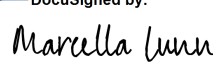
COMPLETION CONTRACTOR

By:  DocuSigned by:
Andy Mculloch

Mountain Cascade of Texas LLC

Its: Vice-President

APPROVED AS TO LEGAL FORM:

 DocuSigned by:
Marcella Lunn
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 DocuSigned by:
Rebecca Diviney
CE9F2B4E4B6745F...

Rebecca Diviney

Director of Capital Projects/City Engineer

 DocuSigned by:
Rosa Rios
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Rosa Rios

City Secretary

EXHIBIT A

NORTH-SOUTH PHASE 3 - 42" WATER TRANSMISSION MAIN										
4.14.21 Mountain Cascade Proposal										
CITY OF DENTON PURCHASE ORDER NO. 192897										
Bid Line Item	Item Code	Description	Unit	Bid Quantity	CO Quantity	Adjusted Quantity	Approved Installed to Date Qty	Remaining Quantity	Bid Unit Price	Bid Amount
1	COD NCTCOG AM ITEM 203.3	Mobilization	LS	1.00		1.00	0.50	1.00	\$300,000.00	\$300,000.00
2	COD NCTCOG AM ITEM 203.3	General Site Preparation	LS	1.00		1.00	0.70	1.00	\$25,000.00	\$25,000.00
3	13 47 13	Corrosion Protection	LS	1.00		1.00	0.00	1.00	\$160,000.00	\$160,000.00
4	COD NCTCOG AM ITEM 201	SWPPP Plan and Implementation	LS	1.00		1.00	0.75	1.00	\$25,000.00	\$25,000.00
5	COD NCTCOG AM ITEM 201	Traffic Control Plan and Implementation	LS	1.00		1.00	0.75	1.00	\$50,000.00	\$50,000.00
6		2 Portable Changeable Message Sign	DAY	270.00		270.00	97.00	200.00	\$100.00	\$20,000.00
7	COD NCTCOG AM ITEM 501.14	6" C900 DR-14 PVC Water Line	LF	21.00		21.00	0.00	21.00	\$350.00	\$7,350.00
8	COD NCTCOG AM ITEM 501.14	12" C900 DR-14 PVC Water Line	LF	918.00		918.00	828.20	89.80	\$110.00	\$9,878.00
9	COD NCTCOG AM ITEM 503.3	60"x3/4" Thick Steel Casing By Bore	LF	274.00		274.00	274.00	0.00	\$2,400.00	\$0.00
10	COD NCTCOG AM ITEM 503.3	60"x3/4" Thick Steel Casing By Open Cut	LF	172.00	-125.00	47.00	0.00	47.00	\$1,800.00	\$84,600.00
11	COD NCTCOG AM 107.19.3	Excavation Protection (Trench Safety)	LF	4,910.00		4,910.00	828.20	4,081.80	\$1.00	\$4,081.80
12		8" Blowoff Valve Assembly	EA	1.00		1.00	0.00	1.00	\$9,000.00	\$9,000.00
13	COD NCTCOG AM ITEM 502.3	Fire Hydrant Assembly	EA	3.00		3.00	0.00	3.00	\$6,800.00	\$20,400.00
