

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND
IRBY UTILITIES (RFP 6412)**

THIS CONTRACT is made and entered into this date _____, by and between Irby Utilities, a corporation, whose address is 7125 Belton Street, Fort Worth, TX 76118, hereinafter referred to as "Supplier," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

SCOPE OF SERVICES

Supplier shall provide products in accordance with the City's RFP # 6412 – Supply of Electrical Utility Line Compression Fittings a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton's RFP #6412 (**Exhibit "B" on file at the office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Certificate of Interested Parties Electronic Filing (**Exhibit "D"**);
- (e) Supplier's Proposal. (**Exhibit "E"**);
- (f) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "F"**)

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

INDEMNITY

THE SUPPLIER REPRESENTS AND WARRANTS TO THE CITY THAT THE INTELLECTUAL PROPERTY SUPPLIED BY CONTRACTOR IN ACCORDANCE WITH THE SPECIFICATIONS IN THE CONTRACT WILL NOT INFRINGE, DIRECTLY OR CONTRIBUTORILY, ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR ANY OTHER INTELLECTUAL PROPERTY RIGHT OF ANY KIND OF ANY THIRD PARTY, AND THAT NO CLAIMS HAVE BEEN MADE BY ANY PERSON OR ENTITY WITH RESPECT TO THE OWNERSHIP OR OPERATION OF THE INTELLECTUAL PROPERTY. MOREOVER, THE CONTRACTOR DOES NOT KNOW OF ANY VALID BASIS FOR ANY SUCH CLAIMS. THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS

(INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM ANY CLAIM THAT THE CITY'S EXERCISE OF ITS LICENSE RIGHTS, AND ITS USE OF THE INTELLECTUAL PROPERTY, THE SUBJECT OF THIS CONTRACT, INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, OR THE BREACH OF ANY OF REPRESENTATIONS OR WARRANTIES STATED IN THE CONTRACT DOCUMENTS. IN THE EVENT OF ANY SUCH CLAIM, THE CITY SHALL HAVE THE RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF.

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

SUPPLIER

DocuSigned by:
BY: 
694A01063BD5452...
AUTHORIZED SIGNATURE

Date: 9/12/2017

Name: Chance Anderson

Title: Account Manager

9728986005

PHONE NUMBER

canderson@irby.com

EMAIL ADDRESS

2017-255837

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____
TODD HILEMAN
CITY MANAGER

BY: _____

Date: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

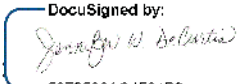
BY  _____
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Exhibit A Special Terms and Conditions

1. The Quantities

The quantities indicated on Exhibit E are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

2. Product Changes During Contract Term

The supplier shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to dentonpurchasing@cityofdenton.com, with the above file number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the supplier's expense. Products that have been installed will be replaced at the supplier's expense.

3. Authorized Distributor

The supplier shall be the manufacturer or authorized distributor of the proposed products. The distributor shall be authorized to sell to the City of Denton, and make available the manufacturer's representative as needed by the City.

4. Total Contract Amount

The contract total shall not exceed \$200,000. Pricing shall be per Exhibit E attached.

5. Delivery Lead Time

Product or services shall be delivered to the City per the weeks noted in Exhibit E after receipt of the order.

Mutually Agreed Amendments

Contract Exhibit B- "RFP 6412, Main Document and Exhibit 2 Section A- General Provisions" shall be amended for the following identified sections only. All other Terms and Conditions shall remain unchanged.

FROM RFP #6412 MAIN DOCUMENT

6. CONTRACT TERM

(Paragraph 2)

Extension of contract terms beyond the initial 1-year period will require mutual agreements of the parties.

7. PRICE ADJUSTMENTS

(Paragraph 1)

Prices quoted for the commodities or services described in the RFP must be firm for a period of one year from date of contract award. Requests made for pricing adjustments will be supported by manufacturer or supplier cost justification support, including, but not limited to, applicable industry index data provided by associated manufactures(s) in accordance with the product represented

8. COOPERATIVE PURCHASING/PIGGY BACK OPTION

VERBAGE TO BE EXCLUDED:

After award, the contractor agrees to pay a service fee in the amount of **2% of the dollar amount of all issued purchase orders generated** from use of this contract. The contractor further agrees to remit the service fee by check on a quarterly basis for the previous quarter spent through this contract, to Julia Winkley, Purchasing Coordinator at 901B Texas Street, Denton, TX 76209, on or by the Fifteen day of each month, following the end of the quarter. The Contractor shall also provided quarterly sales reports from the contract awards and Purchase Orders issued from the Contract, for the purpose of billing and collecting the service fee, and for compiling required purchasing history. This report shall be sent to purchasing@cityofdenton.com on or by the tenth day of each month. The Contractor further agrees that the City of Denton shall have the right, upon reasonable written notice, to review the Contractor's records pertaining to purchases under this awarded contract to verify the accuracy of service fees charged to the Contractor.

REPLACEMENT VERBAGE:

The contract resulting from this solicitation will be available for use by **all governmental entities**, providing there is no conflict with any applicable statutes, rules, policies, or procedures. The governmental entities will have the option to use the pricing as agreed to within the resulting contract. Governmental entities will issue their internal purchase orders directly to the contractor(s).

The contract resulting from this solicitation will be available for use by all governmental entities within a 75 mile radius of Contractor's base (Irby Utilities) location associated to the specific solicitation.

Exhibit A

Special Terms and Conditions

Mutually Agreed Amendments

Contract Exhibit B- “RFP 6412, Main Document and Exhibit 2 Section A- General Provisions” shall be amended for the following identified sections only. All other Terms and Conditions shall remain unchanged.

18. PERFORMANCE LIQUIDATED DAMAGES

(Paragraph 2)

The Contractor shall be assessed a one (1%) percent fee each week when any one of the performance standards outlined above are not met in full for “normal condition” orders and based on usages in line with estimated annual quantities supplied by the City. At the end of each month, the City will review the monthly reports and determine the percentage of penalty to be assessed to the Contractor’s monthly profit margin.

19. WARRANTIES

The contractor shall provide a warranty that is standard in the industry, which is a “pass through” warranty condition for this agreement. Repair or Maintenance of fleet not performed to industry standards shall be accomplished at the contractor’s expense, at the option of the City.

Contract Exhibit B- RFP #6412 Exhibit 2, SECTION A Standard Purchase Terms and Conditions shall be amended for the following identified sections only. All other Terms and Conditions shall remain unchanged.

(Paragraph 1)

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton’s contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent herein after referred to as Bidder, Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City’s Procurement Department and the Supplier. No Terms and Conditions contained in the seller’s proposal response, invoice or statement shall serve to modify the terms set forth herein, unless noted as Special Conditions, which have been mutually agreed upon. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions and attachments will take precedence.

