

February 26, 2018

Honorable Mayor and Members of the City Council  
City of Denton, Texas  
215 E. McKinney Street  
Denton, TX 76201

**Re: Report on Internal Audit Type Monitoring Activities**

Honorable Mayor and Members of the City Council:

The City of Denton (the City) engaged Crawford and Associates, P. C. to provide certain professional services as identified in the Scope and Objectives of Our Services section below. This report describes the scope and objectives of our services, the specific procedures we performed, our findings and recommendations, and management's responses to our findings and recommendations.

**Scope and Objectives of Our Services**

The scope of our professional services was limited to performing certain consulting services designed to assist the Mayor and City Council in meeting its fiduciary responsibilities. These services were performed in accordance with the standards applicable to consulting engagements of the American Institute of Certified Public Accountants. With regards to this specific engagement, the scope of our services included certain internal audit type monitoring procedures in the following area at the City:

- Contract Administration

The objectives of our services in this engagement were to obtain information and review selected accounting records to determine whether any recommendations are warranted regarding the design of established internal control policies and procedures, and to report on the level of compliance with those policies and procedures as designed based on our test work.

**Contract Administration**

**Introduction**

The City of Denton has approximately 868 contracts accounted for on their current contract master list. The contracts cover a wide range of areas such as the purchase of goods or services, leases, memorandums of understanding, interlocal agreements, construction contracts, hedging agreements and other various agreements. The contracts listed on the master list range in dollar amount anywhere from \$0 for some memorandum of understandings for non-monetary exchange of services or facilities up to \$13,000,000 for capital appreciation bonds.

**Procedures Performed:**

To accomplish the stated objectives, we performed the following procedures:

- Obtained and reviewed the City's "Materials Management and Payment Procedures Manual" and noted the sections that pertained specifically to authorization and execution of contracts such as those listed below:
  - Chapter 2 Section 4. Formal Contracts
  - Chapter 2 Section 6. Signature/Authorization
  - Chapter 2 Section 8. Purchasing Authority Thresholds
  - Chapter 11 Section 1. Term Contract Purchases

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**Procedures Performed – continued:**

Outside of the policies and procedures noted above it was also noted that the City did not have any other current and/or consistent policies or procedures in place specifically regarding contract administration or grants.

- We conducted interviews with the Deputy City Manager and Finance Director prior to beginning our fieldwork and then also conducted interviews with individuals from nine City departments to gain an understanding of the types of contracts entered into as well as their procedures involved in the contract process including initiation, administration, monitoring and close-out. The nine City departments and their personnel interviewed are listed below:
  - Legal; City Attorney
  - Purchasing; Assistant Purchasing Manager
  - Real Estate; Real Estate Manager, Senior Analyst, Deputy City Attorney
  - Police; Police Chief
  - Fleet; Fleet Superintendent, Budget Tech
  - Planning; Director of Development Services, Interim Planning Director
  - Materials Management; Logistics Supervisor
  - Economic Development; Economic Development Director
  - Compliance; Compliance Director, Compliance Officer

We also reviewed the notes from fifteen other City departments from previous interview sessions regarding contracts and contract administration that were conducted by the City's Compliance department prior to our engagement. The departments reviewed by the City's Compliance department are listed below:

Electric	Finance	Facilities
Airport	Fire	Wastewater
Water	Street	Human Resources
Library	Court	Tech Services
Parks	Solid Waste	Customer Service

- We judgmentally selected a sample of 62 contracts out of a total of 868 contracts on the contract master list that was provided to us for purpose of our testwork. Our sample included at least one contract from each department listed on the master list, as we attempted to include as many different types of contracts as we could such as contracts for goods or services, memorandums of understanding, interlocal agreements, leases, hedging agreements and other contractual agreements. The contracts sampled ranged from costs of \$0 for an interlocal agreement for parking enforcement with the University of North Texas to a \$4,000,000 contract for fleet parts. Once comfortable with the sample size and contents, we then reviewed the sample for the following items:
  - Proper authorization based on the contract dollar amount as set forth by the terms in Chapter 2 Section 8 of the City's Materials Management and Payment Procedures Manual
  - Approval signature from the Legal department that represents approval of the contract as to form.