14		Connect to Existing Fire Hydrant Assembly	EA	1.00		1.00	1.00	0.00	\$2,500.00	\$0.00
15	33 12 16.23	6" Gate Valve and Box	EA	1.00		1.00	1.00	0.00	\$1,300.00	\$0.00
16	33 12 16.23	12" Gate Valve and Box	EA	1.00		1.00	1.00	0.00	\$3,000.00	\$0.00
17	33 12 16.26	42" Butterfly Valve Assembly	EA	3.00		3.00	0.00	3.00	\$69,500.00	\$208,500.00
18	COD NCTCOG AM ITEM 502.6.3	2" Type 1 CAV Assembly	EA	1.00		1.00	0.00	1.00	\$10,000.00	\$10,000.00
19	COD NCTCOG AM ITEM 502.6.3	4" Type 2 CAV Assembly	EA	2.00		2.00	0.00	2.00	\$12,000.00	\$24,000.00
20		Connect to Existing 16" Water Line	EA	2.00		2.00	0.00	2.00	\$6,500.00	\$13,000.00
21		Connect to Existing 12" Water Line	EA	2.00		2.00	0.00	2.00	\$1,000.00	\$2,000.00
22		Connect to Existing 42" Water Line	EA	2.00		2.00	0.00	2.00	\$10,000.00	\$20,000.00
23	COD NCTCOG AM ITEM 502.10.3A	Reconnect Water Meter (long)	EA	2.00		2.00	0.00	2.00	\$5,000.00	\$10,000.00
24	COD NCTCOG AM ITEM 502.10.3A	Reconnect Water Meter (short)	EA	3.00		3.00	0.00	3.00	\$5,000.00	\$15,000.00
25		Remove existing 16" and 20" Water Line	LF	1,475.00		1,475.00	0.00	1,475.00	\$1.00	\$1,475.00
26		Asphalt Pavement Repair	SY	7,200.00		7,200.00	0.00	7,200.00	\$46.00	\$331,200.00
27		Sidewalk Replacement	SY	13.00		13.00	0.00	13.00	\$212.00	\$2,756.00
28		Curb and Gutter Replacement	LF	1,601.00		1,601.00	0.00	1,601.00	\$30.00	\$48,030.00
29		Manway Vault	EA	2.00		2.00	0.00	2.00	\$8,800.00	\$17,600.00
30		Temporary Asphalt Repair	SY	500.00		500.00	0.00	500.00	\$57.00	\$28,500.00
31		Asbestos Removal from Property	EA	3.00		3.00	3.00	0.00	\$30,000.00	\$0.00
32		Remove existing Buildings from Property	EA	3.00		3.00	3.00	0.00	\$2,500.00	\$0.00
33		16" DIP Special Class 52	LF	20.00		20.00	0.00	20.00	\$1,000.00	\$20,000.00
34		Ductile Iron Fittings	TON	4.00		4.00	2.00	2.00	\$1.00	\$2.00
35		Material Testing	LS	1.00		1.00	0.00	1.00	\$120,000.00	\$120,000.00
1A	33 11 13.13 & 09 97 16	42 Inch Water Line (Poly Coated Steel)	LF	4,225.00		4,225.00	0.00	4,225.00	\$687.00	\$2,902,575.00
147		CREDIT FOR MATERIAL ON HAND (MOH)	LS	1.00		1.00	0.00	1.00	-\$904,344.35	-\$904,344.35
		BASE BID TOTAL								\$3,585,603.45