6. DELIVERY TERMS AND TRANSPORTATION CHARGES: Deliverables shall be shipped F.O.B. Point of Delivery, unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor’s price shall be deemed to include all delivery and transportation charges. In the event shipping charges are applicable, the City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

17. RIGHT TO AUDIT:

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Furthermore, the Contractor, to the best of its ability, also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

20. WARRANTY-TITLE

The contractor represents within reasonable expectation that it has good and indefeasible title to all deliverables furnished under the contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. WARRANTY-DELIVERABLES

The contractor represents within reasonable expectation that all deliverables sold the City under the contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, convenients and to all applicable State, Federal or local Laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

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

27. TERMINATION FOR CAUSE

In the event of a default by either party, the other party shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such ten (10) day

period, cures such default, or provides evidence sufficient to prove to the other party reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the non-defaulting party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the non-defaulting as a result of the defaulting party's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

38. OWNERSHIP AND USE OF DELIVERABLES:

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

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor, to the best of its ability and in working with corresponding manufacturer(s), that such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor, to the best of its ability and with corresponding manufacturer(s), assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor, to the best of its ability and with corresponding manufacturer(s), execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. Furthermore, the Contractor, to the best of its ability and with corresponding manufacturer(s), if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right,

title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

67. RECORDS RETENTION

The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of two (2) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

***RFP #6412 EXHIBIT 2, PPENDIX-A INSURANCE REQUIREMENTS AND
WORKERS COMPENSATION REQUIREMENTS***

Irby Utilities is supplying materials only. This section does not apply.

Exhibit C
City of Denton
Standard Purchase Terms and Conditions

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent herein after referred to as Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the seller's proposal response, invoice or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions will take precedence.

The Contractor agrees that the contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, 22 and 32 shall apply only to a solicitation to purchase services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

3. **CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

6. DELIVERY TERMS AND TRANSPORTATION CHARGES: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

7. RIGHT OF INSPECTION AND REJECTION: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. NO REPLACEMENT OF DEFECTIVE TENDER: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

9. PLACE AND CONDITION OF WORK: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

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

10. WORKFORCE

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

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

Immigration: The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

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

12. INVOICES:

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

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

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.

The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

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

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

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

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

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

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

14. TRAVEL EXPENSES: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the

performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

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

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

17. RIGHT TO AUDIT:

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

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

18. SUBCONTRACTORS:

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ

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

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the

Contract, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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

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

19. WARRANTY-PRICE:

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

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

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. WARRANTY – TITLE: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens,

claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

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

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the

Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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

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

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

26. DEFAULT: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-

judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

28. TERMINATION WITHOUT CAUSE: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

30. DELAYS:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

31. INDEMNITY:

A. Definitions:

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

subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

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

32. INSURANCE: The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Appendix A** for services only. The successful firm shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton.

A. General Requirements:

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

City of Denton
Materials Management Department
901B Texas Street
Denton, Texas 76209

vii. The “other” insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days’ written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage’s indicated within the Contract.

xiv. The insurance coverage’s specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the solicitation instrument.

33. CLAIMS: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor’s ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

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

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not

expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

39. PUBLICATIONS: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be

identified.

40. ADVERTISING: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

41. NO CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. GRATUITIES: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

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

45. ASSIGNMENT-DELEGATION: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided

however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

46. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

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

48. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

49. **DISPUTE RESOLUTION:**

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

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

interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

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

52. HOLIDAYS: The following holidays are observed by the City:

New Year's Day (observed)
MLK Day
Memorial Day
4th of July
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)
New Year's Day (observed)

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

53. SURVIVABILITY OF OBLIGATIONS: All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and

confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

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

55. EQUAL OPPORTUNITY

A. Equal Employment Opportunity: No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

57. RIGHT TO INFORMATION: The City of Denton reserves the right to use any and all information presented in any response to this contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

58. LICENSE FEES OR TAXES: Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

59. PREVAILING WAGE RATES: The contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website www.wdol.gov for Denton County, Texas (WD-2509).

60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS: The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

61. FEDERAL, STATE, AND LOCAL REQUIREMENTS: Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

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

63. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

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

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

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

67. RECORDS RETENTION: The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

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

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

EXHIBIT D

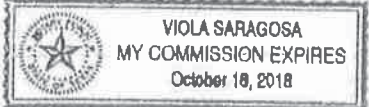
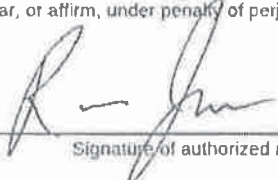

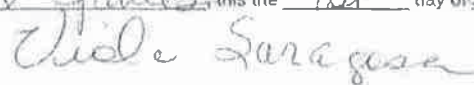
CERTIFICATE OF INTERESTED PARTIES			FORM 1295	
			1 of 1	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.			OFFICE USE ONLY CERTIFICATION OF FILING	
1 Name of business entity filing form, and the city, state and country of the business entity's place of business. Stuart C Irby Fort Worth, TX United States			Certificate Number: 2017-255837	
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed. City of Denton			Date Filed: 08/31/2017	
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract. RFP 6412 Supply of Electrical Utility Line Compression Fittings			Date Acknowledged: 09/12/2017	
4	Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
			Controlling	Intermediary
	Anderson, Chance	Fort Worth, TX United States		X
5 Check only if there is NO Interested Party. <input type="checkbox"/>				
6 AFFIDAVIT				
I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.				
				
AFFIX NOTARY STAMP / SEAL ABOVE		Signature of authorized agent of contracting business entity		
Sworn to and subscribed before me, by the said <u>Russell James</u> this the <u>1st</u> day of <u>September</u>				
20 <u>17</u> , to certify which, witness my hand and seal of office.				
				
Signature of officer administering oath		Printed name of officer administering oath		
Signature of officer administering oath		Title of officer administering oath		

EXHIBIT E



IRBY UTILITIES
ELECTRICAL DISTRIBUTOR

7125 Belton Street
Fort Worth, TX 76118
817-284-0868
www.irby.com

June 7, 2017

City of Denton
Materials Management
901B Texas Street
Denton, TX 76209

Subject: RFP-6412 Supply of Electrical Utility Line Compression Fittings

Robyn,
Thank you for the invitation to participate in the subject RFP. Our response is enclosed.
Our response includes the following documents:

Cover Page	
Exhibit 1	Price Sheet
Completed Solicitation Checklist	
Attachment A	Business Overview Questionnaire
Attachment B	Exception Form
Attachment B1	Mutually Agreed Upon Terms and Conditions
Attachment D	References
Attachment E	Conflict of Interest Form
Attachment F	Acknowledgment
Authorized Distributor Letter	
Product spec sheets	
Proposal Supplement	

We look forward to your response.

