

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND
TDC, LLC (FILE #6530)**

THIS CONTRACT is made and entered into this date _____, by and between TDC LLC, a corporation, whose address is 1916 Farmersville Highway, Ruston, LA 71270, 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 IFB # 6530 Water and Wastewater Chemicals, 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 IFB#6530 (**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."

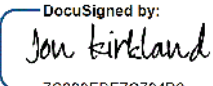
INDEMNITY

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

BY:  _____
AUTHORIZED SIGNATURE 7C390EBE7C794B8...

Date: 11/2/2017

Name: Jon Kirkland

Title: Business Manager

2017-273508 832-672-5050

PHONE NUMBER

jon.kirkland@genlp.com

EMAIL ADDRESS

2017-273508

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, CITY ATTORNEY

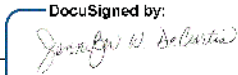
BY:  _____
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Exhibit A

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. Contract Terms

The contract term will be one (1) year, effective from the date that the City provides notice of the award to supplier ("effective date"). The contract shall automatically renew each year on the month and day of the effective date ("renewal date"), unless either party notifies the other party in writing prior to the renewal date that the contract will not be renewed or the contract is otherwise terminated or completed. This contract may only be automatically renewed for an additional three (3) one-year periods, subject to the terms herein, without City Council approval.

5. Price Escalation and De-escalation

On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. The escalation/de-escalation will be based on the U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) for finished Chemicals (PCU212393212393). The stated eligible bid price will be increased or decreased based upon the annual percentage change in the PPI so long as the change is greater than the minimum threshold value of +/- 1%. The maximum escalation will not exceed +/- 8% for any individual year. **The Supplier must submit or make available the manufacturers pricing sheet used to calculate the bid proposal, to participate in the escalation/de-escalation clause.**

The Supplier's request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. The Supplier should provide documentation as a percentage of each cost associated with the unit prices quoted for consideration. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton, at its sole option, reserves the right to either: (1) accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award; or, (2) reject the increase within thirty (30) calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Supplier may request cancellation of such items from the contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. The prices in effect prior to the increase request must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

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

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

6. Total Contract Amount

The contract total shall not exceed \$1,340,000. Pricing shall be per Exhibit E attached.

7. Delivery Lead Time

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

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 affect 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 or 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.**

TDC, LLC
Ruston, LA United States

Certificate Number:
2017-273508

Date Filed:
10/18/2017

Date Acknowledged:
10/23/2017

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, TX

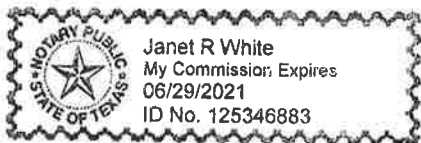
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

6530
IFB# 6530 Water and Wastewater Chemicals

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	City of Denton	Denton, TX United States	X	

5 Check only if there is NO Interested Party.☐**6 AFFIDAVIT**

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

Janet R White
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Jon Kirkland, this the 18 day of October, 2017, to certify which, witness my hand and seal of office.

Janet R White
Signature of officer administering oath

Janet R White
Printed name of officer administering oath

Notary Public
Title of officer administering oath

EXHIBIT E



Bid Cover Sheet

Solicitation Number: IFB #6530

Solicitation Name: Supply of Water and Waste Water Treatment Chemicals for the City of Denton

Firm Name: TDC L.L.C.

