



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Meeting Agenda Public Utilities Board

Monday, March 27, 2023

9:00 AM

Council Work Session Room

REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD

Citizens will also be able to participate in the following way (NOTE: Other than public hearings, citizens are only able to comment one time per agenda item; citizens cannot use both methods to comment on a single agenda item. Public comments are not held for work session reports.):

- eComment – The agenda was posted online at <https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>. Once the agenda is posted, a link to make virtual comments using the eComment module will be made available next to the meeting listing on the Upcoming Events Calendar. Using eComment, Individuals may indicate support or opposition and submit a brief comment about a specific agenda item. eComments may be submitted up until the start of the meeting at which time the ability to make an eComment will be closed. eComments will be sent directly to members of the Public Utilities Board immediately upon submission and recorded by the Secretary into the Minutes of the Meeting.

After determining that a quorum is present, the Public Utilities Board of the City of Denton, Texas will convene in a Regular Meeting on Monday, March 27, 2023, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

This section of the agenda permits a person to make comments regarding public business on items as listed on the agenda. Each speaker will be allowed a maximum of four (4) minutes. Such person(s) shall have registered under the REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD detailed at the beginning of this agenda. Registration is required prior to the time this agenda item is read into the record.

2. CONSENT AGENDA

Each of the items on the Consent Agenda is recommended by the Staff and approval thereof will be strictly on the basis of the Staff recommendations. Approval of the Consent Agenda authorizes the City Manager or designee to implement each item in accordance with the Staff recommendations. The Public Utilities Board has received background information and has had an opportunity to raise questions regarding these items prior to consideration.

Listed below are bids, purchase orders, contracts, and other items to be approved for payment or other action under the Consent Agenda (Agenda Items A – B). This listing is provided on the Consent Agenda to allow Public Utilities Board Members to discuss or withdraw an item prior to approval of the Consent Agenda. If no items are pulled, the Consent Agenda Items will be approved with one motion. If items are pulled for separate discussion, they may be considered as the first items following approval of the Consent Agenda.

- A. [PUB23-058](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide regulatory permitting/approval support, process evaluation, design services, bidding assistance, and construction phase services for the Cooper Creek Lift Station Improvement Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-025 - Professional Services Agreement for design services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$750,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet - PUB](#)
 [Exhibit 2 - Ordinance and Contract](#)

- B. [PUB23-059](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with McCourt Equipment, Inc, for screener maintenance and repairs for the Beneficial Reuse Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8116 - awarded to McCourt Equipment, Inc, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$300,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet - PUB](#)
 [Exhibit 2 - Ordinance and Contract](#)

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. [PUB23-061](#) Consider approval of the March 13, 2023 minutes.

Attachments: [3.13.23 PUB Minutes](#)

- B. [PUB23-012](#) Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$52,000,000 in principal amount of Certificates of Obligation of the City of Denton for General Government and Solid Waste projects; and providing an effective date.

Attachments: [Exhibit 1. Agenda Information Sheet](#)
 [Exhibit 2. Ordinance](#)
 [Exhibit 3. Presentation](#)

- C. [PUB23-013](#) Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$167,000,000 in principal amount of Certificates of Obligation of the City of Denton for Waterworks and Wastewater System and Electric System projects; and providing an effective date.

Attachments: [Exhibit 1. Agenda Information Sheet](#)
 [Exhibit 2. Ordinance](#)
 [Exhibit 3. Presentation](#)

- D. [PUB23-062](#) Management Reports
1. Future Agenda Items
 2. New Business Action Items

Attachments: [1. Future Agenda Items](#)
 [2. New Business Action Items](#)

4. CONCLUDING ITEMS

A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the Public Utilities Board or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

Following the completion of the Regular Meeting, the Public Utilities Board will convene in a Work Session at which the following items will be considered:

WORK SESSION

- A. [PUB23-038](#) Receive a report, hold a discussion, and give staff direction regarding the Solid Waste and Recycling Rewrite of Solid Waste Ordinance and addition of a commercial diversion article.

[Estimated Presentation/Discussion Time: 45 minutes]

Attachments: [Exhibit 1 Agenda Information Sheet](#)
 [Exhibit 2 Redlined Chapter 24](#)
 [Exhibit 3 Clean Version of Ch24 rewrite](#)
 [Exhibit 4 Presentation](#)

CERTIFICATE

I certify that the above notice of meeting was posted on the official website (<https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>) and bulletin board at City Hall, 215 E. McKinney Street, Denton, Texas, on March 23, 2023, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

CITY SECRETARY

NOTE: THE CITY OF DENTON'S DESIGNATED PUBLIC MEETING FACILITIES ARE ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE ACCOMMODATION, SUCH AS SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED, IF REQUESTED AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 940-349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATION CAN BE ARRANGED.



City of Denton

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215 E. McKinney St.
Denton, Texas 76201
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Legislation Text

File #: PUB23-058, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide regulatory permitting/approval support, process evaluation, design services, bidding assistance, and construction phase services for the Cooper Creek Lift Station Improvement Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-025 - Professional Services Agreement for design services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$750,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: March 27, 2023

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide regulatory permitting/approval support, process evaluation, design services, bidding assistance, and construction phase services for the Cooper Creek Lift Station Improvement Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-025 – Professional Services Agreement for design services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$750,000.00).

INFORMATION/BACKGROUND

The Cooper Creek Lift Station (CCLS) was initially completed in 2003. The facility is the main collection site for the Cooper Creek Wastewater Basin flows and is located on the NW corner of Prominence and Mayhill RD. The station currently has a capacity of eight million gallons per day (MGD). There have not been any significant improvements to the station since its completion. CCLS has a history of maintenance challenges due to upstream solids buildup that inundate the station during rain events. Additionally, the station requires various rehabilitation and upgrades, as determined by Water Reclamation staff and a condition assessment previously performed by the consultant under a separate agreement. The equipment has outlived its useful life and warrants replacement. The proposed project will increase capacity and support growth within the community and maintain public health through the safe conveyance of wastewater.

Major improvements and upgrades to the Cooper Creek Lift Station include:

- Installation of a bar screen in advance of the lift station including offsite inlet piping relocation to minimize floodplain impacts, including a washer, compactor and automatic bagging system, bypass channel, on-site paving, and fencing improvements, and associated electrical and instrumentation improvements.
- Installation of new variable frequency drive (VFD) and associated electrical and instrumentation improvements, new Programmable Logic Controller (PLC), and main electrical control panel in the electrical building.
- Installation of a fourth submersible pump to increase capacity up to 12 MGD, permanent emergency bypass connection, and yard isolation valve(s) for future maintenance.

Engineering firms listed on the prequalified list for Wastewater Detention and Lift Station and Collection facilities were interviewed separately to determine the most qualified firm for the project. Based on the qualifications, knowledge, and experience in rehabilitation of similar type and concept most in line with future expansion, staff selected Kimley Horn and Associates Inc. from the list of qualified consultants to perform this work.

Request for Qualifications for professional engineering services for Water and Wastewater was solicited using the City's formal solicitation process. City Council approved a pre-qualified list of engineering firms on March 23, 2021 (Ordinance 21-546).

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On March 23, 2021, Council approved RFQ 7574 for a prequalified list of professional engineering firms for Water and Wastewater (Ordinance 21-546).

RECOMMENDATION

Award a contract with Kimley-Horn and Associates, Inc., to provide regulatory permitting/approval support, process evaluation, design services, bidding assistance, and construction phase services for the Cooper Creek Lift Station Improvement Project for the Water Utilities Department, in a not-to-exceed amount of \$750,000.

PRINCIPAL PLACE OF BUSINESS

Kimley-Horn and Associates, Inc.
Fort Worth, TX

SUSTAINABILITY MEASURES

The rehabilitation of the Cooper Creek Lift Station improves the safety and reliability of wastewater conveyance to the Pecan Creek Water Reclamation Plant.

RELATIONSHIP TO SUSTAINABILITY FRAMEWORK

Focus Area: *Wastewater Collection*

What are some of the goals the department will be setting up to ensure that the sustainability measures are met?

Goal 1: Collect wastewater from the Cooper Creek Basin and discharge it safely to the Water Reclamation Plant

Goal 2: Ensure wastewater is collected and conveyed in accordance with regulatory requirements.

Goal 3: Protect the health, safety, and the environment from sanitary sewer overflows. The project addresses the need to eliminate solids buildup and provide an emergency bypass for maintenance and equipment reliability to ensure the station's continued service.

FISCAL INFORMATION

These services will be funded from Wastewater CIP account 640481545.1360.21100. Requisition #159140 has been entered into the Purchasing software system in the amount of \$550,000. The budgeted amount for this item is \$750,000. The remaining \$200,000 will be added to the allocated project fund in FY 2024.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: David Brown, (940) 349-8480.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., TO PROVIDE REGULATORY PERMITTING/APPROVAL SUPPORT, PROCESS EVALUATION, DESIGN SERVICES, BIDDING ASSISTANCE, AND CONSTRUCTION PHASE SERVICES FOR THE COOPER CREEK LIFT STATION IMPROVEMENT PROJECT FOR THE WATER UTILITIES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7574-025 – PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES AWARDED TO KIMLEY-HORN AND ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$750,000.00).

WHEREAS, on March 23, 2021, the City Council approved a pre-qualified engineer list for Water and Wastewater (Ordinance 21-546), and the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with to Kimley-Horn and Associates, Inc., to provide regulatory permitting/approval support, process evaluation, design services, bidding assistance, and construction phase services for the Cooper Creek Lift Station Improvement Project for the Water Utilities Department, a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [____ - ____]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

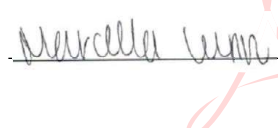
PASSED AND APPROVED this the _____ day of _____, 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o,
ou=City of Denton,
email=marcella.lunn@cityofdent
on.com, c=US
Date: 2023.03.10 10:39:40 -06'00'



Docusign City Council Transmittal Coversheet

PSA	7574-025
File Name	COOPER CREEK LIFT STATION IMPROVEMENTS
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

CITY OF DENTON, TEXAS

STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, with its corporate office at 421 Fayetteville Street, Suite 600, Raleigh, NC 27601 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Cooper Creek Lift Station Improvements (the "PROJECT").

SECTION 1 **Scope of Services**

- A.** The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.
- B.** Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

SECTION 2 **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$750,000 in the manner and in accordance with the fee schedule as set forth in Attachment A. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

SECTION 3 **Terms of Payment**

Payments to the ENGINEER will be made as follows:

A. Invoice and Payment

- (1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment A to reasonably substantiate the invoices.
- (2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.
- (3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.
- (4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.
- (5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

SECTION 4 Obligations of the Engineer

A. General

The ENGINEER will serve as the CITY's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary services incidental thereto.

B. Standard of Care

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and
- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

C. Subsurface Investigations

- (1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.
- (2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

D. Preparation of Engineering Drawings

The ENGINEER will provide to the CITY the original drawings of all plans in ink on reproducible mylar sheets and electronic files in .pdf format, or as otherwise approved by CITY, which shall become the property of the CITY. CITY may use such drawings in any manner it desires; provided, however, that the ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

E. Engineer's Personnel at Construction Site

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.
- (2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if

the work on the PROJECT is being performed in a manner indicating that the PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ENGINEER shall inform the CITY.

- (3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

F. Opinions of Probable Cost, Financial Considerations, and Schedules

- (1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Attachment A.
- (2) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.

G. Construction Progress Payments

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or

encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

H. Record Drawings

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

I. Right to Audit

- (1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.
- (2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.
- (3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

J. INSURANCE

(1) ENGINEER'S INSURANCE

- a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence with a \$2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.
 - i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the CITY. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.
 - ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.
- b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.
 - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.
- c. Workers' Compensation – ENGINEER shall maintain workers compensation and employers liability insurance and, if necessary,

commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.

- i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

(2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.
- b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
- c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.
- d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- e. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.
- f. Insurers for all policies must be authorized to do business in the State of

Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.

- g. Any deductible or self insured retention in excess of \$25,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.
- h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.
- i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.
- l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.
- m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

K. Independent Consultant

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.

L. Disclosure

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

M. Asbestos or Hazardous Substances

- (1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.
- (2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

N. Permitting Authorities - Design Changes

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

O. Schedule

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Attachment A to this AGREEMENT.

P. Equal Opportunity

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents 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 AGREEMENT.
- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and

ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

SECTION 5

Obligations of the City

A. City-Furnished Data

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

B. Access to Facilities and Property

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

C. Advertisements, Permits, and Access

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

D. Timely Review

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Attachment A.

E. Prompt Notice

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

F. Asbestos or Hazardous Substances Release.

- (1) CITY acknowledges ENGINEER will perform part of the work at CITY's facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.
- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

G. Contractor Indemnification and Claims

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

H. Contractor Claims and Third-Party Beneficiaries

- (1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."
- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.
- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

I. CITY's Insurance

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.

- (2) The CITY may secure Builders Risk/Installation insurance at the replacement cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

J. Litigation Assistance

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

K. Changes

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

SECTION 6 **General Legal Provisions**

A. Authorization to Proceed

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

B. Reuse of Project Documents

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

C. Force Majeure

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER's performance of its obligations hereunder.

D. Termination

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.
- b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.

(2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:

- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
- b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
- c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.

(3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

E. Suspension, Delay, or Interruption to Work

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

F. Indemnification

IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS

REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.

G. Assignment

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

H. Jurisdiction

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

I. Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

J. Observe and Comply

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES.**

K. Immigration Nationality Act

ENGINEER shall verify the identity and employment eligibility of its employees who perform work under this AGREEMENT, including completing the Employment Eligibility Verification Form (I-9). Upon request by CITY, ENGINEER shall provide CITY with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this AGREEMENT. ENGINEER shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any ENGINEER employee who is not legally eligible to perform such services. **ENGINEER SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS**

PARAGRAPH BY ENGINEER, ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES. CITY, upon written notice to ENGINEER, shall have the right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

L. Prohibition On Contracts With Companies Boycotting Israel

Engineer acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer's signature provides written verification to the City that Engineer: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

M. Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Engineer certifies that Engineer's signature provides written verification to the City that Engineer, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer's signature provides written verification to the City that Engineer: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

O. Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

P. Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Engineer is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

Q. 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 as defined in the City’s Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). 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.