Sincerely,

Russell James

Ph 817-321-4011
Fx 817-284-7743
james@irby.com



Exhibit 1 BAFO EVALUATION SHEET AWARDED BY VENDOR						Respondent's Name:	IRBY UTILITIES		
RFP 6412 BEST AND FINAL OFFER (BAFO) Pricing Sheet for Electric Transmission Line Conductor Attachments and Pole Hardware						Place of Business	Ft. Worth, TX		
EXHIBIT 1- BAFO							ORIGINAL OFFER		
Item #	EST. ANNUAL QTY	UOM	City Stock #	Product Description	Manufacturer/Model # (Preferred)	Substituted Manufacturer/Model # **	Unit Price	Extended Price	Estimated Delivery ARO (weeks)
** Proposed substitute material must equal or exceed ratings of preferred material, it must be noted in column G, and a cut sheet must be provided with proposal.									
SECTION A- HUBBELL BRAND									
1	45	EA	32010053	JUMPER CLAMP, POST INSULATOR, AL, DBL 1.0-1.4"D, FOR 2-HOLE BLADE, 18" SPACING	HUBBELL 2717243001	MacLean LPH3D-18-140	\$ 93.00	\$ 4,185.00	6
2	5	EA	32010055	JUMPER CLAMP, POST INSULATOR, AL, SGL 1.0-1.4"D, FOR 2-HOLE BLADE	HUBBELL 976423002	MacLean LPJC-140	\$ 48.70	\$ 243.50	6
3	5	EA	32010056	CLAMP-CABLE TO INSULATOR SUPPORT, 0.522"-1.632" DIA, 11/16" HOLES ON 5" BC W/ MOUNTING HARDWARE	HUBBELL ASR2005	AFL PSG199-5-AA	\$ 52.10	\$ 260.50	2
5	1,000	EA	32010052	ANCHOR SHACKLE 7/8"WD, 3/4" PIN, 60K, GALV BNC	HUBBELL AS50BNK	MacLean ASH-66A-BC	\$ 10.90	\$ 10,900.00	2
9	200	EA	32010071	LINK-CHAIN EYE 3/4" 60K 1"X3-1/2" OPENING	HUBBELL LK60	MacLean CL6	\$ 7.10	\$ 1,420.00	2
12	70	EA	32010074	SOCKET-EYE 1-3/4" WIDE EYE, 11/16" HOLE 30K	HUBBELL SA16	MacLean SI-1750	\$ 7.90	\$ 553.00	7
14	400	EA	32010076	Y-CLEVIS BALL, 3/4"D PIN, 30K	HUBBELL YBC30	MacLean YCB-65A	\$ 7.00	\$ 2,800.00	2
15	400	EA	32010078	Y-CLEVIS EYE, 90 DEG, 1" WIDE EYE, 3/4" BOLT, 30K GALV	HUBBELL YCS1090	MacLean RYCE-65-1062	\$ 13.60	\$ 5,440.00	7
16	500	EA	28772240	Y-CLEVIS SOCKET, 3/4"D PIN, 30K	HUBBELL SYC30	MacLean SYCR-56	\$ 15.00	\$ 7,500.00	2
18	300	EA	32010082	YOKE PLATE, 4-POINT, 5/8" THK, 18"X6", (2) 11/16" & (2) 15/16" HOLES, 30K	HUBBELL 976113002	MacLean Y2DR060S1800	\$ 89.00	\$ 26,700.00	7
19	5	EA	32010085	SUSPENSION CLAMP, AL 0.70-1.18" 25K W/SOCKET EYE (SA-10) BNC	HUBBELL HAS118SBNK	MacLean LS-3-S-BC	\$ 24.80	\$ 124.00	7
22	10	EA	32010083	YOKE PLATE CRESCENT	HUBBELL YPC509378	MacLean ASM-641-2	\$ 43.70	\$ 437.00	10
23	5	EA	32010062	SUSPENSION CLAMP	HUBBELL MS60SBNK	MacLean FSC60SBNK	\$ 14.60	\$ 73.00	8
31	10	EA	32010079	YOKE PLATE 3 PT 26" SPACING	PREFORMED YP-5910	MacLean ASM-6258-1	\$ 142.40	\$ 1,424.00	7
32	5	EA	32010063	ARMOR ROD	PREFORMED AR1130	MacLean AR-S1130	\$ 3.60	\$ 18.00	4
34	5	EA	32010081	YOKE PLATE, 3-POINT, 5/8" THK, 18"X6-1/4", (1) 1" & (2) 13/16" HOLES, 40K	HUGHES AS258SZ	MacLean ASM-6312-1	\$ 74.30	\$ 371.50	7
35	5	EA	32010084	BANDING ADAPTER-POST INSULATOR, 5-1/2"X14", (2) 5/8"X6"LG BOLTS W/ NUT, 12" SPACING, FOR 1-1/4" BANDING	ALUMA-FORM D-4080-BS2-6"BOLT		\$ 66.00	\$ 330.00	4
39	5	EA	32010094	ROD, ANCHOR, TWIN EYE, 3/4" X 8"-0"	MACLEAN J7528	Hubbell# 5358	\$ 15.60	\$ 78.00	2
Total Cost of Products (Annual)						Total Cost of Products (Annual)	\$ 62,857.50		
							ORIGINAL OFFER		

EXHIBIT E



Table of Contents

Confidentiality Statement	1
Business Overview Questionnaire and Forms.....	2

EXHIBIT E**Business Overview Questionnaire and Forms**

1. Legal name and address: Stuart C. Irby
7125 Belton Street
Fort Worth, Texas 76118

Agent Authorized to sign contract: Russell James

Agent's email address: james@irby.com

2. Subsidiary of: Sonepar USA

3. Organization Class: Corporation

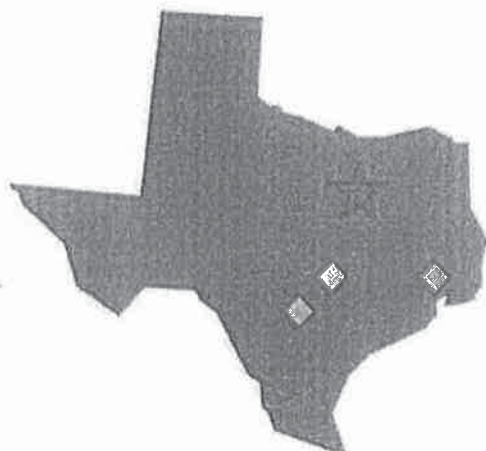
4. Tax Payer ID: 64-0179020

5. Date Established: 1926

6. Historically Underutilized Business: No

7. Does your company have an established physical presence in the state of Texas, or the City of Denton?

Irby has four utility branches located throughout Texas; specifically in Austin, Fort Worth, Houston and San Antonio. Our facilities include a high voltage test lab, tool repair facility, and a Project Services office. Our Fort Worth branch is well situated to meet the City of Denton's material requirements. This branch has a large 60,000 sq. ft. electric utility warehouse that currently carries \$4.2M of pole line hardware, transformers, wire and cable with 3 acres of yard storage space. This warehouse was set up in 1998 in north Texas to support public power and electric utilities.