Firm Address: 1916 Farmerville Highway, Ruston, LA 71270

Contact Name: James Glattly

Contact Phone: 832-280-3033

Contact Fax: 713-860-2692

Website Address: www.genesisenergy.com

Contact Email: James.glattly@genlp.com

EXHIBIT E

IFB # 6530 EXHIBIT 1 - PRICING SHEET FOR SUPPLY OF WATER / WASTEWATER TREATMENT CHEMICALS					
(PRICING SHALL INCLUDE ALL COSTS TO DELIVER GOODS AS SPECIFIED F.O.B DESTINATION):					Respdent: Location:
ITEM#	EST. ANNUAL QTY	UOM	PRODUCT DESCRIPTION	DELIVERY LOCATION / PLANT	DEPT/ PLANT
SECTION A WATER TREATMENT CHEMICALS					
5a	500,000	Dry Lbs.	Liquid Caustic Soda - 50% Diaphragm Grade (Dry Basis Pounds - 3,500 - 4,000 gallon truckloads)	LLWTP	WATER /LLWTP
5b	500,000	Dry Lbs.	Liquid Caustic Soda - 50% Diaphragm Grade (Dry Basis Pounds - 3,500 - 4,000 gallon truckloads)	RRWTP	WATER / RRWTP
SECTION A WATER TREATMENT CHEMICALS				SECTION A TOTAL	
SECTION B WASTE WATER TREATMENT CHEMICALS				SECTION B TOTAL	
GRAND TOTAL				GRAND TOTAL ANNUALLY	
				ESTIMATED FOR FOUR YEARS	
ABBREVIATIONS					
SWEST	Southwest Elevated Storage Tank- 11490 H. Lively Rd, Ponder TX 76259				
LLWTP	Lake Lewisville Water Treatment Plant 1701-B Spencer Rd, Denton TX 76205				
RRWTP	Lake Ray Roberts Water Treatment Plant 9401 Lake Ray Roberts Dam Rd, Aubrey TX 76227				
PCWTRP	Pecan Creek Water Reclamation Plant- 1100 S Mayhill Rd, Denton TX 76205				

		TDC, L.L.C. Ruston, LA	
UNIT PRICE	EXTENDED PRICE	ESTIMATED DELIVERY DAYS ARO (DAYS)	NSF60 Certified Yes or No
\$ 0.32000	\$ 160,000.00	2	Yes
\$ 0.32000	\$ 160,000.00	2	Yes
	\$ 320,000.00		
	\$ -		
	\$ 320,000.00		
	\$ 1,340,000.00		

EXHIBIT E

City of Denton
IFB #6530

-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: TDC, L.L.C.
- Address: 1916 Farmervill Hwy
Ruston, LA 71270
- Agent Authorized to sign contract (Name): Jon Kirkland
Jon.Kirkland@qenlp.com MAIN CONTACT
James.Glatthly@qenlp.com
- Agent's email address:

2. Subsidiary of: Genesis Energy, L.P.

3. Organization Class (circle):

Partnership

Corporation

Individual

Association

4. Tax Payer ID#: 62-1861810

5. Date Established: July 2001

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? State of Texas

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

Sodium Hydroxide and sodium hydrosulfide

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

EXHIBIT E

City of Denton
IFB #6530

14. Provide details on how firm meets the minimum qualifications stated in this Main document

Section 3.

- a. The details must be completed on this form, and shall not point to another document in the respondent's proposal.
- b. Sign below and return form with final submission.

TDC has provided sodium hydroxide (caustic soda or NaOH) to numerous municipalities for water treatment purposes throughout Texas, Louisiana and Arkansas since its inception. TDC has also provided caustic soda services to the City of Denton in the past and look forward to doing so again.

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


Signature


Company


Date

EXHIBIT E

City of Denton
IFB #6530

-SUBMISSION EXCEPTIONS

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

N/A

The above exceptions or clarifications (and any additional pages identified) are the ONLY exceptions 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

Company

Date

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


Signature

TDC, LLC.
Company

7/20/17
Date

EXHIBIT E

City of Denton
IFB #6530

SAFETY RECORD QUESTIONNAIRE

The City of Denton desires to avail itself of the benefits of Section 252.0435 of the Local Government Code, and consider the safety records of potential contractors prior to award of City contracts. Pursuant to Section 252.0435 of the Local Government Code, the City of Denton has adopted the following written definition and criteria for accurately determining the safety record of a respondent prior to awarding City contracts.