R. Agreement Documents

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. This AGREEMENT may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of this AGREEMENT:

Attachment A - Scope of Services, Compensation, Project Schedule

These documents make up the AGREEMENT 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 AGREEMENT documents, the inconsistency or conflict shall be resolved by giving precedence first to the written AGREEMENT then to the AGREEMENT documents in the order in which they are listed above.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

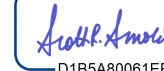
Duly executed by each party's designated representative to be effective on _____.

BY:
CITY OF DENTON, TEXAS

Sara Hensley, City Manager

BY:
ENGINEER
KIMLEY-HORN AND ASSOCIATES,
INC.

DocuSigned by:


D1B5A80061FF4E9

Scott Arnold
Vice President

3/2/2023
Date: _____

2023-990047

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

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

DocuSigned by:

Stephen D. Gay

9EBEE5658E56492

Signature

Director,

Title

Water Utilities

Department

Date Signed: 3/2/2023

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:

Marcella Lunn

4B070831B4AA438

BY: _____

ATTACHMENT "A"

Scope for Engineering Design Related Services for: **COOPER CREEK LIFT STATION IMPROVEMENTS**

The ENGINEER will perform its services pursuant to the requirements delineated below. Services under this attachment include engineering services for the design and construction phase services for the COOPER CREEK LIFT STATION IMPROVEMENTS project.

Project Understanding

The Cooper Creek Lift Station has a history of maintenance challenges due upstream solids buildup that inundate the station during rain events. City staff would like to install a mechanical bar screen in advance of the station inlet to be able to capture and dispose of solids and minimize station/pump downtime. Additionally, the station requires various rehabilitation and upgrades, as determined by discussion with staff as well as a condition assessment previously performed by CONSULTANT under a separate agreement.

ENGINEER will provide engineering design services for the following tasks:

The preliminary analysis, design, bid phase, and construction phase services for the following improvements to the Cooper Creek Lift Station:

- Installation of a bar screen in advance of the lift station including offsite inlet piping relocation to minimize floodplain impacts, including a washer, compactor and automatic bagging system, bypass channel, on-site paving and fencing improvements, and associated electrical and instrumentation improvements as dictated by the preliminary engineering report
- Replacement of wetwell lining system
- Replacement of discharge valves and piping
- Installation of submersible pump on remaining open slot (previously procured by City), as well as a new variable frequency drive (VFD) and associated electrical and instrumentation improvements
- Relocation of existing electrical building HVAC system to accommodate proposed VFD cabinet
- Installation of permanent bypass connection and yard isolation valve(s) for future maintenance
- Installation of new Programmable Logic Controller (PLC) including proposed operational summary
- Replacement of main electrical control panel in electrical building
- Replacement of wetwell flush line and motorized actuated valve
- Replacement of existing base elbows (as needed), discharge piping, valving and appurtenances
- Demolition of existing valve vault and placement of new piping and valving above ground, with pavement modifications as necessary to accommodate maintenance access
- Assisting the City with the permitting of construction documents through Development Services, as well as general coordination with various City Departments

ENGINEER's scope of services is as follows:

- Task 1 – Design Management
- Task 2 – Preliminary Design
- Task 3 – Survey and Geotech
- Task 4 – Final Design
- Task 5 – Construction Contract Documents
- Task 6 – Bidding Phase Services
- Task 7 – Construction Phase Services
- Task 8 – Record Drawings
- Task 9 – Permitting Services
- Task 10 – Downstream Assessment (DSA)
- Task 11 – Additional Services

Task 1 – DESIGN MANAGEMENT

A. Project Management

1. Develop project communication plan.
 - a. Develop project contact list.
 - b. Prepare and e-mail progress reports to the project team once a month to be included with invoices. 12 months is assumed.
 - c. Prepare project schedule and provide schedule updates if the schedule changes.
2. Meetings
 - a. Prepare for and attend kickoff meeting.
 - b. Prepare meeting notes and distribute to the City.
3. Sub-consultant Agreement Preparation
 - a. Prepare and execute up to five (5) subconsultant agreements.

Task 2 – PRELIMINARY DESIGN

A. Preliminary Engineering Report (PER)

1. Prepare and submit a Preliminary Engineering Report for review including:
 - a. Existing Lift Station Condition Summary (based upon City discussion and previous lift station analysis as performed by CONSULTANT under separate agreement)
 - b. Evaluation of mechanical bar screen options and recommendations
 - c. Lift Station rehabilitation recommendations
 - d. Lift Station capacity evaluation
 - e. System and pump curves for existing and proposed pumps
 - f. Electrical and Instrumentation evaluation and recommendations (VFD, Electrical Panel, PLC, etc.)
 - g. Operational recommendations (i.e. flush line, permanent bypass, isolation)
 - h. Existing force main transient/surge analysis and force main improvement recommendations, to accommodate velocity increases associated with adding an additional pump

B. Preliminary Drawings

1. Cover Sheet
2. Preliminary Site Plan
3. Yard Piping Plan and Profile
4. Mechanical Bar Screen Plan and Section
5. Flush Line Plan and Section
6. Preliminary Process Flow Diagram

C. Preliminary OPCC

1. Prepare preliminary design quantity take-off for proposed improvements and engineer's opinion of probable construction cost (OPCC).

D. Deliverables

1. Digital .PDF copy of draft and final technical memorandum.
2. Digital .PDF of 60% Opinion of Probable Construction Cost

E. Meetings

1. Conduct one (1) review meeting with City.
2. Revise PER based on City comments.

Task 3 – SURVEY AND GEOTECH

A. Geotechnical Engineering

1. Perform a geotechnical analysis of the site utilizing a qualified geotechnical laboratory to determine subsurface conditions and make recommendations regarding design parameters. The analysis shall include the following:
 - a. Subsurface exploration including up to three (3) sample bore drilled to between 45 and 50 feet depending upon depth to un-weathered shale or limestone.
 - b. Laboratory tests for classification purposes and strength characteristics.
 - c. Engineering services that address the following:
 - i. Soil and groundwater conditions
 - ii. Comments on general excavatability of soils and shale encountered
 - iii. Recommendations for foundation types, depth, allowable loading and backfill requirements
 - iv. Foundation construction requirements
 - v. Recommended lateral pressures for the design of below grade walls
 - vi. Evaluation of the subgrade soils
 - vii. Recommendations for yard piping installation, including bedding and backfill
 - viii. Recommendations for earthwork.
2. A geotechnical report will be furnished by the geotechnical engineer to present the results of the field and laboratory data as well as analyses and recommendations. The data contained in the geotechnical report will be made available to contractors during the bidding process for informational purposes.

B. Design Survey

1. Utility and Property Owner Coordination
 - a. Coordinate with DIG TESS and City of Denton to locate and mark existing franchise and public utilities prior to performing the field survey.
2. Design Survey
 - a. The limits of the topographic survey shall be the entirety of the lift station parcel and the parcel to the west (both owned by CITY) with a northern limit of the existing Cooper Creek southern top of creek bank.

C. Deliverables

1. Digital .PDF copy geotechnical report.

Task 4 –FINAL DESIGN

A. Final Lift Station Design

1. Prepare engineering plan sheets and specifications in accordance with the preliminary engineering report.
2. The plans will include:
 - a. Civil sheets:
 - i. General notes
 - ii. Overall site plan
 - iii. Yard piping plan and profiles
 - iv. Paving plan and profile
 - v. Grading plan
 - vi. Offsite force main improvements (if required, as dictated by surge analysis) to accommodate increased pumping velocities
 - vii. Details
 - b. Mechanical sheets:
 - i. General notes
 - ii. Mechanical bar screen equipment layouts, sections, and details
 - iii. Lift station equipment layouts, sections, and details
 - c. Structural sheets:
 - i. General notes
 - ii. Site plan
 - iii. Foundation plans
 - iv. Excavation plan
 - v. Sections
 - d. Electrical sheets:
 - i. Site plan
 - ii. Mechanical bar screen electrical plan
 - iii. Grounding plan
 - iv. Electrical building plans, sections, and details
 - v. One-line diagrams
 - vi. Conduit and wiring plan
 - vii. SCADA/instrumentation layout
3. Specifications shall include City Standard and non-standard technical specifications for materials and installation of the proposed facilities.

B. Deliverables

1. Final design submittal (90%)
 - a. Submit four (4) copies and digital .PDFs to City for review and comment.
 - b. Submittal shall include the following:
 - i. Final design plans (22"x34")
 - ii. Final project manual
 - iii. Opinion of probable construction cost

C. Meetings

1. Attend one (1) meeting with City to present and review the final design (90%) submittal

Task 5 – CONSTRUCTION CONTRACT DOCUMENTS**A. Bidding Construction Contract Documents**

1. Incorporate City comments from final design submittal and prepare construction contract documents, bid plans, and opinion of probable construction cost.
2. Construction contract documents will consist of the final plans and project manual, both signed and sealed by a licensed professional engineer in the State of Texas and in accordance with comments provided by the City during final design.

B. Deliverables:

1. Construction Contract Documents Submittal
 - a. Submit two (2) copies and electronic (.pdf) documents to the City for bidding.
 - b. Submittal shall include the following:
 - i. Bid drawings
 - ii. Bid project manual
 - iii. Opinion of probable construction cost

Task 6 – BID PHASE SERVICES

A. Bid Phase Services

1. Provide electronic bid documents to the City purchasing department for bidding.
2. Provide the Notice to Bidders to the City for publication. The City will be responsible for publication of the notice. The City will be responsible for distribution of the bidding documents to prospective contractors, suppliers and plan rooms.
3. The following assistance will be provided to the City during the bidding phase:
 - a. Preparation of addenda and delivery to City for distribution to plans holders.
 - b. Responses to questions submitted by plans holders.
 - c. Attend bid opening facilitated by City.
 - d. Preparation of bid tabulation.
 - e. Preparation of recommendation of award letter.
4. Conformance plans and specifications
 - a. Based on potential questions and addenda from the bidding phase, prepare conformance set of plans and specifications to be used during construction.
 - i. Provide up to four (4) sets to City for execution.

Task 7 – CONSTRUCTION PHASE SERVICES

A. Construction Phase Services

1. Prepare for and conduct one (1) public meeting with City staff and Contractor.
2. Pre-Construction Conference
 - a. Prepare for and attend a pre-construction conference prior to commencement of Work at the Site
3. Site Visits
 - a. Hold meetings every month with the contractor on site for up to eighteen (18) meetings. Meetings will also be considered site visits.
 - b. Site Visits are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgement.
 - c. Based on information obtained during site visits, ENGINEER will determine if Contractor's work is generally proceeding in accordance with the Contract Documents, and ENGINEER will keep CITY informed of the general progress of the work.
4. Recommendations with Respect to Defective Work

- a. Provide recommendations to City that Contractor's work be disapproved and rejected while it is in progress if, on the basis of site visit evaluations, ENGINEER believes such work will not produce a completed Project that conforms generally to Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Notwithstanding the foregoing, the City reserves the right to disapprove or reject Contractor's work without a recommendation from the ENGINEER.
5. Clarifications and Interpretations
 - a. Issue necessary clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field orders authorizing variations from the requirements of the Contract Documents will be made by City.
6. Change Orders
 - a. Recommend change orders to City, as appropriate.
 - b. Review and make recommendations related to Change Orders submitted or proposed by the Contractor.
7. Shop Drawings and Samples
 - a. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs. Assumes up to sixty (60) shop drawings.
8. Substitutes and "or-equal"
 - a. Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
 - b. Provide recommendations to City
9. Inspections and Tests
 - a. Review certificates of inspections and tests within ENGINEER's area of responsibility for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER will be entitled to rely on the results of such tests and facts being certified. The scope of services assumes the

pumps and motors will not be factory tested as they are currently in service, or have already been procured by City.

10. Disagreements between City and Contractor

- a. As necessary, ENGINEER will, with reasonable promptness, render initial written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of the Contractor's work. In rendering such decisions, ENGINEER will be fair and not show partiality to City or Contractor and will not be liable in connection with any decision rendered in good faith in such capacity. The initial decision of the ENGINEER shall be required as a condition precedent to mediation or litigation of any claim arising prior to the date final payment is due to the Contractor, unless thirty (30) days have passed after a claim has been referred to the ENGINEER with no decision having been rendered.

11. Final Walkthrough and Punchlist Preparation

- a. Attend final walkthrough with Contractor and City to determine if the completed work of Contractor is generally in accordance with the Contract Documents.
 - i. Limitation of Responsibilities: The ENGINEER will not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual entity performing or furnishing the work. ENGINEER will not have the authority or responsibility to stop the work of any Contractor.
- b. Compile punch list from information gathered during final walkthrough with City and Contractor.

Task 8 – RECORD DRAWINGS

A. Record Drawings

1. Obtain and review comments and field changes on the construction plans from City and Contractor.
2. Prepare record drawings based on comments and field changes. The ENGINEER will not be providing resident engineering services and will not be observing on a full-time basis, and will therefore not seal the record drawings. The record drawings will be provided in the following format:
 - a. PDF electronic copy

Task 9 – PERMITTING SERVICES

ENGINEER will provide permitting services as listed below on an as-needed basis only, and not without prior authorization in writing from the CITY.

A. Pre-Development Conference (PDC)

1. Apply, prepare for, and attend a pre-development conference with Denton Development Services (DS) on behalf of the Water Utility.

B. Zoning Compliance Plan (ZCP) Permitting

1. Prepare and submit a Zoning Compliance plan (if required) in accordance with Denton Development Services Requirements including a project narrative and graphic exhibits. This scope anticipates responding to up to two rounds of comments, and general coordination with DS staff.