irby

- ★ Fort Worth Branch, 7125 Belton St.
- San Antonio
- Austin
- ◇ Houston

EXHIBIT E

8. Please provide a detailed listing of all products and/or services that your company provides

We have a comprehensive menu of services, as listed below:

Procurement Services

- Best Buy Evaluations
- Capacity Planning
- Cost Savings Initiatives
- Planning/Purchasing/Coordination
- Commodity Volatility Analysis

Warehouse Services

- Warehouse Operations on Customer Site
- Material Flow/Pick Evaluation
- Vendor Shelving
- Storeroom Management

Material Services

- Consigned Inventories
- Vendor Managed Inventory
- Site and Mobile Inventory
- Disaster Recovery Planning
- Material Standardization
- Data Cleansing Processes
- Storm Stock Programs
- Transmission Substation Packaging Services
- Lighting Services
- Safety Testing and Supply
- Tool Repair Operations
- Cable Management Program
- Wire Cutting- Scrap Reduction
- Energy Audits
- Automation/HMI and VFD Design with Start Up and Commissioning Capabilities
- Arc Flash Studies
- Sensor Design

EXHIBIT E

Logistic Services

- Inbound/Outbound Scheduled Delivery Programs
- Jobsite Delivery
- Kitting Programs
- Backhaul, Cross Dock and Transfer Programs
- Project Management for Contractors
- Large Job Storage with Contractor Preferred Delivery Schedule

IT Services

- Automated Transactions
- Bar-Coding
- Customer Site and Extranet Reporting
- Irby-Furnished Inventory and Purchasing System
- Irby Online, ISTOCK, iAssist, Web Ordering
- Remote Data Collection
- XML Interface to Customer's Mainframe
- Full EDI transaction set capable
- Third Party Mapping/Connection Capabilities
- Trade Service On-line Pricing for Contractors

9. Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five years under your current company name or any other company name? If so, provide details of the issues and resolution if available. Include lawsuits where Owner was involved. (Notice: Failure to disclose this information during proposal submission, and later discovered, may result in contract termination at the Owner's option.)

No

10. Have you ever defaulted on or failed to complete a contract under your current company name or any other company name? If so, where and why? Give name and telephone number of Owner.

No

11. Have you ever had a contract terminated by the owner? If so, where and why? Give name and telephone number(s) of Owner(s).

No

EXHIBIT E

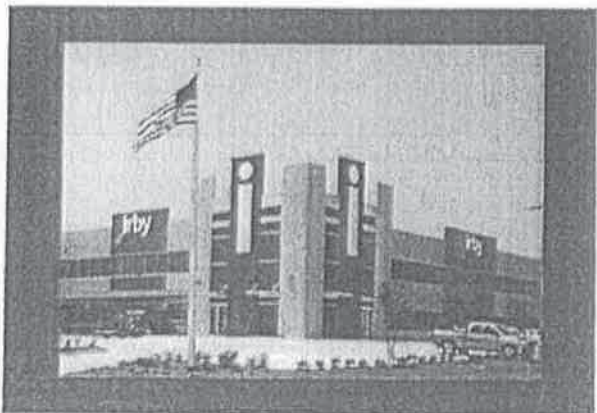
13. Resident/Non-Resident Bidder Determination:

Responding firm's principle place of business:

Irby Utilities
7125 Belton Street
Fort Worth, TX 76118

Company's majority owner principle place of business:

Irby Electrical Distributors
815 Irby Drive
Jackson, MS 39201



- ◆ Established in 1926
- ◆ 2015 Sales of \$940,000,000
- ◆ Headquarters in Jackson, Mississippi
- ◆ Over 60 locations covering 43 states
- ◆ Inventory Investment of \$100,000,000
- ◆ Integrated Alliance Partner



EXHIBIT E

Ultimate Parent Company's principle place of business:

Sonepar USA
510 Walnut Street, Suite 400
Philadelphia, PA 19106



- ◆ Established in 1998
- ◆ 2014 Sales of \$8 Billion
- ◆ Headquarters in Philadelphia, PA
- ◆ Over 60 locations covering 43 states
- ◆ Inventory Investment of \$100,000,000
- ◆ Integrated Alliance Partner

EXHIBIT E

14. Provide details to support the evaluation criteria, including experience and delivery:

a) Indicators of Probable Performance under contract.

Indicators of probable performance under the contract to include: past vendor performance, financial resources and ability to perform, experience or demonstrated capability and responsibility, references, and the vendor's ability to provide reliable maintenance agreements and support.

Performance metrics are key elements for analyzing the effectiveness of a program. Performance measurements can also identify broken processes and errors. Key components for a successful performance management include:

- ◆ Develop measurements for the work processes
- ◆ Must be specific and clearly defined
- ◆ Provide meaningful data for statistical analysis
- ◆ Sustainable and cost-effective
- ◆ Timely review is paramount in order to capitalize on a timely corrective action

Irby would be prepared to meet with key stakeholders to identify appropriate performance metrics for the City of Denton and to determine the best method to communicate the performance of Irby's services.

The most common performance metrics include On-Time and Complete Orders. Irby provide these types of metrics to their key contract customers. Below is an example of this reporting structure.

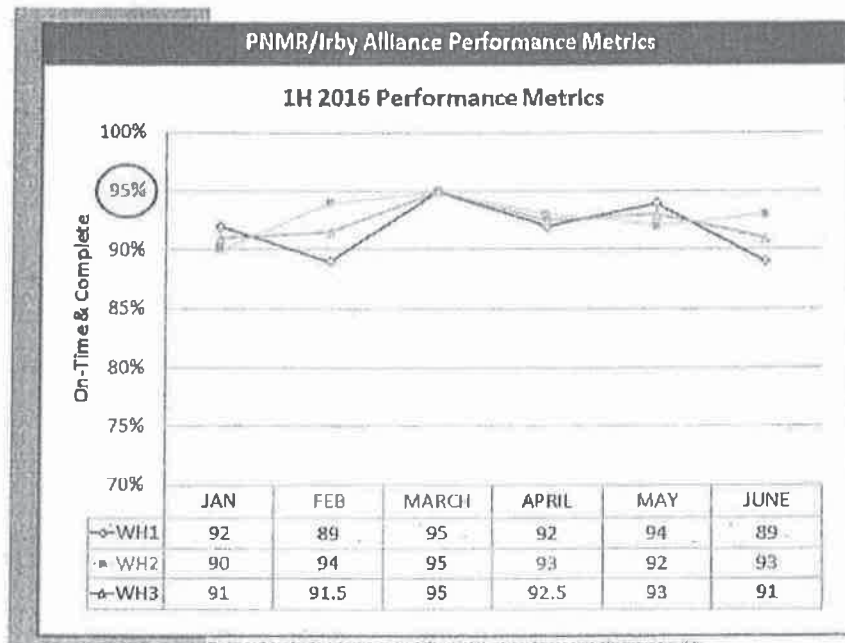


EXHIBIT E

b) Delivery Timeframe.