The definition and criteria for determining the safety record of a respondent for this consideration shall be:

The City of Denton shall consider the safety record of the respondent in determining the responsibility thereof. The City may consider any incidence involving worker safety or safety of the citizens of the City of Denton, be it related or caused by environmental, mechanical, operational, supervision or any other cause or factor. Specifically, the City may consider, among other things:

- a. Complaints to, or final orders entered by, the Occupational Safety and Health Review Commission (OSHRC), against the respondent for violations of OSHA regulations within the past three (3) years.
- b. Citations (as defined below) from an Environmental Protection Agency (as defined below) for violations within the past five (5) years. Environmental Protection Agencies include, but are not necessarily limited to, the U.S. Army Corps of Engineers (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Natural Resource Conservation Commission (TNRCC) (predecessor to the TCEQ), the Texas Department of Health (TDH), the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection or worker safety related laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.
- c. Convictions of a criminal offense within the past ten (10) years, which resulted in bodily harm or death.
- d. Any other safety related matter deemed by the City Council to be material in determining the responsibility of the respondent and his or her ability to perform the services or goods required by the solicitation documents in a safe environment, both for the workers and other employees of respondent and the citizens of the City of Denton.

In order to obtain proper information from respondents so that City of Denton may consider the safety records of potential contractors prior to awarding bids on City contracts, City of Denton requires that respondents answer the following three (3) questions and submit them with their submissions:

EXHIBIT E

City of Denton
IFB #6530

QUESTION ONE

Has the respondent, or the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of OSHA within the past three (3) years?

YES _____ NO ✓ _____

If the respondent has indicated YES for question number one above, the respondent must provide to City of Denton, with its submission, the following information with respect to each such citation:

Date of offense, location of establishment inspected, category of offense, final disposition of offense, if any, and penalty assessed.

QUESTION TWO

Has the respondent, or the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of environmental protection laws or regulations, of any kind or type, within the past five years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.

YES _____ NO ✓ _____

If the respondent has indicated YES for question number two above, the respondent must provide to City of Denton, with its submission, the following information with respect to each such conviction:

Date of offense or occurrence, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

QUESTION THREE

Has the respondent, or the firm, corporation, partnership, or institution represented by respondent, or anyone acting for such firm, corporation, partnership, or institution, ever been convicted, within the past ten (10) years, of a criminal offense which resulted in serious bodily injury or death?

YES _____ NO ✓ _____

If the respondent has indicated YES for question number three above, the respondent must provide to City of Denton, with its submission, the following information with respect to each such conviction:

Date of offense, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

EXHIBIT E

City of Denton
IFB #6530

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

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

Yes

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:

Ruston, LA

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

Ruston, LA

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

Houston, TX

EXHIBIT E**City of Denton
IFB# 6530****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 9/6/17
Addendum No 2 Dated _____
Addendum No 3 Dated _____

Received ✓
Received _____
Received _____

NAME AND ADDRESS OF COMPANY:

TDC, LLC.
1916 Farmerville Hwy
Ruston, LA 71270

Tel. No. 832 280 3033

Email. James.Flattly@genlpc.com

AUTHORIZED REPRESENTATIVE:

Signature [Signature]

Date 9/20/17

Name Jon M. Kirkland

Title Business Manager

Fax No. 318-242-5299

EXHIBIT E

9/19/2017

FDPH.MH59897 - Drinking Water Treatment Chemicals

**ONLINE CERTIFICATIONS DIRECTORY****FDPH.MH59897
Drinking Water Treatment Chemicals**[Page Bottom](#)**Drinking Water Treatment Chemicals**[See General Information for Drinking Water Treatment Chemicals](#)**TDC L L C**

MH59897

1916 Farmerville Hwy
Ruston, LA 71270-3008 USA**NSF/ANSI 60**

Plant at: Shreveport, LA

Trade Dsg	Category	Max Use Level (mg/L)
50% Sodium Hydroxide	Corrosion and Scale Control, Softening, Sequestering, Precipitation and pH adjustment	100