C. Civil Engineering Plans Permitting

1. Prepare and submit civil engineering plans submittal in accordance with Denton Development Services Requirements. This scope anticipates responding to up to two rounds of comments, and general coordination with DS staff.

Task 10 – Downstream Assessment (DSA)

ENGINEER will provide downstream assessment services as listed below on an as-needed basis only, and not without prior authorization in writing from the CITY.

A. Data Collection and Analysis

1. Engineer will request effective hydrologic models for Cooper Creek from the City and FEMA if necessary. This task assumes models will be available, digital, and executable. Drainage areas will be subdivided for the subject property using the on-ground survey prepared under a separate task, aerial topography, and record drawings.
2. Hydrologic parameters for existing, proposed, and fully developed conditions will be developed in accordance with City criteria. If proposed condition peak flows exceed pre-development flows, KH will determine conceptual cut to provide compensatory storage to reduce peak flows to pre-development rates.

B. DSA and Floodplain Study

1. Engineer will prepare a downstream assessment and floodplain study to support the proposed site improvements.
2. The study will identify if additional compensatory storage is needed to offset fill, delineate the 100-year existing and fully developed floodplain limits, and establish proposed site elevations.
3. This scope anticipates up to two rounds of comments and revisions, and general coordination with City staff.

Task 11 – Additional Services

ENGINEER will provide additional services on an as-needed basis only, and not without prior authorization in writing from the CITY.

ADDITIONAL SERVICES NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

City and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the City's written request. Any additional amounts paid to ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include, but are not limited to the following:

- Preparation of a conditional letter of map revision (CLOMR) and letter of map revision (LOMR) and associated submittals to the City and FEMA.
- Revisions associated with development services comments beyond those indicated in the Scope of Services.
- Redesign to reflect project scope changes requested by the CITY, required to address changed conditions or change in direction previously approved by the CITY, mandated by changing governmental laws, or necessitated by the CITY's acceptance of substitutions proposed by the contractor.
- Traffic Control Plan Details
- Traffic signal design
- Sidewalk design
- Design of any offsite drainage improvements beyond the improvements identified in the scope
- Preparation for and attendance at public meetings beyond those identified in the scope
- Furnish additional copies of review documents and/or bid documents in excess of the number of the same identified above.
- Services related to disputes over bid protests, bid rejection, and re-bidding of the contract for construction.
- Construction management and resident project representative services.
- Performance of materials or specialty testing services.
- Services necessary due to default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement, and inspection after final completion.
- Services related to Survey Construction Staking.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
- Retaining wall design
- "Value engineering" after bidding
- Multiple bid packages
- Traffic studies or reports
- SWPPP inspections / coordination
- Any services not listed in the Scope of Services

Compensation for Engineering Design Related Services for:

COOPER CREEK LIFT STATION IMPROVEMENTS

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be a total not-to-exceed \$750,000** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

For Tasks 1 – 6 and 8 – 11 the total compensation shall be on a lump sum basis and not to exceed **\$617,400.**

For Task 7 the total compensation shall be on a reimbursable (hourly) basis and not to exceed **\$132,600.**

Progress payments for shall be paid monthly based on the actual work satisfactorily completed per month in each phase, with the following amounts of the total compensation for each phase of the Project:

• Task 1 – Project Management	\$ 27,600
• Task 2 – Preliminary Design	\$130,900
• Task 3 – Survey and Geotech	\$ 36,500
• Task 4 – Final Design	\$230,400
• Task 5 – Construction Contract Documents	\$ 34,900
• Task 6 – Bid Phase Services	\$ 38,200
• Task 7 – Construction Phase Services	\$132,600
• Task 8 – Record Drawings	\$ 7,800
• Task 9 – Permitting Services	\$ 24,100
• Task 10 – Downstream Assessment (DSA)	\$ 30,000
• Task 11 – Additional Services	<u>\$ 57,000</u>
Grand Total	\$ 750,000

ENGINEER will not exceed the total maximum fee shown without authorization from the CITY. Individual task amounts are provided for budgeting purposes only. ENGINEER reserves the right to reallocate amounts among tasks as necessary.

All permitting, application, and similar project fees will be paid directly by the CITY.

Non-Labor Expenses: Non-labor expenses for reimbursable tasks shall be reimbursed as Direct Expenses at invoice or internal office cost. 4.6% will be added to each invoice to cover certain other internal office cost expenses as to these tasks, such as in-house duplicating, local mileage, telephone calls, facsimiles, postage, and word processing.

Direct Expenses (non-labor) for reimbursable tasks include, but are not limited to, mileage, travel and lodging expenses, mail, supplies, printing and reproduction services, other direct expenses associated with delivery of the work; plus applicable sales, use, value added, business transfer, gross receipts, or other similar taxes. Direct reimbursable expenses such as express delivery services, fees, travel, and other direct expenses will be billed at 1.10 times the cost.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

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) and by City of Denton Ethics Code, Ordinance 18-757.

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.

KIMLEY-HORN AND ASSOCIATES, INC.

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

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

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

n/a

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

4 ☒ **I have no Conflict of Interest to disclose.****5** DocuSigned by:

3/2/2023

Signature of vendor doing business with the governmental entity_____
Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: BE41E74472884A23A94BACBB8F0218C1

Status: Sent

Subject: Please DocuSign: City Council Contract 7574-025 Cooper Creek Lift Station Improvements

Source Envelope:

Document Pages: 34

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Crystal Westbrook

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US & Canada)

crystal.westbrook@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

Holder: Crystal Westbrook

Location: DocuSign

2/28/2023 8:42:54 AM

crystal.westbrook@cityofdenton.com

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

Crystal Westbrook

Completed

Sent: 2/28/2023 9:14:18 AM

crystal.westbrook@cityofdenton.com

Viewed: 2/28/2023 9:14:33 AM

Senior Buyer

Signed: 2/28/2023 9:15:53 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 2/28/2023 9:15:58 AM

lori.hewell@cityofdenton.com

Viewed: 2/28/2023 12:17:20 PM

Purchasing Manager

Signed: 2/28/2023 12:18:06 PM

City of Denton

Signature Adoption: Pre-selected Style

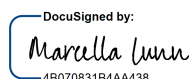
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Using IP Address: 198.49.140.104

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 2/28/2023 12:18:13 PM

marcella.lunn@cityofdenton.com

Viewed: 3/1/2023 3:01:33 PM

Mack Reinwand City Attorney

Signed: 3/1/2023 3:02:59 PM

City of Denton

Signature Adoption: Pre-selected Style

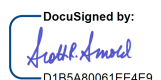
Security Level: Email, Account Authentication
(None)

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Scott Arnold



Sent: 3/1/2023 3:03:05 PM

scott.arnold@kimley-horn.com

Viewed: 3/1/2023 4:04:26 PM

Vice President

Signed: 3/2/2023 1:18:06 PM

Kimley-Horn and Associates, Inc.

Signature Adoption: Uploaded Signature Image


Security Level: Email, Account Authentication
(None)

Using IP Address: 130.41.212.55

Electronic Record and Signature Disclosure:

Accepted: 3/27/2020 10:55:11 AM

ID: a1f38400-e5cc-4b57-8548-4dd7e031355d

Signer Events	Signature	Timestamp
Stephen D. Gay stephen.gay@cityofdenton.com Director, Security Level: Email, Account Authentication (None)	DocuSigned by:  9EBFF5658E56492... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/2/2023 1:18:14 PM Viewed: 3/2/2023 1:19:47 PM Signed: 3/2/2023 1:24:01 PM

Electronic Record and Signature Disclosure:
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ID: 324385c4-de59-412a-afed-57b48c56848a

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

Sent: 3/2/2023 1:24:07 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Hensley
sara.hensley@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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

Electronic Record and Signature Disclosure:
Accepted: 2/27/2023 12:20:02 PM
ID: 7a3d72c7-fbaa-4046-8bf3-2717936b2eb7

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

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

COPIED

Sent: 2/28/2023 9:15:58 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign David Brown david.brown@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 4/10/2019 2:54:36 PM ID: 20238ddf-ccd6-4d52-988f-8c9f3436055e	<div>COPIED</div>	Sent: 3/2/2023 1:24:07 PM Viewed: 3/2/2023 1:34:27 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/28/2023 9:14:18 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none">•Allow per session cookies•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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

Acknowledging your access and consent to receive materials electronically

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

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

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



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB23-059, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with McCourt Equipment, Inc, for screener maintenance and repairs for the Beneficial Reuse Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8116 - awarded to McCourt Equipment, Inc, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$300,000.00).



City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: March 27, 2023

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with McCourt Equipment, Inc, for screener maintenance and repairs for the Beneficial Reuse Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8116 – awarded to McCourt Equipment, Inc, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$300,000.00).

INFORMATION/BACKGROUND

The main function of the Beneficial Reuse Department is to divert all brush from the landfill as well as biosolids from the Water Reclamation Plant. These waste products are combined to produce the compost product known as Dyno Dirt. Dyno Dirt can be used by the City of Denton's citizens to enhance their yards, flower gardens, and amend soils while also diverting waste products that would take up much-needed landfill space. There is also an established customer base that relies on this product to support their businesses.

The proposed contract with McCourt Equipment, Inc. will be for the maintenance and repair of the screeners critical to the department's operation. The equipment removes larger material from the compost to produce a uniform Dyno Dirt product and is the only mechanism available to screen the compost and prepare it for sale.

When equipment repairs are delayed, it has an adverse effect on the ability to supply products to the customer. This could lead to unwanted problems such as compost fires, customer complaints, and a backlog of production that leaves the department short on inventory. Without the screener, compost production and sales would quickly come to a halt.

Section 252.022 of the Local Government Code provides that procurement of sole source commodities and services are exempt from competitive bidding, if over \$50,000, shall be awarded by the governing body.

Project Description	Estimated 5-Year Expenditure
Estimated Repairs & Parts Year 1	\$ 40,000
Estimated Repairs & Parts Year 2	\$ 50,000

Estimated Repairs & Parts Year 3	\$ 50,000
Estimated Repairs & Parts Year 4	\$ 60,000
Estimated Repairs & Parts Year 5	\$ 70,000
Contingency for additional costs	\$ 30,000
Total	\$300,000

RECOMMENDATION

Award with a contract to McCourt Equipment, Inc, for screener maintenance and repairs for the Beneficial Reuse Department, in a one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$300,000.

PRINCIPAL PLACE OF BUSINESS

McCourt Equipment, Inc
Lagrange, TX

ESTIMATED SCHEDULE OF PROJECT

This is an initial one (1) year contract with options to extend the contract for four (4) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

These products and services will be funded through the using department's budget on an as-needed basis. The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Dustin Rolfe, 940-349-8438.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH MCCOURT EQUIPMENT, INC, FOR SCREENER MAINTENANCE AND REPAIRS FOR THE BENEFICIAL REUSE DEPARTMENT, WHICH IS THE SOLE PROVIDER OF THIS SERVICE, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING, AND IF OVER \$50,000, SHALL BE AWARDED BY THE GOVERNING BODY; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8116 – AWARDED TO MCCOURT EQUIPMENT, INC, FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$300,000.00).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the “File” listed hereon, and on file in the office of the Purchasing Agent, and the license terms attached are hereby approved:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8116	McCourt Equipment, Inc	\$300,000.00

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library

that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids.

SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager, or their designee, is hereby authorized to execute the contract relating to the items specified in Section 1, attached hereto, and the expenditure of funds pursuant to said contract is hereby authorized.

SECTION 5. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____


PASSED AND APPROVED this the _____ day of _____, 2023.

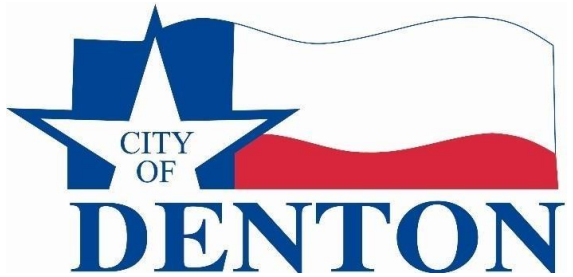
GERARD HUDSPETH, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o,
ou=City of Denton,
email=marcella.lunn@cityof
denton.com, c=US
Date: 2023.03.10 10:44:17
-06'00'



Docusign City Council Transmittal Coversheet

FILE	8116
File Name	Screeener
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND MCCOURT EQUIPMENT, INC
(CONTRACT 8116)**

THIS CONTRACT is made and entered into this date _____, by and between McCourt Equipment, INC a Texas Corporation, whose address is 5141 HWY 71 West La Grange, TX 78945 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

Contractor shall provide products and/or services in accordance with the City's document File- 8116 Screener Repair, 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) City of Denton's File 8116 (**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) Contractor's Proposal (**Exhibit "F"**);
- (f) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "G"**);

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."

Prohibition on Contracts with Companies Boycotting Israel

Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains

Contract # 8116

written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

CONTRACTOR

DocuSigned by:
BY: 
AUTHORIZED SIGNATURE

Printed Name: Eamon McCourt

Title: Vice President

979-242-5298
PHONE NUMBER

smerritt@mccourtequipment.com

EMAIL ADDRESS

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY:

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
BY: Marcella Luna
4B070831B4AA438...

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

DocuSigned by:
Christine Taylor
Christine Taylor
PRINTED NAME

Assistant City Manager

TITLE

City Manager's Office
DEPARTMENT

Exhibit A

Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed \$300,000. Pricing shall be per Exhibit E attached.

2. Contract Terms

The contract term will be one (1) year, with the option for four (4) additional one (1) year renewals effective from date of award or notice to proceed as determined by the City of Denton Purchasing Department. 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.

3. 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. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The supplier 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. Respondent must also provide supporting documentation as justification for the request. 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 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 noting the solicitation number.