The delivery time frame for goods after receipt of order (A.R.O)

The delivery time frame varies and is dependent on each particular project. Irby invests continually to ensure the efficiency, reliability and security of its delivery networks and meet the needs and expectations of our customers. We have dedicated fleet services and are flexible on the delivery schedule you require. Unless otherwise specified, we will select the lowest cost delivery method.

c) Price, Total Cost of Ownership.

The price of the items, to include total cost of ownership, such as installation costs, life cycle costs, and warranty provisions.

Irby, in conjunction with our parent company, Sonepar USA, has developed a unique financial model which has been specifically formulated for the long-term Integrated Supply contracts we enter into with the goal of meeting our customer's service level expectations and reducing your overall Total Cost of Ownership. Because we create a partnership with our clients and work to reduce procurement costs on their behalf, a different financial approach is required. We believe that a model that works on transforming the customer's business, instead of just instituting change, requires an approach rooted in process, systems and operations.

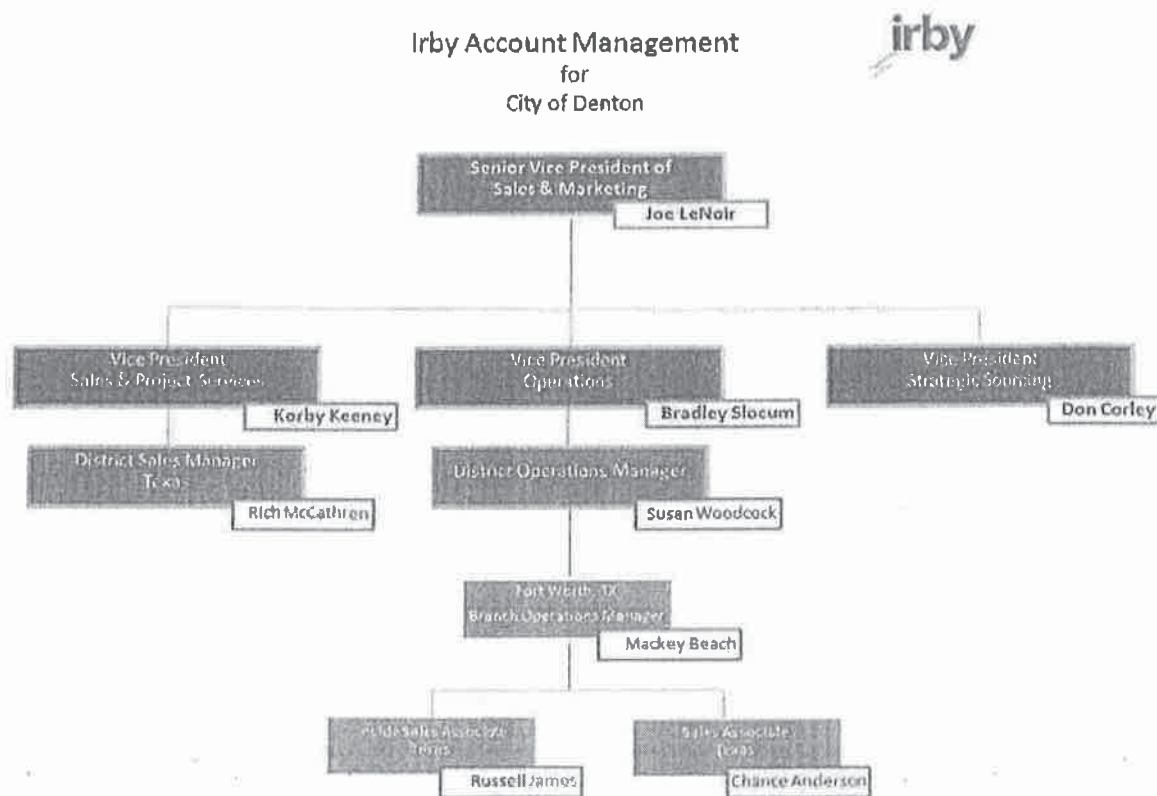
EXHIBIT E

15. Provide details on how firm meets the minimum qualifications stated in this Main document section 3.

Irby has been providing services in support of **electrical utilities** for over 75 years. Staffed by experienced professionals, our expert supply and services capabilities include the design and implementation of effective strategies where consistent performance and continuous improvement are critical.

Irby is well positioned to meet the material requirements of the City of Denton using our Fort Worth Branch which has a large 60,000 sq. ft. electric utility warehouse. This warehouse was established in 1998 in north Texas to support public power and electric utilities. It currently carries \$4.2M of pole line hardware, transformers, wire and cable with three acres of yard storage space. Our core competencies include warehouse management, emergency response, process improvement, tactical and strategic supply chain management of electric utility's line material and equipment.

Following is the organizational structure of key individuals that will manage this account:



Russell James (Texas Inside Sales Associate) and Chance Anderson (Texas Sales Associate) will be the primary contacts.

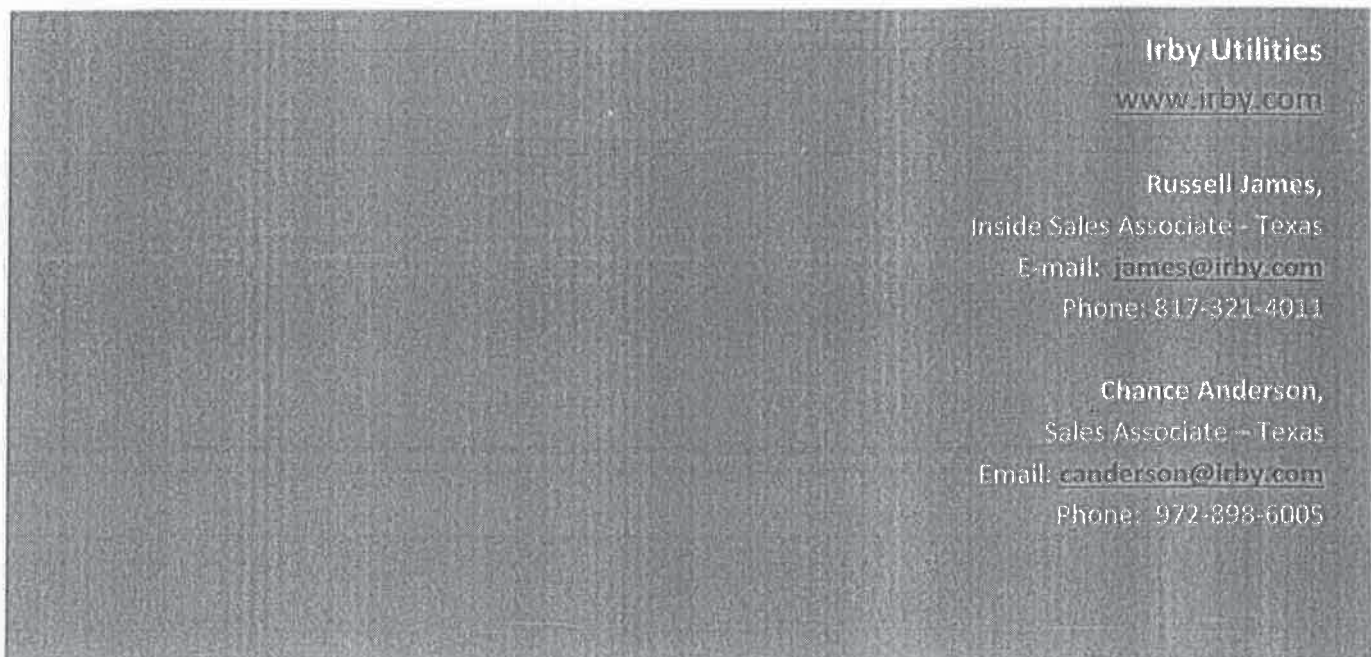
EXHIBIT E

I certify that our firm meets the minimum qualifications as stated in this Main document, Section 3.