Plant at: Westlake, LA

Trade Dsg	Category	Max Use Level (mg/L)
50% Sodium Hydroxide	Corrosion and Scale Control, Softening, Sequestering, Precipitation and pH adjustment	100

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EXHIBIT E



SAFETY DATA SHEET

Sodium Hydroxide Solution

Section 1: Identification Of the Substance/Mixture And Of The Supplier	
<u>Supplier</u> TDC, LLC 1916 Farmerville Hwy Ruston, LA 71270 Company Contact: Customer Service Telephone Number: (800) 422-6274 E-Mail: TDCcustomerservice@genlp.com Web Site: www.genesisenergy.com	<u>Manufacturer</u> TDC, LLC 1916 Farmerville Hwy Ruston, LA 71270 Company Contact: Customer Service Telephone Number: (800) 422-6274 E-Mail: TDCcustomerservice@genlp.com Web Site: www.genesisenergy.com
<u>Supplier Emergency Contacts & Phone Number</u> Customer Service: 800-422-6274 CHEMTREC: 800-424-9300	<u>Manufacturer Emergency Contacts & Phone Number</u> Customer Service: 800-422-6274 CHEMTREC: 800-424-9300
Issue Date: 05/28/2015 Product Name: Sodium Hydroxide Solution CAS Number: 1310-73-2 Chemical Family: Inorganic caustic/salt solution <u>Synonyms</u> caustic soda solution lye solution <u>Product/Material Uses</u> Product is a unique alkaline material, playing a vital role in many industrial processes.	
Section 2: Hazards Identification	
<u>Hazard Classification(s)</u> HAZARD CLASSIFICATION(S): Eye Damage/Irritation - Category 1 Skin Corrosion/Irritation - Category 1A Corrosive to Metals - Category 1 Acute Toxicity - Category 3 (oral) Acute Aquatic Hazard - Category 3 Acute Toxicity - Category 4 (dermal) Acute Toxicity - Category 4 (inhalation) SIGNAL WORD: DANGER HAZARD STATEMENTS: Causes serious eye damage (H318) Causes severe skin burns and eye damage (H314) May be corrosive to metals (H290) Toxic if swallowed (H301) Harmful to aquatic life (H402) Harmful in contact with skin (H312) Harmful if inhaled (H332)	

EXHIBIT E**SAFETY DATA SHEET****Sodium Hydroxide Solution****Section 2: Hazards Identification - Continued****Hazard Classification(s) - Continued****PRECAUTIONARY STATEMENTS:**

P234 - Keep only in original container.

P260 - Do not breathe mist, vapor or spray.

P264 - Wash thoroughly after handling.

P270 - Do not eat, drink or smoke when using this product.

P271 - Use only outdoors or in a well-ventilated area.

P273 - Avoid release to the environment

P280 - Wear protective gloves.

P301+P330+P331 - IF SWALLOWED: Rinse mouth. Do NOT induce vomiting. Immediately call a Poison Control Center.

P302+P352 - IF ON SKIN: wash with plenty of soap and water.

P304+P340 - IF INHALED: remove person to fresh air and keep comfortable for breathing.

P305+P351+P338 - IF IN EYES: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. If eye irritation persists, get medical attention.

P310 - Immediately call a poison center or physician.

P362+P364 - Take off contaminated clothing and wash it before use.

P390 - Absorb spillage to prevent material damage.

P405 - Store locked up.

P406 - Store in corrosive resistant container with a resistant inner liner.

P501 - Dispose of contents/container in accordance with local, state, federal and international regulation.

Section 3: Composition/Information On Ingredients

Ingredient Name	CAS Number		Percent Of Total Weight
sodium chloride	7647-14-5	<	1
sodium hydroxide	1310-73-2		49 - 51
water	7732-18-5		48 - 50

Section 4: First Aid Measures**Eye**

In case of contact, immediately flush eyes with plenty of water for at least 20 minutes. Get medical attention immediately. Continue rinsing until medical help arrives. Speed in treatment may prevent permanent eye damage. Do not use ointments, hot water or rub the eyes. Do not let victim keep his eyes shut.