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**Procedures Performed – continued:**

- Proper documentation of monitoring provisions and identification of the City's specific contract terms or responsibilities within the contracts (if any)
- Proper documentation of monitoring provisions and identification/evaluation of the vendor's performance or responsibilities within the contracts (if any)

**Observations:**

From the procedures performed above, we determined that the City lacks an effective contract administration control framework and more specifically, the City does not currently have formal policies and procedures regarding contract or grant administration at either the City-wide or departmental level and therefore the roles and responsibilities of the various individuals involved can be unclear. For example, Chapter 2 Section 8 of the Materials Management and Payment Procedures Manual defines the purchasing authority thresholds for procurement contracts; however the City does not have any clearly defined policies regarding non-procurement contracts, such as the lease of airport hangars.

We also determined there is no evidence of a formal review or documentation process in place to verify that monitoring is being done on individual contracts to ensure compliance of various contract provisions by both the City and the vendor. It is considered a best practice to have a formal process in place to routinely monitor and review specific contract terms to ensure compliance and performance by both the vendor and the City. This process may be contract specific as not all contracts will require routine review or monitoring depending on the terms set forth within the contract. For example, for construction contracts, progress reports may be required on a regular basis to ensure compliance with City building codes and permits. Another example would be service contracts where the terms may stipulate that the vendor must meet a specific performance threshold. Items such as these should be documented that they have been noted for further evaluation and consideration and/or verified or reviewed on a routine basis if included in the terms of the contract.

Additionally, we identified one contract that was executed for an amount that exceeded the amount approved by City Council. The contract for fleet parts with Napa Auto Parts (Exhibit 1) was approved for 3 year for \$3 million per year for a total not-to-exceed of \$9 million by City Ordinance 2016-172, however the contract was actually executed for 3 years for \$4 million a year for a total not-to-exceed of \$12 million. According to the Purchasing department, the total amount spent against this contract from execution in June 2016 to date as of February 23, 2018 is \$5,372,774.65. It was also noted that this contract was going to be resubmitted to the City Council with a Nunc Pro Tunc Ordinance to correct the error.

We also identified one contract where the amount that was spent on the contract was for an amount that exceeded the contract terms amount approved by City Council. City Ordinance 2015-221 approved a contract with Dustrol, Inc. (Exhibit 2) for a not-to-exceed cost of \$400,000. However, according to the contract master list, this contract was listed as a contract with a not-to-exceed cost of \$1.3 million, a variance of \$900,000. It was determined that the Street department had interpreted this contract to be for \$400,000 per year for 3 years instead of the approved terms of the not-to-exceed \$400,000 over 3 years. However, it was noted that the total amount spent against this contract from execution in August 2015 to date as of February 23, 2018 is only \$333,578.31. So the contract has not been overspent as of this time.



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**Perspective:**

While it was noted that there are no specific, centralized government-wide policies and procedures regarding contract administration, it appears that each of the departments interviewed were performing some level of contract monitoring and/or review. However, it was also noted that due to the fact that there were no clearly defined roles and responsibilities regarding contract administration, each department's personnel were unclear as to what their individual and collective responsibilities should be. It does; however, appear that each department was willing and receptive to implementing new contract administration procedures once they have been developed.

Based on the procedures performed above, we have the following recommendations.

**Recommendations:**

1. We recommend the City develop formal policies concerning overall contract management. Written policies are considered to be a best practice to ensure clearly identified roles and responsibilities of all individuals involved in the contract administration process. These policies should address at a minimum the following items:
  - a. Roles and responsibilities of all City departments involved in the contract process (e.g., Compliance, Legal, and Purchasing departments)
  - b. Binding Authority: who has the authority to bind the City into non-procurement contracts, and what are the authorization levels; can that authority be assigned or reassigned to others; addressing the extent to what proper documentation would be required of all assignments and reassignments
  - c. Recordkeeping: what documentation is required to be kept for each contract, and where that documentation should be stored or maintained (e.g., insurance policies, inspection documentation, contract terms compliance documentation)
  - d. Contract Templates: where should contract templates be stored or maintained, and how often should they be updated and reviewed by the Legal department
2. We recommend the City develop formal policies regarding federal awards to ensure compliance with Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. These policies should address at a minimum the following items:
  - a. Cash management regarding matching requirements and reimbursement of cash spent on federal awards (2 CFR 200.302)
  - b. Time and Effort reporting requirements for payroll charges to federal awards and support for the distribution/allocation of salary or wages to federal awards (2 CFR 200.430)
  - c. Policies for determination of allowable costs to federal awards (2 CFR 200.302)
  - d. Sub-recipient Monitoring that addresses required documentation and frequency of risk assessments for each sub-award and further monitoring procedures (2 CFR 200.331)



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**Recommendations – continued:**

By not having the preceding written policies and procedures in place the City runs the risk of being considered not in compliance with 2 CFR Part 200. The requirements of 2 CFR Part 200 requires grant recipients to expand on existing written policies and procedures including those procedures that ensure an adequate internal control system exists to provide for the proper use and compliance with the requirements of the federal award.