Signature: Russell James
Russell James

6/7/17
Date

EXHIBIT E



Irby Utilities

www.irby.com

Russell James,
Inside Sales Associate - Texas

E-mail: james@irby.com

Phone: 817-321-4011

Chance Anderson,
Sales Associate - Texas

Email: canderson@irby.com

Phone: 972-898-6005



IRBY

EXHIBIT E

**-BUSINESS OVERVIEW QUESTIONNAIRE AND
FORMS**

1. Contract Information (for formal contracting purposes):

The following information will be used to write a contract, should your firm be selected for award.

- Firm's Legal Name: Stuart C Irby
- Address: 7125 Belton Street
Ft.Worth, TX 76118
- Agent Authorized to sign contract (Name): Russell James
- Agent's email address: james@irby.com

2. Subsidiary of: Sonepar

3. Organization Class (circle):

Partnership

Corporation

Individual

Association

4. Tax Payer ID#: 16401790205

5. Date Established: 1927

6. Historically Underutilized Business: Yes or **No**

7. Does your company have an established physical presence in the State of Texas, or the City of Denton? **Yes** or No, in which? Fort Worth, TX

8. Please provide a detailed listing of all products and/or services that your company provides.
See attached Proposal Supplement

9. Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five years under your current company name or any other company name? If so provide details of the issues and resolution if available. Include lawsuits where Owner was involved. (Notice: Failure to disclose this information during proposal submission, and later discovered, may result in contract termination at the Owner's option.)

No, N/A- This is for Services Provided

IRBY

EXHIBIT E

10. Have you ever defaulted on or failed to complete a contract under your current company name or any other company name? If so, where and why? Give name and telephone number of Owner.

No, N/A- This is for Services Provided

11. Have you ever had a contract terminated by the Owner? If so, where and why? Give name and telephone number (s) of Owner (s).

No, N/A- This is for Services Provided

12. Has your company implemented an Employee Health and Safety Program compliant with 29 CFR 1910 "General Industry Standards" and/or 29 CFR 1926 "General Construction Standards" as they apply to your Company's customary activities?

http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1926

No, N/A- This is for Services Provided

13. Resident/Non-Resident Bidder Determination:

Texas Government Code Section 2252.002: Non-resident bidders. Texas law prohibits cities and other governmental units from awarding contracts to a non-resident firm unless the amount of such a bid is lower than the lowest bid by a Texas resident by the amount the Texas resident would be required to underbid in the non-resident bidders' state. In order to make this determination, please provide the name, address and phone number of:

- a. Responding firms principle place of business:

Irby Utilities
7125 Belton Street
Fort Worth, TX 76118

- b. Company's majority owner principle place of business:

Irby Electrical Distributor
815 South President Street
Jackson, MS 39201

- c. Ultimate Parent Company's principle place of business:

Sonepar USA
510 Walnut Street
Suite 400
Philadelphia, PA 19106

EXHIBIT E

14. Provide details to support the evaluation criteria, including experience and delivery.

See attached Proposal Supplement

15. Provide details on how firm meets the minimum qualifications stated in this Main document Section 3.
- The details must be completed on this form, and shall not point to another document in the respondent's proposal.
 - Sign below and return form with final submission.

See attached Proposal Supplement

I certify that our firm meets the minimum qualifications as stated in this Main document, Section 3.

Signature Russell James 6/8/17

EXHIBIT E



City of Denton
601 E Hickory St
Denton, Texas 76205

Irby Utilities (Irby) is pleased to present our proposal supplement to the City of Denton's Scope of Work. As one of the leading utility service suppliers in the United States and the leading Utility supply arm for Sonepar USA, Irby has assembled a proposal that offers the City of Denton industry leading expertise in utility and integrated supply programs.

Irby was founded in 1926 and is based in Jackson, Mississippi. We have over 60 locations covering 46 states and is one of the largest regional electrical distributors in the United States with a proven track record of exemplary service in the Utilities Distribution arena. The employees of Irby have been serving customers in four major market segments, industrial, contractor, commercial and utility, with innovative products and services for 90 years.

Irby is an operating company of Sonepar USA, an independent family-owned company with global market leadership in B-to-B distribution of electrical products and related services. Sonepar USA and Irby have major vendor programs that leverage combined spend at the national level with key suppliers to establish pricing and service platforms that create competitive advantages for the Sonepar operating companies. Through an agreement with Irby, this market position can be leveraged on behalf of the City of Denton with targeted manufacturers to receive best in class pricing.

Thank you for this opportunity.

Sincerely,

Russell James
Inside Sales Associate – Texas

EXHIBIT E

City of Denton
RFP for Supply of Electric Transmission Line Conductor Attachments and Pole Hardware

SUBMISSION EXCEPTIONS/CLARIFICATIONS

Any exceptions or clarifications taken to this solicitation (**including terms and conditions in Exhibit 2, the General Provisions and Terms and Conditions**) must be itemized on the lines below. Additional pages may be added as needed. If there are no exceptions or clarifications, please sign where indicated at the bottom of the page.

Item # Description

See attached Mutually Agreed terms
and conditions

The above exceptions and clarifications (and any additional pages identified) are the ONLY exceptions/clarifications to the specifications, General Provisions and Terms and Conditions in Exhibit 2, and sample contract to this solicitation. I understand that the City may not accept additional exceptions produced after final submission of this proposal.



Signature

Irby

Company

6-8-17

Date

No Exceptions are taken to this solicitation or the General Provisions and Terms and Conditions in Exhibit 2.

Signature

Company

Date

EXHIBIT E



ELGIN B. ROBERTSON, INC. Electrical & Communications Equipment
AMARILLO • CORPUS CHRISTI • DALLAS • HOUSTON Established 1928

July 2, 2014

Reply to: Dallas

To Whom It May Concern:

Please note that Stuart C. Irby in Fort Worth is an authorized distributor for the following manufacturers represented by Elgin B. Robertson, Inc.:

American Polywater
Brugg Cables
Condux/Tesmec
FWT
Galvan
Hughes Brothers
Lindsey Manufacturing
Martin Enterprises
Midsun Group
Neptco
NGK-Locke
Preformed Line Products
Prime Conduit
Stresscrete
Turner Electric
United Poly Systems

Contact: Russell James
Stuart C. Irby
7125 Belton St.
Fort Worth, TX 76118
817-321-4011

Sincerely,


Gary W. Wright
Elgin B. Robertson, Inc., Repr.