Skin

Immediately remove all contaminated clothing and shoes (first responders should wear gloves and goggles while assisting). Get medical attention immediately. Quickly take person to a shower or clean source of water, and flush skin with plenty of water of water. Continue washing until stickiness or soapy feel of the skin disappears. Loosen clothing in areas of blisters but do not break blisters or rub skin.

Ingestion

Immediately call a physician or a poison control center. If vomiting occurs, keep head low so that stomach contents do not enter the lungs.

If conscious, rinse the mouth out several times with cold water and spit out. Give one or two cups of water or milk to drink. Do NOT try to neutral with an acid. Stop if victim becomes nauseated. DO NOT INDUCE VOMITING unless instructed to do so by medical personnel. Never give anything by mouth to an unconscious person.

EXHIBIT E**SAFETY DATA SHEET****Sodium Hydroxide Solution****Section 4: First Aid Measures - Continued****Ingestion - Continued**

If the victim stops breathing: Clear the airway of obstructions, and wipe away any remaining chemical in mouth. Administer artificial respiration with the aid of a pocket mask equipped with a one-way valve or other proper respiratory medical device.

Inhalation

Call a Poison Center or doctor/physician if exposed or you feel unwell. Remove person from source of exposure to fresh air. Lay person on his/her back and turn head to the side. If breathing is difficult, loosen clothing and clear airway. If available, give oxygen.

If not breathing, give artificial respiration using a pocket mask or resuscitation device. Direct mouth contact should be avoided if possible due to the potential for residual corrosive liquid around the person's mouth and airways.

Section 5: Fire Fighting Measures**Flash Point Method: Non-flammable****Fire And Explosion Hazards**

Product solution is non-flammable. Thermal decomposition ("burning") may evolve toxic and irritating combustion byproducts. May cause fire when in contact with combustibles and some incompatible materials.

Extinguishing Media

In case of fire, use water spray (fog) foam, dry chemical, or CO₂, as applicable for combustibles involved in the fire.

Fire Fighting Instructions

Avoid breathing vapors, gases and fumes. Do not touch, handle or walk-through spilled liquid. Firefighters should wear a positive pressure-demand self-contained breathing apparatus (SCBA) and full protective gear. Water can be used to cool and protect exposed material. Do not allow runoff to enter sewers or waterways. Move containers away from fire area if safe to do so.

Section 6: Accidental Release Measures

Refer to North American Emergency Response Guide (NAERG) # 154. Do not allow to come in contact with acids or incompatible materials. Prevent release to the environment, such as runoff to drains, sewers, waterways, basements or confined spaces. Provide maximum exhaust or dilution ventilation.

Small releases: Isolate 150 feet in all directions. Confine area to qualified response personnel. Wear proper Personnel Protective Equipment (See Section 8). Confine release material by berming or diverting its path. Contain and/or absorb spill with inert material (e.g. sand, fly ash, cement powder). Soda ash or weak (<5%) acetic acid may be used to neutralize. Do not neutralize with strong mineral acids, which may evolve large amounts of heat. Do not allow into sewer, storm drains or any waterway. Remove contaminated soil and dispose of in accordance with all governmental regulations.

Large releases: First isolate 150 feet in all directions. Confine area to qualified response personnel. Wear proper Personnel Protective Equipment (See Section 8). If safe to do so, shut off release. Dike spill area with inert materials to prevent runoff into sewers, drains or surface waterways (potential aquatic toxicity). Recover as much of the solution as possible. Treat remaining material as a small release.

Section 7: Handling And Storage**Handling Precautions**

Wear proper Personal Protective Equipment (PPE) as indicated in Section 8. Avoid breathing mist or spray. Prevent contact with eyes and skin. Use only with adequate ventilation.