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

4. Performance Liquidated Damages

The Contractor shall incur contractual payment losses, as initiated by the City for performance that falls short of specified performance standards as outlined below:

- Delivery beyond contracted lead times
- Performance below contracted levels (services only)

The Contractor shall be assessed a one (1%) percent fee each month when any one of the performance standards outlined above are not met in full. The Contractor shall be assessed a two (2%) percent profit fee each month when any two (2) or more performance standards outlined above are not met in full. At the end of each month, the City will review the monthly reports and determine the percentage of penalty to be assessed to the Contractor's monthly profit margin.

Exhibit C

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.

Contract # 8116

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.

Contract # 8116

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:

Contract # 8116

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

Contract # 8116

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

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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

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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 Contract # 8116

notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

30. **DELAYS:**

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

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

31. **INDEMNITY:**

A. Definitions:

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

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR

THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

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

A. General Requirements:

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:
City of Denton
Materials Management Department
901B Texas Street
Denton, Texas 76209
- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

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

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

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

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

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

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

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

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

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

35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as

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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 Contract # 8116

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 as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). 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.

The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

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)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veterans Day
Thanksgiving
Friday After Thanksgiving
Christmas Eve (observed)
Christmas 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.

Contract # 8116

55. EQUAL OPPORTUNITY

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

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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

Contract # 8116

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 Contract # 8116

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 INSURANCE REQUIREMENTS AND WORKERS' COMPENSATION REQUIREMENTS

Upon contract execution, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.

Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
 - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.
 - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
 - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

[X] A. General Liability Insurance:

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

[X] Automobile Liability Insurance:

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than **\$500,000** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- any auto, or
- all owned hired and non-owned autos.

[X] Workers' Compensation Insurance

Contractor shall purchase and maintain Workers' Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$100,000 for each accident, \$100,000 per each employee, and a \$500,000 policy limit for occupational disease. The City need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against the City, its officials, agents, employees and volunteers for any work performed for the City by the Named Insured. For building or construction projects, the Contractor shall comply with the provisions of Attachment 1 in accordance with §406.096 of the Texas Labor Code and rule 28TAC 110.110 of the Texas Workers' Compensation Commission (TWCC).

[] Owner's and Contractor's Protective Liability Insurance

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Contractor's Protective Liability insurance policy naming the City as insured for property damage and bodily injury which may arise in the prosecution of the work or Contractor's operations under this contract. Coverage shall be on an "occurrence" basis and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least **\$500,000.00** combined bodily injury and property damage per occurrence with a **\$1,000,000.00** aggregate.

[] Fire Damage Legal Liability Insurance

Coverage is required if Broad form General Liability is not provided or is unavailable to the contractor or if a contractor leases or rents a portion of a City building. Limits of not less than _____ each occurrence are required.

[] Professional Liability Insurance

Professional liability insurance with limits not less than **\$1,000,000.00** per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.

[] **Builders' Risk Insurance**

Builders' Risk Insurance, on an All-Risk form for 100% of the completed value shall be provided. Such policy shall include as "Named Insured" the City of Denton and all subcontractors as their interests may appear.

[] **Environmental Liability Insurance**

Environmental liability insurance for \$1,000,000 to cover all hazards contemplated by this contract.

[] **Riggers Insurance**

The Contractor shall provide coverage for Rigger's Liability. Said coverage may be provided by a Rigger's Liability endorsement on the existing CGL coverage; through and Installation Floater covering rigging contractors; or through ISO form IH 00 91 12 11, Rigger's Liability Coverage form. Said coverage shall mirror the limits provided by the CGL coverage

[] **Commercial Crime**

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than \$_____ each occurrence are required.

[] **Additional Insurance**

Other insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the "Specific Conditions" of the contract specifications.

ATTACHMENT 1**[] Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities****A. Definitions:**

Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any overage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - 1. a certificate of coverage, prior to that person beginning work on the

project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. obtain from each other person with whom it contracts, and provide to the contractor:
 - a. a certificate of coverage, prior to the other person beginning work on the project; and

- b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- 7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

Exhibit E Contractors Proposal

8116- Screener Repair
McCourt Equipment, Inc

Description	UOM	Unit
Labor	Per Hour	\$129
Trip Charge	Round Trip	\$450
Parts	5% discount from list price	

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) and by City of Denton Ethics Code, Ordinance 18-757.

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.

McCourt Equipment, Inc

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

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

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

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

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

☐

Yes

☒

No

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

☐

Yes

☒

No

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

☐


Yes

☒

No

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

4 ☒ I have no Conflict of Interest to disclose.

5 DocuSigned by:

7C52F31048A545F
Signature of vendor doing business with the governmental entity

3/6/2023

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

- (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
- (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: DD1CD2FD12CC4A9F9814B557BB99939D

Status: Sent

Subject: Please DocuSign: City Council Contract 8116 Screener Repair

Source Envelope:

Document Pages: 35

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Gabby Leeper

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US & Canada)

Gabby.Leeper@cityofdenton.com

IP Address: 198.49.140.104

Record Tracking

Status: Original

Holder: Gabby Leeper

Location: DocuSign

2/23/2023 2:05:39 PM

Gabby.Leeper@cityofdenton.com

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

Gabby Leeper

Completed

Sent: 2/23/2023 2:11:15 PM

gabby.leeper@cityofdenton.com

Viewed: 2/23/2023 2:11:50 PM

Buyer

Signed: 2/23/2023 2:13:45 PM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 2/23/2023 2:13:50 PM

lori.hewell@cityofdenton.com

Viewed: 2/23/2023 4:16:13 PM

Purchasing Manager

Signed: 2/23/2023 4:17:06 PM

City of Denton

Signature Adoption: Pre-selected Style

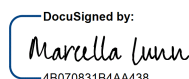
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(None)

Using IP Address: 198.49.140.104

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 2/23/2023 4:17:11 PM

marcella.lunn@cityofdenton.com

Viewed: 2/24/2023 11:41:01 AM

Mack Reinwand City Attorney

Signed: 2/24/2023 11:42:54 AM

City of Denton

Signature Adoption: Pre-selected Style

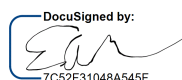
Security Level: Email, Account Authentication
(None)

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Eamon McCourt



Sent: 2/24/2023 11:43:00 AM

smerritt@mccourtequipment.com

Resent: 3/3/2023 8:23:25 AM

Security Level: Email, Account Authentication
(None)

Resent: 3/6/2023 9:51:04 AM

Viewed: 3/6/2023 3:39:07 PM

Signed: 3/6/2023 3:59:08 PM

Signature Adoption: Drawn on Device


Using IP Address: 107.77.218.190


Signed using mobile

Electronic Record and Signature Disclosure:

Accepted: 2/24/2023 12:45:20 PM

ID: aaff2c49-148b-4e79-865e-4ae166e21cda

Signer Events	Signature	Timestamp
<p>Christine Taylor</p> <p>Christine.Taylor@cityofdenton.com</p> <p>Assistant City Manager</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by:</p>  <p>2B3E02ECE3184D8...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 47.186.192.201</p> <p>Signed using mobile</p>	<p>Sent: 3/6/2023 3:59:11 PM</p> <p>Viewed: 3/7/2023 6:59:38 AM</p> <p>Signed: 3/7/2023 7:00:17 AM</p>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		<p>Sent: 3/7/2023 7:00:20 AM</p>
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		
<p>Rosa Rios</p> <p>rosa.rios@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 2/27/2023 12:20:02 PM ID: 7a3d72c7-fbaa-4046-8bf3-2717936b2eb7</p>		
<p>Gabby Leeper</p> <p>gabby.leeper@cityofdenton.com</p> <p>Buyer</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>		<p>Sent: 2/23/2023 2:13:50 PM</p>

Carbon Copy Events	Status	Timestamp
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 3/7/2023 7:00:20 AM Viewed: 3/7/2023 8:40:52 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Dustin Rolfe dustin.rolfe@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Accepted: 3/2/2023 8:09:13 AM ID: f38dc439-ad25-425e-b911-1fe5fa1e442e		
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Notary Events	Signature	Timestamp
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Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none">•Allow per session cookies•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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

Acknowledging your access and consent to receive materials electronically

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

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

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



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB23-061, **Version:** 1

AGENDA CAPTION

Consider approval of the March 13, 2023 minutes.

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
March 13, 2023

After determining that a quorum was present of the Public Utilities Board of the City of Denton, convened in a Regular Meeting on Monday, March 13, 2023, at 9:15 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Barbara Russell, Larry Beck, Lee Riback and Thomas Plock

Also present: General Manager Antonio Puente and Deputy City Attorney Amanda Brown

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

There were no public comments.

2. CONSENT AGENDA

The Consent Agenda consisted of Items 2 A-E.

Board Member Taylor moved to recommend adoption of agenda items 2 C-E. Motion seconded by Board Member Russell; motion carried.

YES (7): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Barbara Russell, Larry Beck, Lee Riback and Thomas Plock

NO (0):

A. PUB23-052 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Black & Veatch Corporation, for Advanced Metering Infrastructure Deployment Program Management - Proof of Concept for the Water Metering Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-023 - Professional Services Agreement for planning services awarded to Black & Veatch Corporation, in the not-to-exceed amount of \$185,687.00).

Board Member Beck pulled this item for questions, other Board Members asked questions that Stephen Gay answered.

Board Member Russell moved to recommend adoption of agenda item 2A. Motion seconded by Board Member Beck; motion carried.

YES (7): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Barbara Russell, Larry Beck, Lee Riback and Thomas Plock

NO (0):

B. PUB23-053 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Our Daily Bread, Inc., for the provision and supervision of temporary labor for the Solid Waste and Recycling Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7988 -awarded to Our Daily Bread, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,040,803.00).

Board Member Riback pulled this item for questions, other Board Members asked questions that Brian Boerner answered.

Board Member Riback moved to recommend adoption of agenda item 2B. Motion seconded by Board Member Beck; motion carried.

YES (7): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Barbara Russell, Larry Beck and Thomas Plock

NO (0):

C. PUB23-054 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive statements of qualifications under RFQ 8061 for the Asset Management Vision for the Water Utilities Department; and providing an effective date (RFQ 8061).

D. PUB23-055 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Andritz Separation Inc., for the purchase of one (1) refurbished belt press as a replacement at the Pecan Creek Water Reclamation Plant for the Water Reclamation Department, which is the sole provider of this commodity, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8180 - awarded to Andritz Separation Inc., in the not-to-exceed amount of \$278,500.00).

E. PUB23-057 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Anixter Inc., for concrete street lights and concrete aggregate poles for the Denton Municipal Electric Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 8191 - awarded to Anixter Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) years not-to-exceed amount of \$1,125,000.00).

3. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB23-040 Consider approval of the February 27, 2023, minutes.

Board Member Cheek moved to recommend approval of agenda item 3A. Motion seconded by Board Member Russell; motion carried.

YES (7): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Barbara Russell, Larry Beck and Thomas Plock

NO (0):

B. PUB23-051 Consider recommending adoption of an ordinance of the City of Denton, Texas, amending the fiscal year 2022-2023 budget and Annual Program of Services of the City of Denton to allow for adjustments to the Capital Improvement Program of \$29,223,360 for expenses related to transformers, LED conversion, Hickory GIS, and TxDOT relocations; declaring a public purpose; providing a severability clause, an open meetings clause and an effective date.

Danielle Stanford gave the presentation. There were questions that staff answered.

Board Member Russell moved to recommend adoption of agenda items 2B. Motion seconded by Board Member Riback; motion carried.

YES (7): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Barbara Russell, Larry Beck and Thomas Plock

NO (0):

C. PUB23-056 - Management Reports

1. City of Denton Code of Ordinances Chapter 24 Rewrite and Comprehensive Diversion Ordinance
2. Future Agenda Items
3. New Business Action Items

4. CONCLUDING ITEMS

There were no concluding items.

With no further business, the meeting was adjourned at 9:36 AM.

SUSAN PARKER
CHAIR
CITY OF DENTON, TEXAS

KIM MANKIN
UTILITIES ADMIN MANAGER
CITY OF DENTON, TEXAS

Minutes approved on: March 27, 2023.



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB23-012, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$52,000,000 in principal amount of Certificates of Obligation of the City of Denton for General Government and Solid Waste projects; and providing an effective date.



City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Cassey Ogden

DATE: March 27, 2023

SUBJECT

Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$52,000,000 in principal amount of Certificates of Obligation of the City of Denton for General Government and Solid Waste projects; and providing an effective date.

BACKGROUND

This ordinance provides the Notice of Intention to issue \$52,000,000 of Certificates of Obligation (CO) of the City of Denton for General Government and Solid Waste projects, as required by state law. The notice will be published once a week for two consecutive weeks in the Denton Record Chronicle, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the ordinance authorizing the issuance of the bonds. The notice will also be posted on the City's website. The additional \$392,000 is for issuance costs and to allow flexibility in marketing and pricing the bond sale.

Staff recommends the sale of \$52,000,000 in COs for General Government and Solid Waste. Below is a listing of recommended General Government and Solid Waste CO funded projects for FY 2022-23 CIP.