AMARILLO:
PHONE: 808/372-2291
FAX: 808/372-3189

CORPUS CHRISTI:
PHONE: 361/643-5247
FAX: 361/643-1760

DALLAS:
P.O. Box 210519
Dallas, Texas 75211
PHONE: 214/333-2341
FAX: 214/333-3632

HOUSTON:
11321 Richmond Avenue
Suite M111
Houston, Texas 77082
PHONE: 281/293-9991
FAX: 281/293-0777

EXHIBIT E

Authorized Distributor Letter



July 24, 2014

To whom it may concern:

Irby Ft. Worth is an authorized distributor for MacLean Power System products for the state of Texas. Irby Fort Worth is also authorized for transmission project business throughout the United States.

Regards,

Layton Lively
Sales Director - Western U.S.
469-744-7228
llively@macleanpower.com
www.macleanpower.com

EXHIBIT E

Kayla Ridgway
Customer Service Specialist



Hubbell Power Systems, Inc.
201 N Allen Street
Centralia MO 65240
Tel: 673-682-8720
Fax: 673-682-8812
E-Mail: kmridgway@hubbell.com

To Whom It May Concern:

This letter is to verify that SONEPAR - STUART C IRBY CO in Fort Worth Texas is an authorized distributor for Hubbell Power Systems.

Sincerely,

Kayla Ridgway
Customer Service Specialist
Distributor Utility Market
Hubbell Power Systems, Inc.

EXHIBIT E

I. REFERENCES

Please list three (3) Utility references, other than the City of Denton, who can verify the quality of service your company provides. The City prefers customers of similar size and scope of work to this proposal.

REFERENCE ONE

GOVERNMENT/COMPANY NAME: CITY OF GARLAND

LOCATION: GARLAND, TX

CONTACT PERSON AND TITLE: GARY HOLCOLMB - PURCHASING SUPERVISOR

TELEPHONE NUMBER: 972-205-2425

SCOPE OF WORK: MULTIPLE CONTRACTS

CONTRACT PERIOD: _____

REFERENCE TWO

GOVERNMENT/COMPANY NAME: CITY OF WEATHERFORD

LOCATION: WEATHERFORD, TX

CONTACT PERSON AND TITLE: ROBERT MOSS - PURCHASING AGENT

TELEPHONE NUMBER: 817-598-4252

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE THREE

GOVERNMENT/COMPANY NAME: CITY OF SANGER

LOCATION: SANGER, TX

CONTACT PERSON AND TITLE: RANEL QUAM

TELEPHONE NUMBER: 940-458-2064

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

EXHIBIT E

City of Denton
RFP for Supply of Electric Transmission Line Conductor Attachments and Pole Hardware

ACKNOWLEDGEMENT

The undersigned agrees this submission becomes the property of the City of Denton after the official opening.

The undersigned affirms he has familiarized himself with the specification, drawings, exhibits and other documents; the local conditions under which the work is to be performed; satisfied himself of the conditions of delivery, handling and storage of materials and equipment; and all other matters that will be required for the work before submitting a response.

The undersigned agrees, if this submission is accepted, to furnish any and all items/services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specification. The period for acceptance of this submission will be 120 calendar days unless a different period is noted.

The undersigned affirms that they are duly authorized to execute this contract, that this submission has not been prepared in collusion with any other respondent, nor any employee of the City of Denton, and that the contents of this submission have not been communicated to any other respondent or to any employee of the City of Denton prior to the acceptance of this submission.

Respondent hereby assigns to the City any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

The undersigned affirms that they have read and do understand the specifications, all exhibits and attachments contained in this solicitation package.

The undersigned agrees that the solicitation package posted on the website are the official specifications and shall not alter the electronic copy of the specifications and/or pricing sheet (Exhibit 1), without clearly identifying changes.

The undersigned understands they will be responsible for monitoring the City of Denton Purchasing Website at: <http://www.cityofdenton.com/index.aspx?page=397> to ensure they have downloaded and signed all addendum(s) required for submission with their response.

I certify that I have made no willful misrepresentations in this submission, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this submission will be investigated, with my full permission, and that any misrepresentations or omissions may cause my submission to be rejected.

Acknowledge receipt of following addenda to the solicitation:

Addendum No 1 Dated	<u>5-25-17</u>	Received	_____
Addendum No 2 Dated	_____	Received	_____
Addendum No 3 Dated	_____	Received	_____

NAME AND ADDRESS OF COMPANY:

Irby Utilities
7125 Belton St.
Ft. Worth, TX
76118
Tel. No. 817-321-4011
Email. james@irby.com

AUTHORIZED REPRESENTATIVE:

Signature [Signature]
Date 6-8-17
Name Russell James
Title Sales
Fax No. 817-284-7743

EXHIBIT E

Attachment B-1 Mutually Agreed Upon Terms and Conditions

Items in this document represent the modified, agreed upon terms and conditions between the City of Denton and Irby Utilities. Only revised sections/paragraphs are attached in completed form.

RFP MAIN DOCUMENT

6. Contract Term

(Paragraph 2)

Extension of contract terms beyond the initial 1-year period will require mutual agreement of the parties.

8. Price Adjustments

(Paragraph 1)

Prices quoted for the commodities or services described in the RFP must be firm for a period of one year from date of contract award. Requests made for pricing adjustments will be supported by manufacturer or supplier cost justification support, including, but not limited to, applicable industry index data provided by associated manufacturer(s) in accordance with the product represented.

9. Cooperative Purchasing/Piggyback Option

(Paragraph 1)

The contract resulting from this solicitation will be available for use by **all governmental** entities within a 75 mile radius of Contractor's base location associated to the specific solicitation

RFP EXHIBIT 2

18. Performance Liquidated Damages

(Paragraph 2)

The Contractor shall be assessed a one (1%) percent fee each week when any one of the performance standards outlined above are not met in full for "normal condition" orders and based on usages in line with estimated annual quantities supplied by the City. At the end of each month, the City will review the monthly reports and determine the percentage of penalty to be assessed to the Contractor's monthly profit margin.

19. Warranties

The contractor shall provide a warranty that is standard in the industry, which is a "pass through" warranty condition for this agreement. Repair or Maintenance of fleet not performed to industry standards shall be accomplished at the contractor's expense, at the option of the City.