The lack of documented policies and procedures could result in the City receiving audit findings of classified as either control deficiencies, material weaknesses and/or non-compliance with grant contracts. In a worst-case scenario this could lead to increased federal oversight, loss of future funding, or a requirement to repay federal awards to the awarding agency.

3. We recommend the City review their current written purchasing policies and procedures to ensure that current policies and procedures are in compliance with the Uniform Guidance procurement requirements outlined in 2 CFR 200.317-.326.
4. We recommend the City implement a routine training program for those City employees who work with contracts and grants. The training should address at a minimum the following items:
  - a. The roles and responsibilities of the individuals and departments initiating the contract and/or grant
  - b. The roles and responsibilities of the supporting departments (e.g., Compliance, Legal, Purchasing departments, etc.)
5. We recommend the City implement a review process to ensure that all contracts approved by a City ordinance are executed for the same amount as approved by the City Council.
6. We recommend the City implement a routine review of the contract administration process of all City departments to ensure the best practices of proper documentation of review, monitoring, and compliance of all significant and material contractual terms.
7. We recommend the City implement a system (e.g., software, database, spreadsheet file) for tracking all City contracts. This system should allow for the tracking of items such as contract not-to-exceed amounts, contract start and expiration dates, and compliance with any specific terms. This system should also allow for easy searching of contracts for possible information-sharing among City departments.
8. We recommend the City implement a formal process for the Legal department to timely notify other appropriate City departments when a contract needs to be updated with new legal language. This will enable the Compliance or Purchasing departments to ensure that all contract templates are resubmitted to the Legal department for review and updating.

**City Management Response:**

Management agrees with the reported findings and acknowledges there have been deficiencies in the contract administration process. The Dustrol, Inc. and NAPA Auto Parts contracts clearly demonstrate unintentional yet problematic errors in regard to contract expenditure amounts. Recommendations to correct these ordinances and contracts are scheduled as a work session item to Council on March 27. The purchase orders currently issued for Dustrol, Inc. will be revised as to not exceed the Council approved amount of \$400,000. A new solicitation for Street milling services will also be placed on the marketplace in March 2018. Multiple options for the NAPA Auto Parts

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**City Management Response – continued:**

contract will be presented for Council's consideration and recommendation. Purchasing is amending current operating procedures, including utilizing checklists and peer reviews, to mitigate these errors moving forward.

The City is working to improve contract management practices and procedures. Below is a listing and schedule of current and upcoming initiatives to address the recommendations:

- |                                                                 |             |
|-----------------------------------------------------------------|-------------|
| • Implementation of contract management software                | Spring 2018 |
| • Annual contract reviews by Compliance Department              | Spring 2018 |
| • Adoption of contract administration policies and procedures   | Summer 2018 |
| • Materials Management and Payment Procedures Manual update     | Fall 2018   |
| • Adoption of grant and federal funding policies and procedures | Winter 2018 |
| • Contract and grant training program for city staff            | Spring 2019 |



We would like to express our appreciation for all the courtesy and assistance we received from management and staff during our work at the City and hope that this report will be of benefit to the City.

*Crawford & Associates, P.C.*

Crawford & Associates, P.C.

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND GENUINE PARTS COMPANY  
(D.B.A. NAPA AUTO PARTS)  
(RFP # 5641)**

June 21, 2016

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between Genuine Parts Company, d.b.a. NAPA Auto Parts, a corporation, whose address is 2999 Circle 75 Parkway, Atlanta, Georgia 30339, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or 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 and/or services in accordance with the City's document RFP 5641 – Fleet Vehicle and Equipment Integrated Parts Inventory Support Services, 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 and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) Revised and Negotiated Scope of Work (**Exhibit "B"**);
- (c) Sample Profit and Loss Statement (**Schedule 1**)
- (d) Standard Terms and Conditions (**Exhibit "C"**);
- (e) Insurance Requirements (**Exhibit "D"**);
- (f) Lease Agreement (**Exhibit "E"**);
- (g) Request for Proposal (RFP) (**Exhibit "F" on File at the Office of the Purchasing Agent**);
- (h) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "G"**);
- (i) Contractor's Best and Final Proposal (**Exhibit "H"**)
- (j) Sample Reports (**Exhibit "I"**).