General Government Projects:

Internal Service/ Enterprise:	<u>Budget</u>	<u>NOI</u>
Pavement Reconstruction (Airport)	\$ 1,800,000	\$ 1,800,000
Vehicle Replacement (Airport)	\$ 420,000	\$ 420,000
End User Computing (Technology Services)	\$ 153,000	\$ 153,000
Fleet Management Software (Int. Svc - Fleet)	\$ 1,000,000	\$ 1,000,000
Fleet Fuel Infrastructure (Int. Svc. - Fleet)	\$ 300,000	\$ 300,000
General Government:		
Finance ERP (Finance)	\$ 2,000,000	\$ 2,000,000
Facilities Maintenance Program (Facilities)	\$ 4,000,000	\$ 4,000,000
Security System Upgrades (Facilities)	\$ 680,000	\$ 680,000
Fire Station # 9: Airport (Facilities)	\$ 13,100,000	\$ 13,100,000
Police Headquarters Renovation (Facilities)	\$ 4,220,000	\$ 4,220,000
ADA Accessibility Upgrades (Facilities)	\$ 722,000	\$ -
ADA Accessibility Upgrades & Park Improvements (Parks)	\$ 770,000	\$ 770,000
Inclusive Playground (Parks)	\$ 200,000	\$ 200,000

Parkside Playground (Parks)	\$ 280,000	\$ 280,000
Signal Cabinets (Traffic)	\$ 208,000	\$ 208,000
Emergency Vehicle Signal Preemption (Traffic)	\$ 720,000	\$ 720,000
Gridsmart Vehicle Detection (Traffic)	\$ 240,000	\$ 240,000
Drainage Improvements (Drainage)	\$ 1,500,000	\$ -
Infrastructure Equipment (Technology Services)	\$ 120,000	\$ -
Public Safety Radios & Modems (Technology Services)	\$ 972,000	\$ 972,000
Vehicle Replacements (Motorpool)	\$ 3,802,000	\$ 3,802,000
Vehicle Additions (Motorpool)	\$ 743,000	\$ 743,000
Total General Government	\$ 37,950,000	\$ 35,608,000

Solid Waste Projects:

Scalehouse Update & Scale Replacement	\$ 1,300,000	\$ 1,300,000
Home Chemical Collection Storage Capacity	\$ 1,000,000	\$ 1,000,000
Landfill Roads & Infrastructure	\$ 2,000,000	\$ 2,000,000
Fleet Shop at Solid Waste	\$ 10,500,000	\$ 10,500,000
Case/Steiger Scraper	\$ 1,200,000	\$ 1,200,000
Total Solid Waste	\$ 16,000,000	\$ 16,000,000

Subtotal **\$ 51,608,000**

Issuance Costs and Pricing Flexibility \$ 392,000

Total General Government & Solid Waste Notice of Intention **\$ 52,000,000**

The City sells bonds in accordance with the useful life of the asset that is being acquired. For example, vehicles are typically sold with bonds that will be paid within five years. For the FY 2022-23 proposed debt issuance for General Government and Solid Waste COs: \$7,290,000 will be 5-year debt, \$6,450,000 will be 10-year debt, and \$37,868,000 will be 20-year debt.

Concurrently with the sale of the COs for General Government and Solid Waste, the City anticipates the sale of approximately \$34,355,000 in General Obligation Bonds to fund the fourth year of projects approved by voters in November 2019, and approximately \$167,000,000 in COs for Water, Wastewater and Electric.

If approved by the City Council, staff will proceed with the publication of the Notice of Intention and will schedule the Bond Ordinance consideration and adoption for June 6, 2023. The bond ordinance will dictate the parameters of the bond sale. Under such an arrangement, staff will be permitted to execute the bond sale within six (6) months of June 6, 2023, provided certain interest rate parameters are met.

RECOMMENDATION

Staff recommends adoption of the ordinance.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On October 18, 2022, the City Council adopted a reimbursement ordinance (Ord. No. 22-1924) authorizing the reimbursement of capital program expenditures of \$34,355,000 in GO and \$204,297,641 in CO funded projects for General Government, Solid Waste, Electric, Water and Wastewater.

FISCAL INFORMATION

The ordinance is for the authorization to publish the Notice of Intention to sell \$52,000,000 of Certificates of Obligation for General Government and Solid Waste projects. A notice is only required for Certificates of Obligation.

EXHIBITS

1. Agenda Information Sheet
2. Ordinance
3. Presentation

Respectfully submitted:
Nick Vincent
Interim Director of Finance

Prepared by:
Randee Klingele
Treasury Manager

ORDINANCE NO. 23-

AN ORDINANCE DIRECTING THE PUBLICATION OF NOTICE OF INTENTION TO ISSUE \$52,000,000 IN PRINCIPAL AMOUNT OF CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON FOR GENERAL GOVERNMENT AND SOLID WASTE PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is deemed necessary and advisable that the Notice of Intention to Issue Certificates of Obligation be given as hereinafter provided; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That attached hereto is a form of "NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON", the form and substance of which are hereby adopted and approved, and made a part of this Ordinance for all purposes.

SECTION 2. That the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be published once a week for two consecutive weeks in a newspaper of general circulation in the City, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the Ordinance authorizing the issuance of such Certificates of Obligation. And further that the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be posted continuously on the City's Internet website for at least 45 days before the date tentatively set for the passage of the Ordinance authorizing the issuance of the Certificates of Obligation.

SECTION 3. That for purposes of Texas Local Government Code, Subchapter C of Chapter 271, as amended, the City has currently designated \$576,865,286 in principal amount of the following \$901,615,000 of outstanding debt obligations as self-supporting debt, provided that such designated amount may be changed from time to time:

- Certificates of Obligation, Series 2012
- General Obligation Refunding and Improvement Bonds, Series 2012
- Certificates of Obligation, Series 2013
- General Obligation Refunding and Improvement Bonds, Series 2013
- Certificates of Obligation, Series 2014
- General Obligation Refunding and Improvement Bonds, Series 2014
- General Obligation Refunding Bonds, Series 2014
- Certificates of Obligation, Series 2015
- General Obligation Refunding and Improvement Bonds, Series 2015
- General Obligation Refunding Bonds, Series 2015
- Certificates of Obligation, Series 2016
- General Obligation Refunding and Improvement Bonds, Series 2016

- General Obligation Refunding Bonds, Series 2016
- Certificates of Obligation, Series 2017
- General Obligation Refunding and Improvement Bonds, Series 2017
- Certificates of Obligation, Series 2018
- General Obligation Bonds, Series 2018
- Certificates of Obligation, Series 2018A
- Certificates of Obligation, Series 2019
- General Obligation Refunding and Improvement Bonds, Series 2019
- Certificates of Obligation, Series 2020
- General Obligation Refunding and Improvement Bonds, Series 2020
- General Obligation Refunding Bonds, Series 2020A
- Certificates of Obligation, Series 2021
- General Obligation Bonds, Series 2021
- Certificates of Obligation, Series 2022
- General Obligation Refunding and Improvement Bonds, Series 2022
- Extendable Commercial Paper Notes, Series A

SECTION 4. That this Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the rules and regulations of the United States Department of the Treasury.

SECTION 5. That this Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. The ordinance was passed and approved by the following vote [__ – __]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
[VACANT], District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the 4th day of April, 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

THE STATE OF TEXAS :

COUNTY OF DENTON :

CITY OF DENTON :

NOTICE OF INTENTION
TO ISSUE CERTIFICATES OF OBLIGATION
OF THE CITY OF DENTON
(GENERAL GOVERNMENT AND SOLID WASTE PROJECTS)

THE CITY OF DENTON, in Denton County, Texas, hereby gives notice of its intention to issue CITY OF DENTON CERTIFICATES OF OBLIGATION, in accordance with the Certificate of Obligation Act of 1971, as amended and codified, and other applicable laws, in the maximum principal amount of \$52,000,000 for the purpose of paying all or a portion of the City's contractual obligations incurred pursuant to contracts for the purchase, construction and acquisition of certain real and personal property, to wit: (a) acquiring, constructing, installing and equipping fire stations; (b) acquisition of vehicles and equipment for the fire, police, building inspections, community improvement services, animal services, streets and traffic control, facilities management, airport, technology services, fleet management, warehouse management, and parks and recreation departments; (c) renovations to, and equipping of, existing municipal buildings, including the acquisition and installation of replacement heating, venting and air conditioning equipment, roofing and flooring; (d) acquiring, constructing, installing and equipping police stations; (e) acquiring, constructing and installing building security systems, including security system technology equipment and software, for municipal buildings; (f) constructing, reconstructing, renovating, installing and equipping municipal parks; (g) renovations to, expansion of, and equipping existing municipal vehicle maintenance facility; (h) acquisition and installation of technology equipment, including radio equipment, computer equipment and software, for various municipal departments; (i) constructing and improving streets, including traffic signalization, landscaping, drainage, utility line relocations and the acquisition of land and rights-of-way therefor; (j) constructing, reconstructing and renovating runways and taxiways at the municipal airport; and (k) acquisition of vehicles and equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's solid waste disposal system; and also for the purpose of paying all or a portion of the City's contractual obligations for professional services, including engineers, architects, attorneys, map makers, auditors, and financial advisors, in connection with said projects and said Certificates of Obligation. The City proposes to provide for the payment of such Certificates of Obligation from the levy and collection of ad valorem taxes in the City as provided by law, and from certain surplus revenues (not to exceed \$1,000 in aggregate amount) derived by the City from the ownership and operation of the City's Utility System (consisting of the City's combined waterworks system, wastewater system and electric light and power system). The City Council of the City tentatively proposes to authorize the issuance of such Certificates of Obligation, in one or more series, at a meeting commencing at 6:30 p.m. on June 6, 2023, in the City Council room at the Municipal Building (City Hall), 215 E. McKinney, Denton, Texas. In the event the City Council will be unable to meet at the Municipal Building (City Hall) on June 6, 2023, the City will post on its website, **www.cityofdenton.com**, information for persons to attend the meeting by telephone, teleconference or other electronic means.

The maximum interest rate for such Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for such Certificates of Obligation is February 15, 2053, and the

estimated combined principal and interest required to pay such Certificates of Obligation to be authorized on time and in full is \$70,825,376.

The City has separately provided notice of its intention to also issue additional Certificates of Obligation in the maximum principal amount of \$167,000,000 for water system, wastewater system and electric system projects (the “Utility System Certificates of Obligation”). The maximum interest rate for the Utility System Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for the Utility System Certificates of Obligation is February 15, 2053, and the estimated combined principal and interest required to pay the Utility System Certificates of Obligation to be authorized on time and in full is \$276,596,233.

The City currently has outstanding debt obligations secured by and payable from ad valorem taxes (not including \$576,865,286 principal amount of outstanding debt obligations the City has designated as self-supporting debt) equal to \$324,749,714 in principal amount and \$424,962,796 in combined principal and interest required to pay such outstanding debt obligations on time and in full. The City reasonably expects to pay self-supporting debt obligations from revenue sources other than ad valorem taxes, provided, however, that in the event such self-supporting revenue sources are insufficient to pay debt service, the City is obligated to levy ad valorem taxes to pay such debt obligations. Ordinance No. 23-___ designating certain outstanding debt obligations of the City as self-supporting for purposes of Texas Local Government Code, Subchapter C of Chapter 271 (“Chapter 271”) is available upon request to the City at the address noted above.

CITY OF DENTON, TEXAS

By: Rosa Rios, City Secretary



Public Utilities Board Notice of Intentions



Purpose of Notice of Intention

- State Law (Texas Local Government Code, Chapter 271, Subchapter C – Certificate of Obligation Act) requires the publication of a Notice of Intent to issue Certificates of Obligation (COs).
- The notice must be published in a newspaper of general circulation in the City (Denton Record Chronicle) and on the City's website.
- Publication must be once a week for two consecutive weeks.
- Passage of Bond Ordinance authorizing the sale of COs must be at least 46 days after the date of the first publication.

Solid Waste Projects

	Budget	NOI
Scalehouse Update & Scale Replacement	\$ 1,300,000	\$ 1,300,000
Home Chemical Collection Storage Capacity	\$ 1,000,000	\$ 1,000,000
Landfill Roads & Infrastructure	\$ 2,000,000	\$ 2,000,000
Fleet Shop at Solid Waste	\$ 10,500,000	\$ 10,500,000
Case/Steiger Scraper	\$ 1,200,000	\$ 1,200,000
Solid Waste Total	\$16,000,000	\$16,000,000

Utility Projects - Water

	Budget	NOI
Supplement to Bond Election 2019 Projects	\$11,000,000	\$11,000,000
Westgate Road and Drainage	\$ 208,000	\$ 208,000
Morse Street Reconstruction	\$ 480,000	\$ 480,000
Transmission Line Condition Repairs	\$ 1,000,000	\$ 1,000,000
Northwest Transmission Lines & BPS	\$ 7,000,000	\$ 7,000,000
RRWTP Disinfection Conversion and Chemical Improvements	\$ 2,500,000	\$ 2,500,000
LLWTP Raw Water Transmission Line	\$ 3,500,000	\$ 500,000
LLWTP Clarifiers Rehab (Sludge Rake Coating)	\$ 1,000,000	\$ 1,000,000
Capacity Rerate and Performance Upgrades	\$ 8,000,000	\$ 8,000,000
SCADA Platform Development	\$ 1,500,000	\$ 1,500,000
Water Total	\$36,188,000	\$33,188,000

Utility Projects - Wastewater

	Budget	NOI
Supplement to Bond Election 2019 Projects	\$ 8,000,000	\$ 8,000,000
Annual Field Service Replacements	\$ 1,400,000	\$ 1,400,000
Hickory Creek Interceptor IV	\$ 1,000,000	\$ 1,000,000
Dry Fork Sanitary Sewer	\$ 1,246,000	\$ 1,246,000
Milam Creek Basin Wastewater Line and Lift Station	\$ 6,752,000	\$ 6,752,000
Replace Hobson Force Main	\$ 150,000	\$ -
Solids Handling Improvements	\$12,150,000	\$ 2,000,000
Cooper Creek Bar Screen	\$ 50,000	\$ 50,000
PCWRP Headworks Reconfiguration	\$ 3,900,000	\$ 3,900,000
Hickory Creek Forcemain Replacement	\$ 2,400,000	\$ 2,400,000
Grenada Lift Station Replacement	\$ 1,600,000	\$ 1,600,000
Robson Ranch Decommissioning Project	\$ 550,000	\$ 550,000
SCADA Platform Development	\$ 1,500,000	\$ 1,500,000
Hickory Creek Interceptor III	\$ 500,000	\$ -
Wastewater Total	\$41,198,000	\$30,398,000

Utility Projects - Electric

	Budget*	NOI
Automated Meter Reading	\$ 1,101,641	\$ 1,102,000
Distribution Substations	\$ 10,530,000	\$ 7,745,000
Distribution Transformers	\$ 2,400,000	\$ 21,800,000
Feeder Extensions & Improvements	\$ 12,640,000	\$ 12,613,000
New Residential & Commercial	\$ 5,000,000	\$ 4,955,000
Over to Under Conversions	\$ 500,000	\$ 45,000
Power Factor Improvements	\$ 500,000	\$ 500,000
Street Lighting	\$ 2,500,000	\$ 4,000,000
Transmission Lines	\$ 8,200,000	\$ 12,541,000
Transmission Substations	\$ 15,615,000	\$ 21,248,000
Production Plant Improvements	\$ 2,200,000	\$ 2,200,000
Technology - Software/Hardware	\$ 5,275,000	\$ 3,488,000
Electric Relocations	\$ 6,500,000	\$ 9,948,000
Electric Total	\$ 72,961,641	\$ 102,185,000

*3/13/2023 PUB approved CIP budget amendment for expenses related to transformers, LED conversions, Hickory GIS and TxDOT relocations.