REMEDIAL WORK										
7R	COD NCTCOG AM ITEM 501.14	Remove/Replace - 6" C900 DR-14 PVC Water Line. Price to include any Trench Safety costs, if any, in proposal number	LS					1.00	\$10,000.00	\$10,000.00
8R	COD NCTCOG AM 107.19.3	Remove/Replace - 12" C900 DR-14 PVC Water Line. Price to include any Trench Safety costs, if any, in proposal number	LS					1.00	\$235,000.00	\$235,000.00
										\$245,000.00

CHANGE ORDER WORK										
36	Hickory St.	Existing bore was required to be lowered, Project EOR Field Directive 1. Provide all costs, if any , to adjust the 42" water line to accommodate the adjusted bore depth	LS					1.00	\$25,000.00	\$25,000.00
37	Oak St.	Existing bore was required to be lowered, Project EOR Field Directive 1. Provide all costs, if any , to adjust the 42" water line to accommodate the adjusted bore depth	LS					1.00	\$25,000.00	\$25,000.00
38	Scripture St.	Existing bore was required to be adjusted due to multiple unknown conflicts. Engineer of Record (DRAFT) sheets PL-7 and PL-8. Provide all costs associated with this change in elevations	LS					1.00	\$25,000.00	\$25,000.00
	Bonnie Brae	Remove and Replace Additional Curb & Gutter damaged by S&J, not shown on drawings to be removed and replaced	LF					214.00	\$30.00	\$6,420.00
	Bonnie Brae	Remove & Replace Additional Sidewalk damaged by S&J, not shown on drawings to be removed and replaced	SY					52.00	\$212.00	\$11,024.00
	Bonnie Brae	Remove & Replace Additional Driveway Approach damaged by S&J, not shown on drawings to be removed and replaced.	SY					11.00	\$212.00	\$2,332.00
	Bonnie Brae	Remove and Replace Curb inlet top damaged by S&J, not shown on drawings to be removed and replaced.	EA					1.00	\$19,200.00	\$10,000.00
43	Bid Item 1A. 42" Water Line (Poly Coated Steel)	Part of Bid Item 1A. Provide material costs including shipping to provide a new 42" replacement pipe for the project - Pipe #32	EA					1.00	\$12,000.00	\$12,000.00

MATERIALS ON HAND (MOH) BREAKDOWN		Unit	Quantity	Qty Rate	MOH Value		Bid Value
1A	42" Water Line (Poly Coated Steel)	LF	4,225.00	\$241.60	\$1,020,747.71		\$816,600.00
10	60" x 3/4" Steel Casing	LF	172.00	\$419.00	\$72,068.00		\$16,395.35
17	42" Butterfly Valve Assembly	EA	3.00	\$42,176.00	\$126,528.00		\$71,349.00
TOTAL FOR MATERIALS ON HAND (LINE ITEM 147)							\$904,344.35

EXHIBIT B

Bond Number: 107181787

SECTION 00 61 13
PERFORMANCE BOND

THE STATE OF TEXAS §
COUNTY OF DENTON § KNOW ALL BY THESE PRESENTS:

That we, S & J Construction Co., Inc., known as
"Principal" herein and Travelers Casualty and Surety Company Of America, a corporate
surety(sureties, if more than one) duly authorized to do business in the State of Texas, known as
"Surety" herein (whether one or more), are held and firmly bound unto the City of Denton, a
municipal corporation created pursuant to the laws of Texas, known as "City" herein, in the
penal sum of, Three Million Eight Hundred Ten Thousand and Forty Eight and 74/100 Dollars
(\$3,810,048.74), lawful money of the United States, to be paid in Denton, Denton
County, Texas for the payment of which sum well and truly to be made, we bind ourselves, our
heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

WHEREAS, the Principal has entered into a certain written contract with the City
awarded the 18th day of February, 2020, which Contract is hereby referred to and
made a part hereof for all purposes as if fully set forth herein, to furnish all materials,
equipment labor and other accessories defined by law, in the prosecution of the Work, including
any Change Orders, as provided for in said Contract designated as NORTH-SOUTH PHASE III 42-
INCH WATER TRANSMISSION MAIN.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall
faithfully perform it obligations under the Contract and shall in all respects duly and faithfully
perform the Work, including Change Orders, under the Contract, according to the plans,
specifications, and contract documents therein referred to, and as well during any period of

1 extension of the Contract that may be granted on the part of the City, then this obligation shall
2 be and become null and void, otherwise to remain in full force and effect.

3 **PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in
4 Denton County, Texas or the United States District Court for the Eastern District of Texas,
5 Sherman Division.

6 This bond is made and executed in compliance with the provisions of Chapter 2253 of
7 the Texas Government Code, as amended, and all liabilities on this bond shall be determined in
8 accordance with the provisions of said statute.

9 **IN WITNESS WHEREOF**, the Principal and the Surety have SIGNED and SEALED this
10 instrument by duly authorized agents and officers on this the 24th day of February
11 _____, 2020.