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."



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

**CONTRACTOR**

DocuSigned by:  
*Stu Kambury*  
BY: DEFC3964E8624EA...  
AUTHORIZED SIGNATURE

Date: 6/13/2016

Name: Stu Kambury

Title: Division VP

214 414-1700

**PHONE NUMBER**

Stu\_kambury@genpt.com

**EMAIL ADDRESS**

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

DocuSigned by:  
*Jennifer Walters*  
BY: C5BFAFC1821946D...

**CITY OF DENTON, TEXAS**

DocuSigned by:  
*George C. Campbell*  
BY: 4884E925F0E6486...  
GEORGE C. CAMPBELL, CITY MANAGER

Date: June 21, 2016

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

DocuSigned by:  
*John Knight*  
BY: C621996C2A2B439...

**Contract #5641**  
**Exhibit A**  
**Special Terms and Conditions**

## **Special Terms and Conditions**

### **Total Contract Amount**

The contract total for services shall not exceed an annual amount of \$4,000,000 for a total not-to-exceed amount of \$12,000,000. Pricing shall be per Exhibit B attached.

### **Contract Terms**

The contract term will be one (1) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall be renewed each year, from the date of award by City Council, upon mutual written agreement by both parties. The City shall notify the Contractor at least ninety (90) days prior to the scheduled renewal date in accordance with the terms set forth hereinunder. At the sole option of the City of Denton, the contract may be further extended as needed, not to exceed a total of six (6) months.

### **Pricing**

The pricing for all normally stocked, and locally available, items will be furnished FOB Destination, Prepaid and Allowed, and the prices quoted for all non-stock items, non-locally available items, special/custom and emergency orders will be furnished FOB Destination, Prepaid and Added, which means that the Contractor initially pays the freight and then adds the freight charges to its invoice to the City for reimbursement.

### **Firm Pricing Profile**

The parties agree that Contractor's pricing profile shall remain firm, but prices on individual products shall increase and decrease throughout the term of the Contract.

### **Price Adjustments**

As stated above in the section entitled Firm Pricing Profile, prices on individual products shall increase and decrease throughout the term of the Contract.

### **Cooperative Purchasing**

This contract will be available for use by **all governmental entities**, providing there is no conflict with any applicable statutes, rules, policies, or procedures. The governmental entities will have the option to use the pricing as agreed to within the resulting contract.

Governmental entities will issue their internal purchase orders directly to the Contractor, however, shall reference and cite the City of Denton contract number within the purchase order document.

After award, the Contractor agrees to collect, on behalf of the City, a service fee in the amount of **0.25% of the dollar amount of all issued purchase orders generated** from any governmental entities contracted, based on the use of this contract. The Contractor further agrees to remit the service fee by check on a quarterly basis for the previous quarter spent through this



contract, to Julia Klinck, Contract Administration Supervisor, at 901B Texas Street, Denton, Texas 76209, on or by the fifteenth (15<sup>th</sup>) day of each month, following the end of the quarter. The Contractor shall also provide quarterly sales reports from the contract awards and Purchase Orders issued from the Contract, for the purpose of billing and collecting the service fee, and for compiling required purchasing history. This report shall be sent to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) on or by the fifteenth (15<sup>th</sup>) day of each month. The Contractor further agrees that the City of Denton shall have the right, upon reasonable written notice, to review the Contractor's records pertaining to purchases under this awarded contract to verify the accuracy of service fees charged to the Contractor.

### **Intellectually Property Indemnification**

This section only applies to software owned by the Contractor and made available to the City. The contractor will indemnify, defend and hold harmless the City, and its authorized users, against any action or claim brought against the City, or its authorized users that is based on a claim that software infringes any patent rights, copyright rights or incorporated misappropriated trade secrets. Contractor will pay any damages attributable to such claim that are awarded against the City or its authorized users, in a judgment or settlement. If the City or its authorized users' utilization of the software becomes subject to a claim, or is likely to become subject to a claim, in the sole opinion of the City, or its authorized users, the Contractor shall, at its sole expense (1) procure for City or its authorized users, the right to continue using such software under the terms of this Contract; or (2) replace or modify the software so that it is non-infringing.