EXHIBIT E**RFP EXHIBIT 2, Section B- Standard Purchase Terms and Conditions***(Opening Paragraph 1)*

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's solicitation are applicable to Contracts/Purchase Orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller herein after referred to as the Bidder, Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the Sellers Proposal response, Invoice or Statement shall serve to modify the terms set forth herein unless noted as Special Conditions, which have been mutually agreed upon.. If there is a conflict between the provisions on the face of the Contract/Purchase Order these written provisions and attachments will take precedence.

6. DELIVERY TERMS AND TRANSPORTATION CHARGES: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. In the event shipping charges are applicable, the City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

17. RIGHT TO AUDIT

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Furthermore, the Contractor, to the best of its ability, also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

20. WARRANTY – TITLE

The Contractor represents within reasonable expectation that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. WARRANTY – DELIVERABLES

The Contractor represents within reasonable expectation that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

C. Unless otherwise specified in the Contract, the warranty period shall be one year from the date of delivery of the deliverables or from the date of acceptance of any replacement deliverables, or as a term

EXHIBIT E

stated by the corresponding manufacturer. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty.

27. TERMINATION FOR CAUSE

In the event of a default by either party, the other party shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the other party reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the non-defaulting party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the non-defaulting as a result of the defaulting party's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

38. OWNERSHIP AND USE OF DELIVERABLES:

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

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor, to the best of its ability and in working with corresponding manufacturer(s), that such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor, to the best of its ability and with corresponding manufacturer(s), assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor, to the best of its ability and with corresponding manufacturer(s), execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. Furthermore, the Contractor, to the best of its ability and with corresponding manufacturer(s), if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in

EXHIBIT E

order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

67. RECORDS RETENTION

The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of two (2) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

EXHIBIT 2, APPENDIX –A INSURANCE REQUIREMENTS AND WORKERS COMPENSATION REQUIREMENTS

Our bid is to supply materials only. This section does not apply.

EXHIBIT 2, APPENDIX –B - CONTRACT BY AND BETWEEN CITY OF DENTON, TEXAS AND IRBY UTILITIES

SCOPE OF SERVICES

Supplier shall provide products or services in accordance with the Supplier's proposal in response thereto, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "D"**. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Proposal Exceptions (Exhibit D)
- (b) Request for Proposal (RFP # ____)
- (c) City of Denton Standard Terms and Conditions (**Exhibit "A" as accepted**)
- (d) Special Terms and Conditions (**Exhibit "B"**)
- (e) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "C"**).
- (f) Supplier's Proposal. (**Exhibit "D"**);

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence as noted above.

Attachment B-1: Mutually Agreed Upon Terms and Conditions

EXHIBIT F

City of Denton
RFP for Supply of Electric Transmission Line Conductor Attachments and Pole Hardware

-CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE -	FORM CIQ
For vendor or other person doing business with local governmental entity This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.	
This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	
1 Name of vendor who has a business relationship with local governmental entity. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	
2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. <small>(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.)</small>	
3 Name of local government officer about whom the information in this section is being disclosed. <div style="text-align: center; margin: 10px 0;"> <div style="border-bottom: 1px solid black; width: 200px; margin: 0 auto;"></div> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <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? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <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? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="text-align: center; font-size: 2em; margin-left: 200px;">NA</p> <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; align-items: flex-end;"> <div style="width: 45%;"> Signature of vendor doing business with the governmental entity </div> <div style="width: 45%; text-align: center;"> <div style="font-size: 1.5em; margin-bottom: 5px;">6-8-17</div> Date </div> </div>	

RFP 6412 - Main Document

Certificate Of Completion

Envelope Id: C6EDC586EAA648ECB766947C4CB736F3	Status: Sent
Subject: Please DocuSign: City Council Contract 6412 Irby Utilities	
Source Envelope:	
Document Pages: 58	Signatures: 2
Supplemental Document Pages: 0	Initials: 0
Certificate Pages: 6	
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Robyn Forsyth
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	robyn.forsyth@cityofdenton.com
	IP Address: 10.102.101.11

Record Tracking

Status: Original	Holder: Robyn Forsyth	Location: DocuSign
9/12/2017 8:40:11 AM	robyn.forsyth@cityofdenton.com	

Signer Events

Robyn Forsyth
robyn.forsyth@cityofdenton.com
Buyer
City of Denton
Security Level: Email, Account Authentication (Optional)

Signature

Completed

Using IP Address: 129.120.6.150

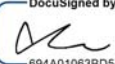
Timestamp

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Viewed: 9/12/2017 8:44:46 AM
Signed: 9/12/2017 8:45:41 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Chance Anderson
canderson@irby.com
Account Manager
Security Level: Email, Account Authentication (Optional)

DocuSigned by:

694A01063BD5452...

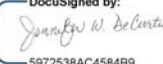
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Viewed: 9/12/2017 2:28:48 PM
Signed: 9/12/2017 2:29:44 PM

Using IP Address: 70.196.0.234
Signed using mobile

Electronic Record and Signature Disclosure:

Accepted: 9/12/2017 2:28:48 PM
ID: db234089-346f-4f04-8bd8-11571cc19ca3

Jennifer DeCurtis
jennifer.decurtis@cityofdenton.com
Deputy City Attorney
City of Denton
Security Level: Email, Account Authentication (Optional)

DocuSigned by:

5972538AC4584B9...

Sent: 9/12/2017 2:29:49 PM
Viewed: 9/12/2017 2:58:12 PM
Signed: 9/12/2017 2:58:22 PM

Using IP Address: 47.190.47.120
Signed using mobile

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Julia Winkley
julia.winkley@cityofdenton.com
Contracts Administration Supervisor
City of Denton
Security Level: Email, Account Authentication (Optional)

Sent: 9/12/2017 2:58:24 PM
Viewed: 9/14/2017 5:31:06 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Todd Hileman
Todd.Hileman@cityofdenton.com
Security Level: Email, Account Authentication (Optional)

Electronic Record and Signature Disclosure:

Signer Events	Signature	Timestamp
Accepted: 7/25/2017 9:02:14 AM ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21 Jennifer Walters jennifer.walters@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Person Signer Events	Signature	Timestamp
Editor Deliver Events	Status	Timestamp
Agent Deliver Events	Status	Timestamp
Intermediary Deliver Events	Status	Timestamp
Certified Deliver Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Sherri Thurman sherri.thurman@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div>COPIED</div>	Sent: 9/12/2017 2:29:46 PM
Julia Winkley julia.winkley@cityofdenton.com Contracts Administration Supervisor City of Denton Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div>COPIED</div>	Sent: 9/12/2017 2:29:48 PM
Jane Richardson jane.richardson@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Robin Fox Robin.fox@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Jennifer Bridges jennifer.bridges@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Carion Cop Events	Status	Timestamp
Jane Richardson jane.richardson@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Laura Cheek laura.cheek@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Laura Hermosilo Laura.Hermosillo@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
James Russell james@irby.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Accepted: 8/21/2017 11:25:46 AM ID: 4c72776c-9b81-43c2-88bc-15a3b86c17ac		
otar Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	9/12/2017 2:58:24 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, 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.

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

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