12 PRINCIPAL:

13 S & J Construction Co., Inc.
14
15
16
17
18
19
20

BY: Jerry Smith, President

Signature

21 ATTEST:

22 Kelley Colvert
23 Kelley Colvert
24

25 (Principal) Secretary

26
Name and Title

00 61 13 - 3

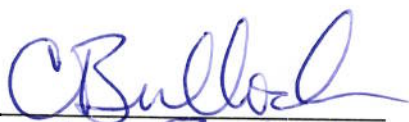
PERFORMANCE BOND

Page 3 of 4

Address:

P.O. Box 5003

Jacksonville, AR 72078


Chris Bullock

Witness as to Principal

SURETY:

Travelers Casualty and Surety Company Of America

BY:

Signature



Bradley D. Johnson, Attorney In Fact
Name and Title

Address:

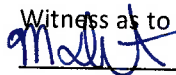
1501 Mart Drive

Little Rock, AR 72202

00 61 13 - 4

PERFORMANCE BOND

Page 4 of 4

1 Witness as to Surety
2 

Telephone 501-819-3288

Number:

3

4

5

6 *Note: If signed by an officer of the Surety Company, there must be on file a certified extract
7 from the by-laws showing that this person has authority to sign such obligation. If
8 Surety's physical address is different from its mailing address, both must be provided.
9 The date of the bond shall not be prior to the date the Contract is awarded.

10

Bond Number: 107181787

SECTION 00 61 14

PAYMENT BOND

1
2
3
4 THE STATE OF TEXAS §
5 § KNOW ALL BY THESE PRESENTS:
6 COUNTY OF DENTON §
7

8 That we, S & J Construction Co., Inc., known as
9 "Principal" herein, and Travelers Casualty and Surety Company Of America, a
10 corporate surety (sureties), duly authorized to do business in the State of Texas, known as
11 "Surety" herein (whether one or more), are held and firmly bound unto the City of Denton, a
12 municipal corporation created pursuant to the laws of the State of Texas, known as "City"
13 herein, in the penal sum of Three Million Eight Hundred Ten Thousand and Forty Eight and 74/100 Dollars
14 (\$ 3,810,048.74), lawful money of the United States, to be paid in Denton, Denton
15 County, Texas, for the payment of which sum well and truly be made, we bind ourselves, our
16 heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
17 presents:

18 WHEREAS, Principal has entered into a certain written Contract with City, awarded the
19 18th day of February, 2020, which Contract is hereby referred to and
20 made a part hereof for all purposes as if fully set forth herein, to furnish all materials,
21 equipment, labor and other accessories as defined by law, in the prosecution of the Work as
22 provided for in said Contract and designated as NORTH-SOUTH PHASE III 42-INCH WATER
23 TRANSMISSION MAIN.

24 NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Principal shall
25 pay all monies owing to any (and all) payment bond beneficiary (as defined in Chapter 2253 of
26 the Texas Government Code, as amended) in the prosecution of the Work under the Contract,

CITY OF DENTON

Invitation for Bid No. 7200

1 then this obligation shall be and become null and void; otherwise to remain in full force and
2 effect.

3 This bond is made and executed in compliance with the provisions of Chapter 2253 of
4 the Texas Government Code, as amended, and all liabilities on this bond shall be determined in
5 accordance with the provisions of said statute.

6

1 **IN WITNESS WHEREOF**, the Principal and Surety have each SIGNED and SEALED this
2 instrument by duly authorized agents and officers on this the 24th day of
3 February, 2020.

4

PRINCIPAL:

S & J Construction Co., Inc.

ATTEST:

BY: _____

Signature

(Principal) Secretary

Kelley Colvert
Kelley Colvert

Name and Title

Jerry Smith, President

Address: _____

P.O. Box 5003
Jacksonville, AR 72078

Witness as to Principal

Chris Bullock
CHRIS BULLOCK

SURETY:

Travelers Casualty and Surety Company Of America

ATTEST:

BY: _____

Signature

[Signature]


CITY OF DENTON

Invitation for Bid No. 7200

00 61 14 - 4

PAYMENT BOND

Page 4 of 4


(Surety) Secretary

Bradley D. Johnson, Attorney In Fact

Name and Title

Address: 1501 Mart Drive

Little Rock, AR 72202



Witness as to Surety

Telephone Number: 501-819-3288

1

2 Note: If signed by an officer of the Surety, there must be on file a certified extract from the
3 bylaws showing that this person has authority to sign such obligation. If Surety's physical
4 address is different from its mailing address, both must be provided.