Avoid contact with acids and other incompatible materials. Dilute product only in enclosed containers. Always add

EXHIBIT E**SAFETY DATA SHEET****Sodium Hydroxide Solution****Section 7: Handling And Storage - Continued****Handling Precautions - Continued**

product to water - not water to product.

Storage Precautions

Protect containers from physical damage. Keep away from acids and incompatible materials. Store in a cool, dry, well-ventilated area out of direct sunlight at moderate temperatures (<80 deg F, 27C). Keep container tightly closed. Keep away from children.

Do not store in metal containers - not compatible with copper, zinc, aluminum or their alloys (e.g., brass, bronze, galvanized metals, etc.). Nickel is the preferred metal for handling sodium hydroxide. Mild steel may also be acceptable. Although the use of steel is not recommended at elevated temperatures.

Work/Hygienic Practices

Wash thoroughly after handling, and before eating, drinking, smoking and using toilet facilities.

Section 8: Exposure Controls/Personal Protection**Engineering Controls**

Use outdoors or indoors only with adequate general and local exhaust ventilation. Maintain exposures below occupational exposure limits.

Eye/Face Protection

At a minimum, chemical splash goggles or faceshield over safety glasses or goggles should be worn at all times when handling. A full facepiece should be worn with SCBA or air-line respirator.

Skin Protection

The use of chemical-resistant gloves are recommended as minimum industrial skin protection when handling product or performing spill cleanup. Chemical resistant apron, and/or suit and boots should be worn to prevent skin contact. Chemical resistant materials include neoprene, polyvinyl chloride (PVC), nitrile and natural rubber. Chemical protective clothing should be used for spill cleanup.

Wash/decontaminate clothing prior to reuse. Contaminated leather shoes cannot be cleaned and should be discarded.

Respiratory Protection

Engineering controls should be implemented preferentially to reduce exposures. If working near open container, storage vessel opening or open tank truck dome cover, wear self-contained breathing apparatus, or positive pressure demand air-line respirator if there is a potential for exposure.

Other/General Protection

Eyewash and safety shower should be available in areas of handling or storage.

Ingredient(s) - Exposure Limits

sodium hydroxide

ACGIH TLV-CEILING: 2 mg/m3

OSHA PEL-TWA: 2 mg/m3

NIOSH REL-Ceiling: 2 mg/m3

IDLH: 10 mg/m3

AIHA ERPG-1: 0.5 mg/m3

AIHA ERPG-2: 5 mg/m3

AIHA ERPG-3: 50 mg/m3

EXHIBIT E**SAFETY DATA SHEET****Sodium Hydroxide Solution****Section 9: Physical And Chemical Properties****Appearance**

A colorless to slightly hazy liquid..

Odor

No distinct odor.

Chemical Type: Mixture

Physical State: Liquid

Boiling Point: 293 °F 145 °C

Specific Gravity: 1.52 @ 20C (12.7 lbs/gal)

Vapor Pressure: 17-18 mm Hg @ 20C

pH Factor: 14

Solubility: Complete

Section 10: Stability And Reactivity

Stability: Stable

Hazardous Polymerization: Will not occur.

Conditions To Avoid (Stability)

Store away from incompatible materials.

Incompatible Materials

Incompatible with acids, flammable liquids, organic peroxides and organic halogens. Mixing with water produces heat, toxic and corrosive fumes. Contact with trichloroethylene may cause fire and explosion. Sodium hydroxide solution is not compatible with metals, such as aluminum, copper, zinc, soft iron and tin - may form flammable hydrogen gas. Attacks some plastics, rubber and coatings. Contact with nitromethane and similar nitro compounds produces shock sensitive salts.

Hazardous Decomposition Products

Mixing with water produces heat, toxic and corrosive fumes. Contact with metals may form flammable hydrogen gas. Thermal oxidation (i.e., "burning") may produce toxic decomposition products, including sodium oxides, carbonates, and peroxides.