### **Rights to Data, Documents, and Computer Software (Governmental Entity Ownership)**

Any research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this contract shall be the exclusive property of the City and all such materials shall be delivered to the City by the Contractor upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of contractor's obligations under this contract without the prior written consent of the City; provided, however, that contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work.

The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works. For the avoidance of any doubt, the parties agree that Contractor cannot assign or leave with the City its proprietary TAMS (Total Automotive Management System) upon termination or expiration of the Contract.

### **Patent Rights**

The Contractor agrees to provide an indemnity for intellectual property claims based on intellectual property rights owned by Contractor but cannot provide a direct copyright, trademark or patent indemnity for the products supplied pursuant to the contract, as contractor does not manufacture the products. Contractor can agree to use reasonable commercial efforts to assist the City in processing any infringement claim against the applicable manufacturer.

### **No Liquidated Damages**

The parties agree that no liquidated damages of any kind will be assessed against Contractor under this Contract for any reason.

### **Warranties**

All products supplied pursuant to the contract are subject to the terms of written warranties provided by the manufacturer of each product, and contractor shall use reasonable commercial efforts to assist the City in processing all warranty claims that the City may have against a manufacturer. The manufacturer's warranty will be the sole and exclusive remedy of the City in connection with any claims concerning the products supplied to the City hereunder. ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED. Copies of the manufacturers' warranties are available to the City upon request.

However, the Contractor shall pass through all available warranty benefits from the applicable manufacturer to the City. In the event that any product does not conform to the manufacturer's warranty, the City may return such product to Contractor and Contractor will process the City's warranty claim with the manufacturer of the defective product. After the manufacturer has accepted the claim from Contractor, Contractor, as the City's sole and exclusive remedy and the contractor's sole liability, shall either, at its option: (i) replace the product with a conforming product or (ii) issue a credit or refund for the price of the product.

### **Shipping, Delivery, and Packaging**

#### **Identification of Shipments:**

In addition to the complete destination address, each delivery must be clearly marked with the purchase order number. Each shipment must be accompanied by a packing slip.

#### **Packaging and Labeling:**

Contractor will use commercially reasonable efforts to ensure that all items shipped will be properly labeled, with weather resistant labeling, showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information.

#### **Special Delivery Requirements:**

City Department representatives may have specific, internal delivery rules and policies. These will be provided on each purchase order issued. The contractor(s) will be required to adhere to those requirements.

**Hours of Delivery:**

Stock orders for inventory replenishment shall be delivered during the overnight shift hours of 10:30 p.m. to 12:00 a.m. (Central) unless prior approval for after-hours delivery has been obtained from the City. In the event of any approval by the City for after-hours delivery, Contractor may not invoice any additional charges for that delivery. Contractor is encouraged to obtain City's hours of operation at time of order.

Daily parts deliveries shall be accepted by City staff in between the hours of 6:30 a.m. and 5:00 p.m. (Central).

**Delivery Schedule:**

Respondent's shall furnish, in the space indicated on the price sheet, a delivery schedule for each line item as to time required for delivery after receipt of order (ARO) under normal conditions. Delivery Days means calendar days, unless otherwise specified. Failure to state delivery time may disqualify Respondent. The City of Denton, at its sole option, may choose to negotiate delivery times.

**Delivery Delays:**

If delay is foreseen, Contractor shall give written notice to the City and must keep City advised at all times of the status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the City to purchase goods and services of this solicitation elsewhere. The parties agree that Contractor will use reasonable commercial efforts to meet required delivery times, but conditions out of Contractor's reasonable control, such as adverse traffic or weather conditions, may delay deliveries and contractor will not be liable in any manner for such delayed deliveries.

**Compliant Products:**

Providing products or materials which do not meet all specification requirements does not constitute delivery. Delivery does not occur until the contractor delivers products or materials in full compliance with the specifications to City's F.O.B. destination, unless delivery is specifically accepted, in whole or in part, by the Customer. City reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.

**Restocking Fee:**

The City may request that a contractor accept return of merchandise already delivered or that a contractor cancel an order prior to delivery. If the return is required through no fault of the contractor, the contractor may request a reasonable restocking charge. The Customer may pay a restocking charge if the City determines that the charge is justifiable. As a guideline, such charges shall not exceed 10%. There shall be no fees charged for cancellation of an order prior to shipment by the Contractor.