5

6

THE DATE OF THE BOND SHALL NOT BE PRIOR
TO THE DATE THE CONTRACT IS AWARDED.

7

8

END OF SECTION

9

CITY OF DENTON

Invitation for Bid No. 7200

Bond Number: 107181787

SECTION 00 61 19
MAINTENANCE BOND

THE STATE OF TEXAS §
§ KNOW ALL BY THESE PRESENTS:
COUNTY OF TARRANT §

That we S & J Construction Co., Inc., known as
"Principal" herein and Travelers Casualty and Surety Company Of America, a corporate surety
(sureties, if more than one) duly authorized to do business in the State of Texas, known as
"Surety" herein (whether one or more), are held and firmly bound unto the City of Denton, a
municipal corporation created pursuant to the laws of the State of Texas, known as "City"
herein, in the sum of ^{Three Million Eight Hundred Ten Thousand and Forty Eight and 74/100} _____ Dollars
(\$ 3,810,048.74), lawful money of the United States, to be paid in Denton, Denton
County, Texas, for payment of which sum well and truly be made unto the City and its
successors, we bind ourselves, our heirs, executors, administrators, successors and assigns,
jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the City awarded
the 18th day of February, 2020, which Contract is hereby
referred to and a made part hereof for all purposes as if fully set forth herein, to furnish all
materials, equipment labor and other accessories as defined by law, in the prosecution of the
Work, including any Work resulting from a duly authorized Change Order (collectively herein,
the "Work") as provided for in said contract and designated as NORTH-SOUTH PHASE III 42-INCH
WATER TRANSMISSION MAIN.; and

WHEREAS, Principal binds itself to use such materials and to so construct the Work in
accordance with the plans, specifications and Contract Documents that the Work is and will

1 remain free from defects in materials or workmanship for and during the period of **two (2) years**
2 after the date of Final Acceptance of the Work by the City ("Maintenance Period"); and
3

4 **WHEREAS**, Principal binds itself to repair or reconstruct the Work in whole or in part upon
5 receiving notice from the City of the need therefor at any time within the Maintenance Period.
6

7 **NOW THEREFORE**, the condition of this obligation is such that if Principal shall remedy
8 any defective Work, for which timely notice was provided by City, to a completion satisfactory to
9 the City, then this obligation shall become null and void; otherwise to remain in full force and
10 effect.
11

12 **PROVIDED, HOWEVER**, if Principal shall fail so to repair or reconstruct any timely
13 noticed defective Work, it is agreed that the City may cause any and all such defective Work to
14 be repaired and/or reconstructed with all associated costs thereof being borne by the Principal
15 and the Surety under this Maintenance bond; and
16

17 **PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in
18 Denton County, Texas or the United States District Court for the Eastern District of Texas,
19 Sherman Division; and
20

21 **PROVIDED FURTHER**, that this obligation shall be continuous in nature and successive
22 recoveries may be had hereon for successive breaches.
23
24
25

1 **IN WITNESS WHEREOF**, the Principal and the Surety have each SIGNED and SEALED this
2 instrument by duly authorized agents and officers on this the 24th day of February
3 _____, 2020.

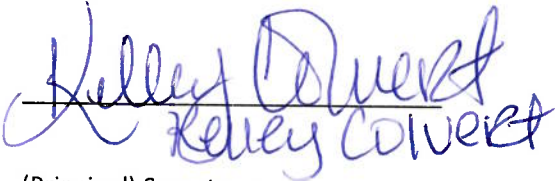
4
5 PRINCIPAL:

6
7 S & J Construction Co., Inc.
8
9 _____
10

11 BY: 
12 _____
13

Signature

14 ATTEST:

15
16 
17 Kelley Colver
18 (Principal) Secretary

19
20
21
22
23
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25
26
27
28
Jerry Smith, President
Name and Title