Section 11: Toxicological Information**Eye Effects**

Corrosive and irritating. Permanent eye damage may occur from contact with liquid. Vapors, mist and spray may cause severe eye irritation and burns to the conjunctiva and cornea. Sloughing of the conjunctiva, cornea may occur resulting in corneal opacity, edema and ulceration.

Skin Effects

Corrosive and irritating to skin and mucous membranes. Skin contact with liquid, mist or spray may cause severe irritation, pain, redness (erythema), and burns to skin and mucous membranes. Irritation and pain may be delayed even though skin damage starts immediately upon contact. Skin may have a "soapy" feel. Skin burns may result in permanent damage if product is not removed very quickly.

Acute Oral Effects

Corrosive and irritating to skin and mucous membranes of the mouth and throat. Ingestion will result in severe burning and corrosion of the mouth, throat and gastrointestinal tract. Hypersalivation, vomiting, cardiovascular collapse, tracheal obstruction, and difficulty breathing may occur. Doses as small as about 2 grams may be fatal.

Aspiration hazard. Sodium hydroxide that mixes with stomach acids produces heat. Aspiration of sodium hydroxide during vomiting may cause filling of the lungs with fluid (pulmonary edema), which may be fatal.

EXHIBIT E**SAFETY DATA SHEET****Sodium Hydroxide Solution****Section 11: Toxicological Information - Continued****Acute Inhalation Effects**

Corrosive and irritating. Sodium hydroxide has a low volatility and does not easily form vapors. However, inhalation of aerosols, mist or spray may cause severe irritation to the nose, throat, and respiratory system. Symptoms include runny nose, coughing, sneezing, hoarseness, headache, nausea, shortness of breath and severe lung damage. Inhalation of high concentrations may be fatal.

Chronic/Carcinogenicity

Neither the product overall nor any of its ingredients are known to be listed as potentially carcinogenic by NTP, IARC, OSHA or ACGIH.

Ingredient(s) - Toxicological Data

sodium hydroxide

LD50 (dermal, rabbit): 1,350 mg/kg

LD50 (oral, rat): 140-340 mg/kg

LDLo (oral, human): 1.57 mg/kg

LC50 (inhal, mouse): 1200 mg/m³ (2 hrs)

LC50 (inhal, rat): 2300 mg/m³ (2 hrs)

Section 12: Ecological Information**Ecotoxicological Information**

Harmful to fish and aquatic organisms. Do not allow to enter sewers and waterways.

Acute Toxicity - Fish And Invertebrates

Freshwater Ecotoxicity Values (CHRIS, 1997; HSDB, 1997; OHM/TADS, 1997):

Lethal, Cyprinus carpio, 180 ppm/24 hours (25 degrees C)

Lethal, Vector Snails, 150 to 450 ppm/24 hours (27 degrees C)

Lethal, Daphnia, 100 ppm

Lethal, Minnows, 100 ppm

Lethal, Silver Salmon, 20 ppm

Lethal, Brook Trout, 25 ppm/24 hours

Lethal, Cutthroat Trout, 35 ppm

Lethal, Creek Chub, 40 ppm/24 hours

Lethal, King Salmon, 48 ppm

Lethal, Crabs and Fish, 70 ppm/5 hours, stagnant water

Lethal, Carp, Shiners, Suckers, 96 ppm/16 hours, tap water

Lethal, Minnows, 100 ppm

Lethal, Shiners, 100 ppm/120 hours

Lethal, Bass and Goldfish, 100 ppm/3 to 20 hours

TLm, Mosquito Fish, 125 ppm/96 hours, turbid

TLm, Bluegill and Sunfish, 99 mg/L/48 hours, tap water

Saltwater Ecotoxicity Values (CHRIS, 1997; OHM/TADS, 1997):

LC50, Cockle, 330 to 1000 ppm/48 hours, aerated

LC50, Pogge, 33 to 100 ppm/48 hours, aerated

LC50, Starfish, 33 to 100/48 hours, aerated

LC50, Shrimp, 33 to 100/48 hours, aerated

Lethal, Oysters, 180 ppm/23 hours, circulating

Lethal, Oysters, 90 ppm/4.5 hours, circulating

EXHIBIT E**SAFETY DATA SHEET****Sodium Hydroxide Solution****Section 13: Disposal Considerations**

Dispose in accordance with applicable federal, state and local government regulations. Waste materials may be required to be disposed of as hazardous waste. Do not allow into any sewer, on the ground, or into any body of water.