Total CO Notice of Intentions

Solid Waste	\$	16,000,000
Water	\$	33,188,000
Wastewater	\$	30,398,000
Electric	\$	102,185,000
<hr/>		
Total CO NOIs	\$	181,771,000

Next Steps

- **April 4, 2023**
 - Council considers approval of NOI ordinances.
- **May 22, 2023**
 - PUB considers approval of bond ordinance authorizing the sale of Certificates of Obligation.
- **June 6, 2023**
 - Council considers approval of bond ordinances authorizing the sale of both General Obligation bonds and Certificates of Obligation.
- **June 21, 2022**
 - Preliminary date of sale if market conditions are favorable.
- **July 26, 2022**
 - Preliminary date of close and delivery of funds.

Questions





City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB23-013, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$167,000,000 in principal amount of Certificates of Obligation of the City of Denton for Waterworks and Wastewater System and Electric System projects; and providing an effective date.



City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Cassey Ogden

DATE: March 27, 2023

SUBJECT

Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$167,000,000 in principal amount of Certificates of Obligation of the City of Denton for Waterworks and Wastewater System and Electric System projects; and providing an effective date.

BACKGROUND

This ordinance provides the Notice of Intention (NOI) to issue \$167,000,000 of Certificates of Obligation (CO) of the City of Denton for Water, Wastewater and Electric System projects, as required by state law. The notice will be published once a week for two consecutive weeks in the Denton Record Chronicle, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the ordinance authorizing the issuance of the bonds. The notice will also be posted on the City's website. The additional \$1,229,000 is for issuance costs and to allow flexibility in marketing and pricing the bond sale.

Staff recommends the sale of \$167,000,000 in COs for Water, Wastewater and Electric System. Changes to material pricing and project requirements for large projects were compared to the initial 2022 scopes and pricing in developing the NOI project list. The reduction in Water and Wastewater is associated with the timing of projects and utilization of the City's Commercial Paper Program. The Public Utilities Board (PUB) approved a Capital Improvement budget amendment for the Electric Fund of \$29,223,360 in response to increased costs and analysis of several projects. Increased costs include distribution transformers increasing more than 300% and emergency purchases of transformers have been required to meet inventory minimums and serve new developments. In addition, to increased transformer pricing, Electric's increase reflects previously unavailable material purchases for the Hickory GIS and the LED conversion was expedited to complete the multi-year project in 2023 as well as costs associated with TXDOT's widening of IH35 through Denton.

Below is a listing of recommended Water, Wastewater and Electric System CO funded projects for FY 2022-23.

Water Projects:

	<u>Budget</u>	<u>NOI</u>
Supplement to Bond Election 2019 Projects	\$ 11,000,000	\$ 11,000,000
Westgate Road and Drainage	\$ 208,000	\$ 208,000
Morse Street Reconstruction	\$ 480,000	\$ 480,000
Transmission Line Condition Repairs	\$ 1,000,000	\$ 1,000,000
Northwest Transmission Lines & BPS	\$ 7,000,000	\$ 7,000,000
RRWTP Disinfection Conversion and Chemical Improvements	\$ 2,500,000	\$ 2,500,000
LLWTP Raw Water Transmission Line	\$ 3,500,000	\$ 500,000
LLWTP Clarifiers Rehab (Sludge Rake Coating)	\$ 1,000,000	\$ 1,000,000

Capacity Rerate and Performance Upgrades	\$ 8,000,000	\$ 8,000,000
SCADA Platform Development	\$ 1,500,000	\$ 1,500,000
Water Total	\$ 36,188,000	\$ 33,188,000

Wastewater Projects:	<u>Budget</u>	<u>NOI</u>
Supplement to Bond Election 2019 Projects	\$ 8,000,000	\$ 8,000,000
Annual Field Service Replacements	\$ 1,400,000	\$ 1,400,000
Hickory Creek Interceptor IV	\$ 1,000,000	\$ 1,000,000
Dry Fork Sanitary Sewer	\$ 1,246,000	\$ 1,246,000
Milam Creek Basin Wastewater Line and Lift Station	\$ 6,752,000	\$ 6,752,000
Replace Hobson Force Main	\$ 150,000	\$ -
Solids Handling Improvements	\$ 12,150,000	\$ 2,000,000
Cooper Creek Bar Screen	\$ 50,000	\$ 50,000
PCWRP Headworks Reconfiguration	\$ 3,900,000	\$ 3,900,000
Hickory Creek Forcemain Replacement	\$ 2,400,000	\$ 2,400,000
Grenada Lift Station Replacement	\$ 1,600,000	\$ 1,600,000
Robson Ranch Decommissioning Project	\$ 550,000	\$ 550,000
SCADA Platform Development	\$ 1,500,000	\$ 1,500,000
Hickory Creek Interceptor III	\$ 500,000	\$ -
Wastewater Total	\$ 41,198,000	\$ 30,398,000

Electric Projects:	<u>Budget*</u>	<u>NOI</u>
Automated Meter Reading	\$ 1,101,641	\$ 1,102,000
Distribution Substations	\$ 10,530,000	\$ 7,745,000
Distribution Transformers	\$ 2,400,000	\$ 21,800,000
Feeder Extensions & Improvements	\$ 12,640,000	\$ 12,613,000
New Residential & Commercial	\$ 5,000,000	\$ 4,955,000
Over to Under Conversions	\$ 500,000	\$ 45,000
Power Factor Improvements	\$ 500,000	\$ 500,000
Street Lighting	\$ 2,500,000	\$ 4,000,000
Transmission Lines	\$ 8,200,000	\$ 12,541,000
Transmission Substations	\$ 15,615,000	\$ 21,248,000
Production Plant Improvements	\$ 2,200,000	\$ 2,200,000
Technology - Software/Hardware	\$ 5,275,000	\$ 3,488,000
Electric Relocations	\$ 6,500,000	\$ 9,948,000
Electric Total	\$ 72,961,641	\$ 102,185,000

Subtotal **\$ 165,771,000**

Issuance Cost and Pricing Flexibility \$ 1,229,000

Total Water, Wastewater, and Electric **\$ 167,000,000**

*3/13/2023 PUB approved CIP budget amendment for expenses related to transformers, LED conversions, Hickory GIS and TxDOT relocations.

The City sells bonds in accordance with the useful life of the asset that is being acquired. For example, vehicles are typically sold with bonds that will be paid within five years. For the FY 2022-23 proposed debt issuance for Water, Wastewater and Electric System COs: \$63,586,000 will be 20-year debt, and \$102,185,000 will be 30-year debt.

If approved by the City Council, staff will proceed with the publication of the Notice of Intention and will schedule the Bond Ordinance consideration and adoption for June 6, 2023. The bond ordinance will dictate the parameters of the bond sale. Under such an arrangement, staff will be permitted to execute the bond sale within six (6) months of June 6, 2023, provided certain interest rate parameters are met.

RECOMMENDATION

Staff recommends adoption of the ordinance.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On October 18, 2022, the City Council adopted reimbursement ordinance (Ord. 22-1924) authorizing the reimbursement of capital program expenditures of \$34,355,000 and \$204,297,641 in CO funded projects for General Government, Solid Waste, Electric, Water and Wastewater.

On March 13, 2013, the Public Utilities Board approved a Capital Improvement Program budget amendment of \$29,223,360 for expenses related to transformers, LED conversion, Hickory GIS and TxDOT relocations.

FISCAL INFORMATION

The ordinance is for the authorization to publish the Notice of Intention to sell \$167,000,000 of Certificates of Obligation for Water, Wastewater and Electric System projects. A notice is only required for Certificates of Obligation.

EXHIBITS

1. Agenda Information Sheet
2. Ordinance
3. Presentation

Respectfully submitted:
Nick Vincent
Interim Director of Finance

Prepared by:
Randee Klingele
Treasury Manager

ORDINANCE NO. 23-____

AN ORDINANCE DIRECTING THE PUBLICATION OF NOTICE OF INTENTION TO ISSUE \$167,000,000 IN PRINCIPAL AMOUNT OF CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON FOR WATERWORKS AND WASTEWATER SYSTEM AND ELECTRIC SYSTEM PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is deemed necessary and advisable that the Notice of Intention to Issue Certificates of Obligation be given as hereinafter provided; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That attached hereto is a form of "NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON", the form and substance of which are hereby adopted and approved, and made a part of this Ordinance for all purposes.

SECTION 2. That the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be published once a week for two consecutive weeks in a newspaper of general circulation in the City, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the Ordinance authorizing the issuance of such Certificates of Obligation. And further that the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be posted continuously on the City's Internet website for at least 45 days before the date tentatively set for the passage of the Ordinance authorizing the issuance of the Certificates of Obligation.

SECTION 3. That this Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the rules and regulations of the United States Department of the Treasury.

SECTION 4. That this Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. The ordinance was passed and approved by the following vote [__ – __]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
[VACANT], District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the 4th day of April, 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

THE STATE OF TEXAS :

COUNTY OF DENTON :

CITY OF DENTON :

NOTICE OF INTENTION
TO ISSUE CERTIFICATES OF OBLIGATION
OF THE CITY OF DENTON
(WATERWORKS AND WASTEWATER SYSTEM AND ELECTRIC SYSTEM PROJECTS)

THE CITY OF DENTON, in Denton County, Texas, hereby gives notice of its intention to issue CITY OF DENTON CERTIFICATES OF OBLIGATION, in accordance with the Certificate of Obligation Act of 1971, as amended and codified, and other applicable laws, in the maximum principal amount of \$167,000,000 for the purpose of paying all or a portion of the City's contractual obligations incurred pursuant to contracts for the purchase, construction and acquisition of certain real and personal property, to wit: (a) acquisition of equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's waterworks and wastewater system; and (b) acquisition of equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's electric light and power system; and also for the purpose of paying all or a portion of the City's contractual obligations for professional services, including engineers, architects, attorneys, map makers, auditors, and financial advisors, in connection with said projects and said Certificates of Obligation. The City proposes to provide for the payment of such Certificates of Obligation from the levy and collection of ad valorem taxes in the City as provided by law, and from certain surplus revenues (not to exceed \$1,000 in aggregate amount) derived by the City from the ownership and operation of the City's Utility System (consisting of the City's combined waterworks system, wastewater system and electric light and power system). The City Council of the City tentatively proposes to authorize the issuance of such Certificates of Obligation, in one or more series, at a meeting commencing at 6:30 p.m. on June 6, 2023, in the City Council room at the Municipal Building (City Hall), 215 E. McKinney, Denton, Texas. In the event the City Council will be unable to meet at the Municipal Building (City Hall) on June 6, 2023, the City will post on its website, **www.cityofdenton.com**, information for persons to attend the meeting by telephone, teleconference or other electronic means.

The maximum interest rate for such Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for such Certificates of Obligation is February 15, 2053, and the estimated combined principal and interest required to pay such Certificates of Obligation to be authorized on time and in full is \$276,596,233.

The City has separately provided notice of its intention to also issue additional Certificates of Obligation in the maximum principal amount of \$52,000,000 for general government and solid waste disposal system projects (the "General Government & Solid Waste Certificates of Obligation"). The maximum interest rate for the General Government & Solid Waste Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for the General Government & Solid Waste Certificates of Obligation is February 15, 2053, and the estimated combined principal and interest required to pay the General Government & Solid Waste Certificates of Obligation to be authorized on time and in full is \$70,825,376.

The City currently has outstanding debt obligations secured by and payable from ad valorem taxes (not including \$576,865,286 principal amount of outstanding debt obligations the City has designated as self-supporting debt) equal to \$324,749,714 in principal amount and \$424,962,796 in combined principal and interest required to pay such outstanding debt obligations on time and in full. The City reasonably expects to pay self-supporting debt obligations from revenue sources other than ad valorem taxes, provided, however, that in the event such self-supporting revenue sources are insufficient to pay debt service, the City is obligated to levy ad valorem taxes to pay such debt obligations. Ordinance No. 23-___ designating certain outstanding debt obligations of the City as self-supporting for purposes of Texas Local Government Code, Subchapter C of Chapter 271 (“Chapter 271”) is available upon request to the City at the address noted above.

CITY OF DENTON, TEXAS

By: Rosa Rios, City Secretary



Public Utilities Board Notice of Intentions



Purpose of Notice of Intention

- State Law (Texas Local Government Code, Chapter 271, Subchapter C – Certificate of Obligation Act) requires the publication of a Notice of Intent to issue Certificates of Obligation (COs).
- The notice must be published in a newspaper of general circulation in the City (Denton Record Chronicle) and on the City's website.
- Publication must be once a week for two consecutive weeks.
- Passage of Bond Ordinance authorizing the sale of COs must be at least 46 days after the date of the first publication.