**Safety and Environmental Hazards**

The City does not warrant or guarantee against the possibility that safety or environmental hazards or potential hazards (including premises and special defects) may exist at the City's facilities. Notwithstanding the foregoing, the City shall, at all times during the term of the contract, at the City's sole expense, maintain in good condition and repair (so as to prevent any



damage or injury to contractor's employees, the inventory or other personal property located in the on-site store(s)) the roof, exterior walls, foundation, and structural portions of the on-site store(s) and all portions of the electrical and plumbing systems lying outside of the on-site store(s) but serving the on-site store(s).

All contractors to the City are required to ensure absolute safety standards are applied and enforced. City will not be liable for injuries to Contractor employees to the extent such injuries are caused by the negligent acts or omissions or intentional misconduct of Contractor or its employees. Likewise, Contractor will not be liable for injuries to City employees to the extent such injuries are caused by the negligent acts or omissions or intentional misconduct of City or its employees. Known hazards shall immediately be reported and all safety precautions shall be taken to prevent potential safety issues from occurring.

**Contractor Standards of Performance**

Monthly Time Standards - Contractors shall fully understand that the City relies on the product or service of the solicitation to provide vital municipal services, and the availability and reliability of the equipment is of the essence. With this in mind, the Contractor shall meet the following performance standards at all times. Labor disputes, strikes, and other events, except those beyond the Contractor's control such as acts of God, shall not relieve the Contractor from meeting these standards. For service category, the Contractor must ensure the given level of service is achieved, within the designated number of working hours.

Contractor shall deliver goods or services within specified delivery times for 95% of all orders.

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND DUSTROL, INC.  
(RFP 5846)**

**THIS CONTRACT** is made and entered into this 4 day of August A.D., 2015, by and between Dustrol, Inc., a corporation, whose address is P.O. Box 1728, Roanoke, Texas 76262, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or 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**

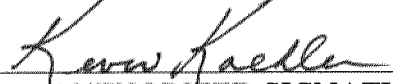
Supplier shall provide products and/or services in accordance with the City's document RFP 5846-Street Milling Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) Request for Proposal (**Exhibit "B" on File at the Office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Insurance Requirements (**Exhibit "D"**);
- (e) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "E"**);
- (f) Contractor's Proposal. (**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."

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

**CONTRACTOR**

BY:   
AUTHORIZED SIGNATURE

Date: 7-16-15

Name: Kevin Koehler  
**Corporate Secretary**

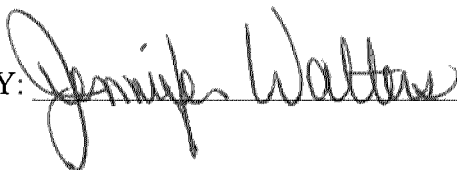
Title: \_\_\_\_\_

316-536-2262  
PHONE NUMBER

KKoehler@dustrol.com  
EMAIL ADDRESS

**CITY OF DENTON, TEXAS**

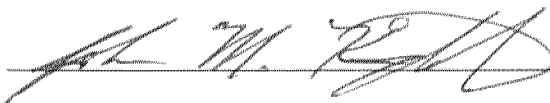
ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: 

BY:   
GEORGE C. CAMPBELL, CITY MANAGER

Date: August 4, 2015

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY: 



## **Exhibit A**

### **Special Terms and Conditions**

#### **Total Contract Amount**

The contract total for services shall not exceed \$400,000. Pricing shall be per Exhibit F attached.

#### **Contract Terms**

The contract term will be one (1) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council, unless either party notifies the other prior to the scheduled renewal date. At the sole option of the City of Denton, the contract may be further extended as needed, not to exceed a total of six (6) months.

#### **Price Escalation and De-escalation**

The City will implement an escalation/de-escalation price adjustment annually. Any request for price adjustment must be based on the following indices: 1) U.S. Energy Information Administration (EIA) prior 52 week average for Midwest (PADD 2) for retail diesel (on-highway) – all types 2) U.S Department of Labor, Bureau of Labor Statistics, Employment Cost Index (ECI) for Total Compensation, Private Industry Construction Workers (CIU2012300000000A) as found at (<http://www.bls.gov>). The price will be increased or decreased based upon the annual percentage change in the combined indices. The price adjustment will be determined annually at the contract renewal date. The maximum escalation will not exceed +/- 8% for any individual year. Should the indices change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the combined indices change not to exceed the 8% limit per year. The service provider should provide documentation as percentage of each cost associated with the unit prices quoted for consideration. Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. If no request is made, then it will be assumed that the bid price will be in effect.

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

The request can be sent by e-mail to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) noting RFP 5846.

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