RCRA Information

Waste may qualify as hazardous waste under code D002 (Corrosive Waste).

Section 14: Transport Information**Proper Shipping Name**

sodium hydroxide solution

Hazard Class

8 (PGII)

DOT Identification Number

UN1824

DOT Shipping Label

Corrosive

Additional Shipping Paper Description

Reportable Quantity (RQ) = 1,000 lbs (454 kg)

Section 15: Regulatory Information**U.S. Regulatory Information**

This product is listed as a hazardous substance under criteria defined in the Federal OSHA Hazard Communication Standard, 29 CFR 1910.1200.

Toxic Substance Control Act (TSCA): Sodium hydroxide in this product is listed on the TSCA 8(b) Chemical Substance Inventory.

CERCLA/Superfund Hazardous Substance (49 CFR 172.101 App A): RQ = 1,000 lbs (454 kg).

SARA 302 - Product does not contain ingredients that are list as Extremely Hazardous Substances.

SARA Hazard Classes

Acute Health Hazard

Reactivity Hazard

SARA Section 313 Notification

This product does not contain any ingredients regulated under Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 or 40 CFR 372.

Ingredient(s) - State Regulations

sodium hydroxide

New Jersey - Workplace Hazard

New Jersey - Special Hazard

Pennsylvania - Workplace Hazard

Pennsylvania - Environmental Hazard

Massachusetts - Hazardous Substance

New York City - Hazardous Substance

Canadian Regulatory Information

This product contains more than 1% of a known, controlled ingredient regulated under WHMIS.

WHMIS Hazard Classifications:

EXHIBIT E**SAFETY DATA SHEET****Sodium Hydroxide Solution****Section 15: Regulatory Information - Continued****Canadian Regulatory Information - Continued**

Class E - Corrosive Material

Section 16: Other Information**NFPA Rating****Health: 3****Fire: 0****Reactivity: 1****Disclaimer**

Although reasonable care has been taken in the preparation of this document, we extend no warranties and make no representations as to the accuracy or completeness of the information contained therein, and assume no responsibility regarding the suitability of this information for the user's intended purposes or for the consequences of its use. Each individual should make a determination as to the suitability of the information for their particular purpose(s).

TDC, LLC

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EXHIBIT F**City of Denton
IFB# 6530****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.**2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

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

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

Name of Officer

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

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

4**I have no Conflict of Interest to disclose.****5**

Signature of vendor doing business with the governmental entity

9/20/17

Date

Certificate Of Completion

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Subject: City Council Docusign Item - 6530 TDC

Source Envelope:

Document Pages: 44

Signatures: 2

Envelope Originator:

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Initials: 0

Karen E. Smith

AutoNav: Enabled

karen.smith@cityofdenton.com

Envelopeld Stamping: Enabled

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karen.smith@cityofdenton.com

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Jon Kirkland

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jon.kirkland@genlp.com

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Business Manager

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Jennifer DeCurtis

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5972538AC4584B9...

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Deputy City Attorney

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City of Denton

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Julia Winkley

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julia.winkley@cityofdenton.com

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Contracts Administration Supervisor

City of Denton

Security Level: Email, Account Authentication (Optional)

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:

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ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21

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Agent Deliver Events	Status	Timestamp
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Jane Richardson jane.richardson@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign		

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randy Markham randy.markham@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
robyn Forsyth robyn.forsyth@cityofdenton.com Security Level: Email, Account Authentication (Optional) Electronic Record and Signature Disclosure: Not Offered via DocuSign		

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

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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.

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