Solid Waste Projects

	Budget	NOI
Scalehouse Update & Scale Replacement	\$ 1,300,000	\$ 1,300,000
Home Chemical Collection Storage Capacity	\$ 1,000,000	\$ 1,000,000
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Case/Steiger Scraper	\$ 1,200,000	\$ 1,200,000
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Utility Projects - Water

	Budget	NOI
Supplement to Bond Election 2019 Projects	\$11,000,000	\$11,000,000
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Water Total	\$36,188,000	\$33,188,000

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	Budget	NOI
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Hickory Creek Interceptor III	\$ 500,000	\$ -
Wastewater Total	\$41,198,000	\$30,398,000

Utility Projects - Electric

	Budget*	NOI
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Distribution Substations	\$ 10,530,000	\$ 7,745,000
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Electric Total	\$ 72,961,641	\$ 102,185,000

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Total CO Notice of Intentions

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Water	\$	33,188,000
Wastewater	\$	30,398,000
Electric	\$	102,185,000
<hr/>		
Total CO NOIs	\$	181,771,000

Next Steps

- **April 4, 2023**
 - Council considers approval of NOI ordinances.
- **May 22, 2023**
 - PUB considers approval of bond ordinance authorizing the sale of Certificates of Obligation.
- **June 6, 2023**
 - Council considers approval of bond ordinances authorizing the sale of both General Obligation bonds and Certificates of Obligation.
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 - Preliminary date of sale if market conditions are favorable.
- **July 26, 2022**
 - Preliminary date of close and delivery of funds.

Questions





City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB23-062, **Version:** 1

AGENDA CAPTION

Management Reports

1. Future Agenda Items
2. New Business Action Items

Future Public Utilities Board Agenda Items

Note: This is a working draft of pending PUB items and is subject to change without notice.

Meeting Date	Item	Dept
April 10, 2023	Wastewater Master Plan	Water Utilities
April 24, 2023		
May 8, 2023		
May 22, 2023	CIP Proposed Budget Utility Forecasts	Finance Finance
June 12, 2023	Utility Budgets & Rates Work Session	Finance
June 26, 2023	Utility Budgets, CIP Budgets & Rates Work Session Follow Up	Finance
July 10, 2023	Utility Rates (includes Customer Service)	Finance
July 24, 2023	Utilities Budget Approval for Solid Waste, Water, Wastewater, Electric and Customer Service	Finance
August 14, 2023		
August 28, 2023		
September 11, 2023		
September 25, 2023		
October 9, 2023		
October 23, 2023		
November 13, 2023		
December 11, 2023		

Codes: Work Session WS, Consent Agenda CA, Individual Consideration IC

PUBLIC UTILITIES BOARD - NEW BUSINESS ACTION ITEMS

DATE REQUESTED					
REQUESTOR		ITEM			DEPT
					STATUS



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City Hall
215 E. McKinney St.
Denton, Texas 76201
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Legislation Text

File #: PUB23-038, **Version:** 1

AGENDA CAPTION

Receive a report, hold a discussion, and give staff direction regarding the Solid Waste and Recycling Rewrite of Solid Waste Ordinance and addition of a commercial diversion article.

[Estimated Presentation/Discussion Time: 45 minutes]



City of Denton

City Hall
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AGENDA INFORMATION SHEET

DEPARTMENT: Solid Waste & Recycling Department

CM/ DCM/ ACM: Ryan Adams

DATE: March 27, 2023

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding the Solid Waste and Recycling Rewrite of Solid Waste Ordinance and addition of a commercial diversion article.

BACKGROUND

On July 19, 2022, the Denton City Council adopted the City of Denton's Comprehensive Solid Waste Management Strategy ("CSWMS") to guide the City's future solid waste/materials management system and to develop infrastructure, programs, and policies necessary to manage the diversion of materials for ultimate disposal. As part of this strategy, the creation of programs, policies and resources designed to drive diversion is envisioned to be essential for program success.

As envisioned, the commercial diversion article will require all commercial customers of the City of Denton Solid Waste Services to implement a mandatory program to either recycle divertible materials through the City's curbside program or manage their divertible non-programmatic materials through an independent third party with mandatory reporting of net diverted material volumes to the City. In support of establishing a program that has enforceable provisions, the Solid Waste Ordinance will have to be updated and amended to better define and outline tools to promote the enforcement of Denton's sole provider of Solid Waste services, to provide more customized services to commercial/multi-family customers, compliance with Denton Development Code for container enclosures, rented container management, and management of contaminated material.

RECOMMENDATION

Approve the Rewrite of the Solid Waste Ordinance Chapter 24.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Redlined Chapter 24
Exhibit 3: Clean Version of Chapter 24 (rewrite)
Exhibit 4: Presentation

Respectfully submitted:
Brian Boerner
Director of Solid Waste & Recycling

Prepared by:
Tammy Clausing
Assistant Director

Chapter 24 SOLID WASTE¹

ARTICLE I. IN GENERAL

Sec. 24-1. Purpose.

Sec. 24-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Appliance a device or pieces of equipment designed to perform a task, typically a domestic one such as an oven, refrigerator, etc.

Brush shrubs, tree limbs, and branches.

Bulky items any non-putrescible household item that will not fit inside a solid waste container when the lid on the solid waste container is closed. Only items consistent with residential use, such as household furniture and appliances, shall be considered bulky items. This term includes material that is part of routine household maintenance but does not include construction, demolition, or remodeling materials or debris (see Construction and demolition debris definition).

~~means any household item that will not fit inside a solid waste container when the lid on the solid waste container is closed. Only items consistent with residential use, such as household furniture and appliances shall be considered bulky items.~~

The City the City of Denton.

Commercial means any structure or building other than residential, including business structures, hotels, motels, rooming houses or boardinghouses and structures containing five (5) ~~four (4)~~ or more dwelling units.

¹Editor's note(s)—Ord. No. 2005-256, § 1, adopted September 20, 2005, amended chapter 24 in its entirety to read as herein set out. Former chapter 24, §§ 24-1—24-13, 24-41, 24-42, 24-66—24-71, 24-72—24-74, pertained to similar provisions, and derived from §§ 12-1, 12-2, 12-4—12-6, 12-8, 12-9(b), (c), 12-10, 12-12, 12-14(a)—(d), 12-15, 12-16(b), (c), 12-17(c), 12-17(e), (f), 12-18(a), (b), 12-19—12-23 of the 1966 Code; Ord. No. 89-032, § I, 2-21-89; Ord. No. 90-003, § I, 1-2-90; Ord. No. 91-066, § I, III, V—VIII, 4-30-91; Ord. No. 98-299, § I—IV, 9-15-98; Ord. No. 00-042, § 1, 2, 2-1-00; Ord. No. 00-045, §§ 1, 3, 2-1-99.

Cross reference(s)—Disposal of manure, § 6-15; housing generally, Ch. 15; junk dealers and dealers in secondhand merchandise, § 16-26 et seq.; automotive wrecking and salvage yards, § 16-126 et seq.; grass and weeds creating nuisances, § 20-71 et seq.; littering generally, § 21-5; construction and building debris on streets, § 25-8; refuse and garbage handling in mobile home or recreational vehicle parks, § 32-90; insect and rodent control in mobile home and recreational vehicle parks, § 32-91.

~~*Commercial tree trimmer* means a person who or firm that engages in and solicits the trimming, and/or cutting of trees as a regular part of the business.~~

Construction and Demolition Debris or C&D waste resulting from construction or demolition projects, regardless of the point of origin. This term includes all materials that are directly or indirectly by-products of construction work, including remodeling, or that result from the demolition of any structures and may include, but are not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

Container any receptacle designed for the specific purpose to hold solid waste or recyclable materials, which can be lifted or emptied manually or by use of a special vehicle.

Contamination non-program materials in any container set for recycling and/or diversion from ultimate disposal.

Decals an adhesive permit issued by the City and to be affixed to a vehicle for use in special waste and recyclable materials collection and transportation services.

Director The City of Denton's Solid Waste Director who is the City official responsible for managing the permitting and regulation of all waste and recycling services provided within the City. This definition includes the director's authorized designee(s).

Excess accumulations any accumulation of MSW or recyclables/divertible material outside of the container. This does not include residential yard waste, bulky items, or other waste specifically identified for unique placement outside a traditional residential garbage or recycling container.

Hazardous waste as defined in the federal Solid Waste Disposal Act 42 U.S.C. 6901.

~~means any commercial or residential garbage, trash, rubbish or other solid waste identified or listed as a hazardous waste by the administrator of the U. S. Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act 42 U.S.C. 6901 et seq., as amended.~~

~~*Infectious waste* means commercial or residential garbage, trash, rubbish, or other waste containing pathogens or biologically active material which because of its type, concentration, and quantity is capable of transmitting disease to persons exposed to the waste, including human and animal tissue, bandages and other material used in health care which become contaminated by pathogenic materials.~~

~~*Municipal Solid Waste (MSW)* solid waste resulting from or incidental to residential, municipal, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, construction and demolition materials, not separated at the point of collection for delivery to another location for processing for reuse, and all other solid waste other than special wastes and recyclable materials. is solid waste resulting from or incidental to residential, municipal, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, construction and demolition materials, dead animals, and all other solid waste other than special wastes.~~

Owner any person or entity shown as the property owner on the latest property tax assessment rolls or any person having any legal or equitable interest in the property, including any agent who is responsible for managing, leasing, or operating the property including any tenant.

Pay bag a bag sold by the City or its designee to customers for additional material to be collected outside of their normal carted collection. A pre-paid additional waste solution.

Private containers are containers used, or intended for use, in disposal or collection of MSW or recyclable materials and that are not issued by the City or permitted consistent with Section 24-72. – Annual permit required for special waste and recyclables haulers and include, but are not limited to, roll-off containers and self-contained compactors.

Putrescible waste waste that is capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions, and include materials such as food wastes, offal, and dead animals.

Program materials recyclable materials as defined in this Chapter.

Recyclable materials materials defined by the contract between the City of Denton and any contracted recycling processor that are not special waste and have been separated from other waste at the point of collection for delivery to another location for processing and reuse. These materials include paper, cardboard, plastics containers displaying a resin identification number (RIN) of 1 through 7, steel and aluminum cans, and glass bottles.

Residential means a structure, house or building occupied as a dwelling only, and which contains no more than ~~four (4)~~ ~~three (3)~~ dwelling units.

Residential garbage consists of all normal household waste that fits in the garbage containers issued to said customer. ~~consists of all normal household waste, except plant clippings, leaves, tree trimmings, ashes, metal scraps other than cans, large accumulations of boxes, demolition and remodeling debris and other material that cannot be broken down to fit in regular garbage containers.~~

Solid waste consistent with 30 TAC 330.3, garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities.

Special waste as defined in 30 TAC 330.3.

~~means any commercial or residential garbage, trash, rubbish, hazardous waste, infectious waste, or other solid waste that because of its quantity, concentration, physical or chemical characteristics or biological properties is not collectable by the city's solid waste department.~~

Utility Rate Ordinance the ordinance adopted annually by the City Council that establishes the utility rate schedule.

Unsafe materials Any material or matter deemed by the Texas Commission of Environmental Quality (TCEQ), the Environmental Protection Agency (EPA), the State Department of Health, or any other federal, state, or local governmental agency to be unsuitable or detrimental to the environment or human health when disposed of in the type of sanitary landfill operated by the City.

Unauthorized container a container used or intended for use in the disposal or collection of MSW or recyclable materials that is not issued by the City of Denton Solid Waste Department or one that has not been permitted for use within the City limits.

~~Unusual accumulations, for residential service for each regular collection, means more than one cubic yard of garbage, trash, and other municipal solid waste permitted under this chapter, and yard waste that exceeds a pile three (3) feet in height, three (3) feet in width and cut to a maximum of four-foot lengths, and heavy, bulky objects and other accumulations unusual for the average household. Unusual accumulations for commercial service means any accumulation of refuse outside of the container.~~

Valet Service special, specific, collection service provided to areas with limited space for standard dumpster collection service as identified by the Director.

Vehicle any wheeled device designed mainly for the conveyance or transportation of persons or property. This definition includes cars, trucks, tractors, and trailers.

Vehicle service fee the fee associated with permitting each vehicle for use in the collection and transportation of special waste or recyclable materials.

Vehicle service permit the permit required by the City for vehicles for use in special waste and recyclable materials collection and transportation services.

Waste manifest a document wherein the service provider must record collection points and the location of disposal of special waste, recyclable materials, and other waste as required by state and federal law and as defined by the City from time to time, such as a bill of lading.

Yard waste vegetative or organic material produced from the care and maintenance of landscaped areas, gardens, and lawns. This includes weeds, leaves, grass clippings, dead flowers and plants, brush, pruned branches and stems, roots, or wood shavings that can be bagged in brown paper (kraft) bags or in a City designated yard waste container.

(Ord. No. 2005-256, § 1, 9-20-05)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 24-3. The City is the exclusive provider for municipal solid waste services.

The City's solid waste department shall be the exclusive provider of municipal solid waste collection and disposal services for all premises within the City, and it shall be unlawful for any other person or entity to provide municipal solid waste collection or disposal services to any person or entity for compensation within the city, or to make use of the public streets for that purpose, except as provided in this chapter.

(Ord. No. 2005-256, § 1, 9-20-05)

Sec. 24.4. – Administration and Enforcement.

- (a) All officials duly authorized, including but not limited to peace officers of the State, and those authorized by statute to issue citations for Class C criminal misdemeanors, may assist the City in enforcement of this chapter.
- (b) Additionally, the Director, at his discretion, may designate trained personnel to issue notices of violation and to make accompanying affidavits to support prosecution as part of the City's ongoing efforts to regulate and manage wastes for the benefit of the public health, safety and welfare, in coordination with the office of the City Attorney, the municipal courts, the police department, the Texas Commission on Environmental Quality and any agencies with jurisdictional interest in solid waste regulation and management.

Sec. 24-4. Charges for use of city landfill.

~~The charges to be paid by persons for the use of the city's sanitary landfill site shall be in an amount established and as from time to time amended by ordinance as adopted by the city council, the ordinances and amendments thereto to be kept on file with the city secretary and to be available for public inspection during regular business hours.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

Sec. 24.5. – Landfill Use

The amounts to be paid for the use of the City's landfill site shall be the amounts established in the Utility Rate Ordinance or a City Council approved contract.

All persons using the landfill will abide by the posted landfill rules, follow any directions given by landfill staff, and conduct themselves in a safe and professional manner.