Address:

P.O. BOX 5003

Jacksonville, AR 72078

24
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27
28

Witness as to Principal

SURETY:

Travelers Casualty and Surety Company Of America

BY:

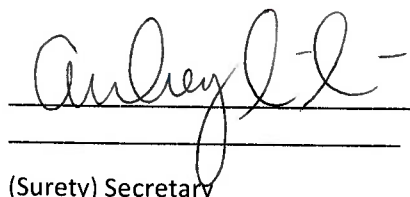
Signature



Bradley D. Johnson, Attorney In Fact

Name and Title

ATTEST:



(Surety) Secretary

Address:

1501 Mart Drive

Little Rock, AR 72202

Witness as to Surety

Telephone 501-819-3288

Number:

*Note: If signed by an officer of the Surety Company, there must be on file a certified extract from the by-laws showing that this person has authority to sign such obligation. If Surety's physical address is different from its mailing address, both must be provided. The date of the bond shall not be prior to the date the Contract is awarded.



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Bradley D. Johnson**, of **Little Rock, Arkansas**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February**, 2017.



State of Connecticut

City of Hartford ss.

By: _____

Robert L. Raney
 Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2021



Marie C. Tetreault
 Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **24th**

day of **February**

, 2020



Kevin E. Hughes
 Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.

EXHIBIT C



Client: **City of Denton**
 Document: **North-South Phase III 42-Inch Water Transmission Main - Pipe Walk**

Project: **City: No. 180006/ IFB No.**
FNI: DTN12314

Date: **May 4, 2021**

Item #	Pipe	Comments
1	GENERAL	Comments below denote observed conditions but do not constitute an exhausted list of concerns. Each pipe joint is to be properly inspected and issues addressed before being installed.
2	GENERAL	A lot of pipe in the park is sitting on the ground
3	GENERAL	Rust to be wire brushed off of all pipe ends
4	GENERAL	All coating to be inspected before installation (per spec)
5	GENERAL	All lining to be inspected for cracks per specs
6	GENERAL	New gaskets to be provided
7	GENERAL	Where have Covalence shrink sleeves been stored? Did not see them on site
8	GENERAL	Thoroughly inspect pipe in park due to extended public access and vandalism
9	MK 2, 11	On ground
10	MK 64	Cover off, touching MK 2
11	MK 1	Cover off with trash inside, crack in mortar
12	MK 7	Cover off, crack in mortar
13	MK 13	Close to curb (about an inch from curb)
14	MK 17	On curb
15	MK 18	On ground
16	MK 20	Lining concern
17	MK 21	Close to ground
18	MK 22	On curb
19	MK 23	Lining concern
20	MK 24	Looks moved, rocks, off cradle
21	MK 25	Close to curb
22	MK 28	Lining concern
23	MK 32	Reject - car hit
24	MK 36	Chunks of mortar laying pipe
25	MK 38	Mortar concern
26	MK 41	Chunks of mortar laying pipe
27	MK 43	Mortar concern
28	MK 45	Coating concern
29	MK 45, 47	Bells touching each other
30	MK 53	Welding outlet to be repatched
31	MK 55	Mortar concern
32	MK 89	Welding outlet to be repatched
33	MK 61	No cover
34	MK 85, 74	Touching at end
35	MK 118	No cover
36	MK 112	Crack in mortar
37	MK 134, 132	Touching each other
38	MK 138, 139	Touching each other
39	MK 136	Cover open
40	MK 154	Sitting on ground
41	MK 152, 137	Touching each other
42	MK 124	Sitting on ground
43	MK 159	Sitting on ground
44	MK 175	Mortar concern
45	MK 155	Cover off
46	MK 184	Mortar cracking
47	MK 187	Cover off, crack in mortar
48	MK 161, 162	Touching each other
49	MK 111, 119	Touching each other
50	MK 129, 142	Touching each other
51	MK 169	Cracking
52	MK 169, 172	Touching each other
53	MK 83	No cover
54	MK 143	No cover

EXHIBIT D

EXHIBIT D

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY

ADDITIONAL INSURED ENDORSEMENT

Policy No: _____[the "POLICY"]

Insured: _____[the "CONTRACTOR"]

Project: North-South Phase III 42-Inch Water Transmission Main IFB #7200, Engineering
Project No. 180006, DTN12314 [the "PROJECT"]

Policy Type: _____

The POLICY, and all coverage parts thereunder, is hereby amended to include The City of Denton, Texas ("City of Denton") and Travelers Casualty and Surety Company of America ("Travelers"), as an insured, as that term is defined in the POLICY, for purposes of all coverage afforded by the POLICY, but only with respect to liability arising out of CONTRACTOR's ongoing operations performed for the City of Denton on the PROJECT. The POLICY, and all coverage parts thereunder, is hereby amended to provide that in the City of Denton's or Travelers' sole and absolute discretion the City of Denton or Travelers may satisfy by payment any deductible or self-insured amounts that are conditions precedent to coverage under the POLICY. The POLICY is primary to and non-contributory with the insurance issued directly to the persons or organizations mentioned in this endorsement.

EXHIBIT E

EXHIBIT E

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY

NOTICE OF CANCELLATION OR MODIFICATION ENDORSEMENT

Policy No: _____[the "POLICY"]

Insured: _____[the "CONTRACTOR"]

Project: North-South Phase III 42-Inch Water Transmission Main IFB #7200,
Engineering Project No. 180006, DTN12314 [the "PROJECT"]

Policy Type: _____

Number of Days' Notice: 30 Calendar Days

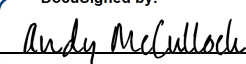
If any change (a "Change") in the POLICY is requested, or will be made for any reason, or if the POLICY will be cancelled for any reason (a "Cancellation"), or if the POLICY will lapse or expire by its own terms (an "Expiration"), the insurer who provided the POLICY agrees that the Change, Cancellation, or Expiration shall not be effective until thirty (30) calendar days after written notice of the Change, Cancellation, or Expiration has been provided to:

The City of Denton, Texas – Development Services Building
Robin Davis, Project Manager
401 North Elm
Denton, TX 76201

AND

Travelers Casualty and Surety Company of America
Ryan J. Slepisky, Claim Counsel
111 Schilling Road
Hunt Valley, MD 21031

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.		
	<p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>		
1	Name of vendor who has a business relationship with local governmental entity. Mountain Cascade of Texas LLC		
2	<input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7 th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3	Name of local government officer about whom the information in this section is being disclosed. <div style="text-align: center;">N/A</div> <hr style="width: 50%; margin: auto;"/> <div style="text-align: center;">Name of Officer</div> <p>This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: space-around; width: 100%;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <div style="display: flex; justify-content: space-around; width: 100%;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?</p> <div style="display: flex; justify-content: space-around; width: 100%;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> <p>D. Describe each employment or business and family relationship with the local government officer named in this section.</p>		
4	<input checked="" type="checkbox"/> I have no Conflict of Interest to disclose.		
5	<div style="display: flex; justify-content: space-between;"> <div> DocuSigned by:  Andy McCulloch Signature of Person doing business with the governmental entity </div> <div style="text-align: right;"> 6/17/2021 Date </div> </div>		

Certificate Of Completion

Envelope Id: E198A2797D9A4D2DBC24B266633976F5

Status: Completed

Subject: Please DocuSign: City Council Tender Agreement 7200-1 North-South Water Main

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Document Pages: 34

Signatures: 7

Envelope Originator:

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Cori Power

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Denton, TX 76209

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Senior Buyer

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Lori Hewell



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lori.hewell@cityofdenton.com

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Purchasing Manager

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City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication
(None)

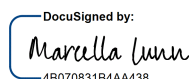
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Marcella Lunn



Sent: 6/16/2021 3:45:59 PM

marcella.lunn@cityofdenton.com

Viewed: 6/16/2021 3:53:08 PM

Deputy City Attorney

Signed: 6/16/2021 3:54:17 PM

City of Denton

Signature Adoption: Pre-selected Style

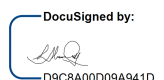
Security Level: Email, Account Authentication
(None)

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Leslie Alvarado-Llitas



Sent: 6/16/2021 3:54:20 PM

LALVARA2@travelers.com

Resent: 6/17/2021 11:27:25 AM

tbd

Resent: 6/17/2021 4:33:14 PM

Travelers Insurance Company

Viewed: 6/17/2021 12:15:54 PM

Security Level: Email, Account Authentication
(None)

Signature Adoption: Uploaded Signature Image

Signed: 6/18/2021 8:44:44 AM

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Electronic Record and Signature Disclosure:

Accepted: 6/17/2021 12:15:54 PM

ID: aa346122-6246-42a6-aa45-ff0072b177a5

Signer Events	Signature	Timestamp
<p>Andy McCulloch</p> <p>AMcCulloch@mountaincascade.com</p> <p>Vice-President</p> <p>Harber Co.Inc. dba Mountain Cascade of Nevada</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 6/17/2021 3:26:04 PM ID: 92155cc8-37dd-48dc-9d1f-616d94e6c8dd</p>	<p>DocuSigned by: <i>Andy McCulloch</i> 0AB8B77B6BE940A...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 206.248.39.237</p>	<p>Sent: 6/16/2021 3:54:19 PM</p> <p>Resent: 6/17/2021 11:27:25 AM</p> <p>Viewed: 6/17/2021 3:26:04 PM</p> <p>Signed: 6/17/2021 3:51:08 PM</p>
<p>Rebecca Diviney</p> <p>Rebecca.Diviney@cityofdenton.com</p> <p>Director of Capital Projects/City Engineer</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 6/18/2021 9:02:00 AM ID: 7aff003f-b003-4e3e-8259-62b24d2e7aae</p>	<p>DocuSigned by: <i>Rebecca Diviney</i> CE9F2B4E4B6745F...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 6/18/2021 8:44:48 AM</p> <p>Viewed: 6/18/2021 9:02:00 AM</p> <p>Signed: 6/18/2021 9:02:17 AM</p>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Contract Administrator</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 6/18/2021 9:02:20 AM</p> <p>Viewed: 6/23/2021 8:50:56 AM</p> <p>Signed: 6/23/2021 10:04:26 AM</p>
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>Interim City Manager</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by: <i>Sara Hensley</i> 5236DB296270423...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 6/23/2021 10:04:29 AM</p> <p>Viewed: 6/23/2021 10:05:02 AM</p> <p>Signed: 6/23/2021 10:05:15 AM</p>
<p>Rosa Rios</p> <p>rosa.rios@cityofdenton.com</p> <p>City Secretary</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 6/23/2021 10:15:04 AM ID: defec7af-f451-4989-97d6-1d08370a2c57</p>	<p>DocuSigned by: <i>Rosa Rios</i> 1C5CA8C5E175493...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 6/23/2021 10:05:17 AM</p> <p>Viewed: 6/23/2021 10:15:04 AM</p> <p>Signed: 6/23/2021 10:15:35 AM</p>
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Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
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: 6/16/2021 3:26:17 PM Viewed: 6/23/2021 1:56:27 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 6/18/2021 9:02:20 AM Viewed: 6/18/2021 9:03:56 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 6/23/2021 10:15:39 AM Viewed: 6/23/2021 11:06:36 AM
Seth Garcia Seth.Garcia@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/28/2021 10:51:23 AM ID: b0341a0e-397b-4b00-a58f-337d99f35d4c	COPIED	Sent: 6/23/2021 10:15:40 AM Viewed: 6/23/2021 10:39:24 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: 6/23/2021 10:15:43 AM
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Completed	Security Checked	6/23/2021 10:15:43 AM
Payment Events	Status	Timestamps
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To contact us by email send messages to: purchasing@cityofdenton.com

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

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

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- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, 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.