(1) Rules shall be posted at the landfill as follows:

"City of Denton Landfill Facility Rules

All vehicles that enter the City of Denton landfill must obey the following rules and procedures. These rules are in place to provide a safe and efficient environment for our employees and our customers.

- 1. All vehicles enter the landfill at their own risk.**
- 2. Scavenging material is strictly prohibited.**
- 3. No Smoking on Landfill property.**
- 4. Customers must present a valid, government-issued ID at the weigh station.**
- 5. The minimum charge applies to each individual load of chargeable waste material crossing the scales.**
- 6. All loads entering landfill property, consistent with State and local laws, must be secured with a tarpaulin (tarp), net, or other means to properly secure the load and prevent litter. Unsecured or improperly secured loads will be subject to a surcharge.**
- 7. All coverings shall remain in place and secure, including turnbuckles on commercial vehicles, until the vehicle has arrived at the unloading area. (coverings may be requested to be removed at another area for inspection).**
- 8. Posted speed limits must be followed at all times. The Maximum Landfill Speed Limit is 15 MPH.**
- 9. Incoming loads may be inspected on a random basis. Landfill staff will determine if prohibited items/materials are present. The unloading of unauthorized wastes is prohibited by State law. Landfill personnel shall have the authority to reject unauthorized loads and have unauthorized material removed by the transporter and/or assess appropriate surcharges.**
- 10. Vehicles entering the landfill weighing over 14,000 lbs. must have tow hooks, cables, or an accessible fixed point available to pull the vehicle if needed.**
- 11. All pets must remain inside the vehicle at all times.**
- 12. Children under the age of 12 must remain inside the vehicle at all times.**
- 12. Yield the right-of-way to all landfill equipment.**
- 13. Users of the landfill are required to follow all directions given by landfill staff.**
- 14. Customers must always stay within ten (10) feet of their vehicle while in the unloading zone.**
- 15. Drivers must unload at the location identified by working face personnel and follow the posted separation distances between trucks when backing into their spot.**
- 16. There will be no horseplay, fighting, or verbal attacks/abuse allowed at the City of Denton Landfill. Report any issues to the site management."**

The Director reserves the right to refuse service or revoke landfill use privileges for any person that endangers other customers or employees, engages in physical or verbal abuse, or knowingly disposes of materials in the incorrect disposal area.

Sec. 24-~~65~~. Disposal of garbage, trash or rubbish only in authorized locations.

- (a) ~~It shall be unlawful for any person to dispose of g~~Garbage, trash or rubbish ~~in any~~must be placed in the city, other than as provided in this chapter or as otherwise expressly authorized by the ~~e~~City. ~~No person shall place any solid waste, bulky items or any other material in, on or next to the solid waste container of another, unless authorized to do so by the person or persons who pay the charge for the solid waste collection service.~~
- (b) No person shall place Any solid waste, bulky items, or any other material in, on, or next to the solid waste container of another, unless authorized to do so by the person or persons who pay the charge for the solid waste collection service. garbage or other solid or liquid matter, residential, industrial or commercial, that possesses characteristics deemed by the Texas Commission of Environmental Quality (TCEQ), or the Environmental Protection Agency, or the State Department of Health, or any other federal, state or local agency having jurisdiction to be unsuitable or detrimental to the environment or human health when disposed of in the type of sanitary landfill operated by the city is hereby prohibited. Such material or matter shall be disposed of in the manner prescribed by the agency having jurisdiction and at the expense of the party or parties generating such material or matter. In no case shall such material or matter be placed for collection by the city nor shall it be delivered to or disposed of at the city's sanitary landfill.

(Ord. No. 2005-256, § 1, 9-20-05)

State law reference(s)—Water quality standards, V.T.C.A., Water Code § 26.124.

Sec. 24-~~67~~. Receptacles Containers for municipal solid waste and recyclable materials.

- (a) ~~(a) — Every owner, manager, agent, occupant, tenant, or lessee of any building, house, or structure within the corporate limits of the city shall provide and maintain suitable~~obtain containers ~~or receptacles~~ of sufficient size and number to hold the municipal solid waste and recyclable materials which accumulates on the premises; commercial accounts may retain non-City recycling/diversion services provided they conform to the other provisions of this chapter. The City may require certain levels of service to be provided based upon historical documentation from similar developments or on actual volumes of MSW and recyclables. Any property in the City that has any active residential utility service, or commercial utility service and issued a certificate of occupancy must also have solid waste service, as well.
- (b) Customers are responsible for maintaining the cleanliness of their issued containers.
- (c) All commercial containers and enclosures shall comply with the Denton Development Code section 7.12.
- (d) ~~It shall be unlawful to~~All solid waste must be placed solid waste in, on or near a solid waste container in a manner that ~~does not allow~~s the lid of the solid waste or recycling container to be and remain completely closed with all the solid waste material contained completely within the container.
- (e) The contents of municipal solid waste receptacles shall be secured in a manner to prevent trash or any other material from escaping the receptacle, including by being blown or spilled due to exposure from weather elements or animals.
- (f) The contents of the recyclable materials container shall be secured in a manner to prevent recyclables or any other material from escaping the receptacle, including by being blown or spilled due to exposure from weather elements or animals.
- (g) Recyclable materials shall be placed directly in the recyclable materials container without bagging the materials when a City of Denton container is used.

(h) Only program materials shall be placed in the recyclable material container when a City of Denton container is used.

(i) The City may refuse to collect a container set out for collection that the City determines does not comply with this section.

~~It shall be a defense to prosecution under this section if the solid waste placed next to the container is a bulky item as defined in section 24-2, and if the bulky item is placed next to the container less than forty-eight (48) hours before the collection. The defense does not apply if the person placing the bulky item in, on or near the solid waste container was not authorized to use the solid waste container.~~

~~(c) The contents of municipal solid waste receptacles shall be secured so that neither the wind nor animals can scatter trash or rubbish over the premises or over the streets or alleys or other property within the city.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

~~Sec. 24-7. Weight limitations of containers.~~

~~The total weight of any garbage bag and contents and of any trash and rubbish receptacle and contents shall be fifty (50) pounds or less.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

~~Sec. 24-8. Removal of unauthorized containers.~~

~~All solid waste and recycling storage containers, not meeting the requirements of this chapter shall be removed and disposed of by the city and the city shall not be liable for the removal and disposal of the same.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

Sec. 24-89. Prohibited materials and regulations.

(a) (a)

(b) Unsafe material is prohibited in the City landfill.

(c) Unsafe material shall be disposed of in the manner provided for by law or agency regulation.

(d) The owner and the party or parties generating unsafe material are responsible, including for the costs, for the collection, transportation, and disposal of the unsafe material.

(e) Unsafe material may not be placed for collection by the City.

(f) Unsafe material shall not be delivered to or disposed of at the City of Denton's landfill.

(g) No person shall deposit into any container serviced by the solid waste and recycling department any special waste. The solid waste and recycling department shall refuse to collect, transport or dispose of special or hazardous waste or any other garbage, rubbish, trash, or other solid waste that does not comply with this chapter.

(h) Only program materials shall be deposited in containers at City recycling drop sites.

(i) Special waste shall be collected, removed, and disposed of only by an authorized private hauler.

(j) Municipal Solid Waste (MSW) containing putrescibles shall be collected, at a minimum of, once weekly.

- (k) Any person collecting, transporting, or disposing of special or hazardous waste must obtain a permit issued pursuant to Article V of this chapter prior to such collection, transport, or disposal.

~~The director of solid waste shall keep a list of special waste that is not acceptable for collection and disposal by the solid waste department. The director of solid waste may also make reasonable rules regarding the collection and disposal by the solid waste department of any municipal solid waste, or other solid waste that requires special preparation or handling to meet the requirements of any state or federal law or regulation or which are otherwise necessary to safely and properly collect, transport, and provide for disposal. The list of special waste and the rules shall be written and kept on file by the director of solid waste and be available for public inspection during regular business hours.~~

- ~~(b) No person shall deposit in any container serviced by the solid waste department any special waste. The solid waste department may refuse to collect, transport or dispose of special or hazardous waste or any other garbage, rubbish, trash, or other solid waste that does not comply with this chapter or the regulations made by the director of solid waste.~~
- ~~(c) Each property owner shall be responsible for arranging collections with an authorized private hauler for the collection, removal, and disposal of any special waste or other garbage, trash, rubbish, or other solid waste which the city's solid waste department will not collect.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

Sec. 24-~~910~~. Municipal solid waste to be drained.

- (a) All municipal solid waste mixed with water or other liquids shall be drained before being placed in the receptacle.

- ~~(a)(b)~~ The resultant liquids shall be disposed of in an acceptable manner.

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

Sec. 24-~~101~~. Preparation of yard waste, tree limbs and cuttings.

- (a) ~~(a)~~ Tree limbs, shrubs and hedge cuttings shall:

(1) not exceed four (4) feet in length

(2) ~~and shall be~~ stacked neatly

(3) ~~Be placed so that~~with one (1) cut end faces toward the street at the curb line.

Limbs, shrubs, and hedge cuttings shall also be placed in a manner that will not block or otherwise impede the sidewalk.

(4) No ~~unit or single~~ piece shall weigh more than fifty (50) pounds.

- (b) Yard waste consisting of small pieces, small cuttings and small loose material ~~shall be placed for~~ collection shall be placed in approved kraft bags ~~or City-issued container(s).~~

- (c) The City may refuse to collect brush or yard waste not placed for collection as provided in this section.

~~(a)~~(d) Charges for the collection of brush and yard waste shall be provided in the published Utility Rate Ordinance.

- ~~(b) The director of solid waste shall provide for regular collections of yard waste which has been prepared in accordance with this section. If unusual accumulations are present, a reasonable charge shall be made for such service in addition to the regular service charge.~~
- ~~(c) Brush, limbs, leaves and cuttings from trees and shrubs which have been trimmed or removed by a commercial tree trimmer shall be disposed of at the expense of the owner or person controlling the same or upon payment of the actual cost of such removal plus an administrative and overhead charge.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

Sec. 24-1~~12~~. Heavy or unusual accumulations.

Bulk or large quantities of MSW or construction and demolition debris in excess of four (4) cubic yards will not be collected via weekly curbside collection. Individuals needing collection of MSW or construction and demolition debris may contract with the City of Denton to provide a temporary container to dispose of the materials in an alternate manner.

- ~~(a) Construction and demolition materials and other accumulations as a result of construction, remodeling, repairing or destruction shall be disposed of at the expense of the owner.~~
- ~~(b) Household furnishings, goods and appliances, including but not limited to stoves, refrigerators, washing or drying machines, water heaters, sofas, chairs, tables, mattresses and box springs, shall be disposed of at the expense of the owner or person controlling same or, upon request and payment of a fee to recover the cost of providing these additional services, including administrative and overhead costs.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

~~Sec. 24-13. Theft of service prohibited.~~

~~No person shall knowingly place any solid waste, bulky items, or any other material in, on, or next to the solid waste container of another person or entity in the City of Denton, Texas.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

Secs. 24-~~14~~~~12~~—24-40. Reserved.

ARTICLE II. RESIDENTIAL COLLECTION SERVICE

Sec. 24-41. Residential solid waste services required.

- ~~(a) Any owner, occupant, tenant or lessee of any residential premises in the city shall have their municipal solid waste regularly removed by the city.~~
- ~~(b) The charges for such service shall be included on a regularly scheduled bill.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

Any owner of any residential premises in the City is required to sign up for and maintain bundled solid waste and recycling service from the City of Denton and must have their municipal solid waste regularly removed by the City. If any utility service is active at a premises, then solid waste service must also be active regardless of occupancy status.

Sec. 24-42. Charges for residential service.

- ~~(a) As used in this section, the term "individual family unit" shall mean each side of a duplex, each living unit per subdivided lot, each apartment in an apartment house, up to and including three (3) units and any unit or living space in which a single family resides.~~
- ~~(b) The charge for collecting municipal solid waste from each individual family unit shall be in an amount established and as from time to time amended by ordinance as adopted by the city council; the ordinance and amendments thereto to be kept on file with the city secretary and to be available for public inspection during regular business hours.~~
- ~~(c) Multiple dwelling units having either water or electricity billed through a single meter will be billed a single solid waste charge along with the single water or electric charge, regardless of the occupancy of such multiple dwelling unit.~~
- ~~(d) Multiple dwelling units classified as fraternities, sororities, boardinghouses and dormitories shall be charged as a commercial or institutional service. Any multiple dwelling unit which requires more than the minimum service described in this chapter is subject to having the charges increased by the director of solid waste based upon the additional required service.~~
- ~~(e) Mobility or visually impaired customers may receive special collection services. Containers may be placed in locations designated by the city. The resident receiving this special service must be mobility or visually impaired and no member of the household is physically able to place the containers at the curb. Such special services shall require approval by the director of solid waste or designee. The monthly rate for these special collection services will be the same rate as is charged those customers with no impairments.~~
- ~~(f) All residential dwelling units shall containerize their waste for collection.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

The charge for collecting municipal solid waste from each residential dwelling unit shall be provided in the Utility Rate Ordinance, as amended.

Sec. 24-43. Residential collection service.

- ~~(a) (a) All single-family residents within the city shall place their residential refuse and recyclables containers must be placed at the curbside at a time and in a manner specified by the Director as specified by the general manager of solid waste services or designee.~~
- ~~(b) (b) Residential refuse garbage, and recyclables materials, pay bags, bulk items, brush, or yard waste shall may not be placed at the curb no earlier than 6:00 p.m. on the day prior to the scheduled collection day.~~
- ~~(b)(c) To ensure collection, residential refuse and recyclables should Containers must be placed at the curb for collection prior to by 7:00 a.m. on the scheduled day of collection day.~~

-
- (c) ~~Customers whose refuse or recyclables were not collected because: they were not placed at the proper location, they contained unacceptable materials, or they were not placed out for collection by the required time, shall not be collected until the next regularly scheduled collection service.~~
- (d) Containers shall be placed in the street with the wheels resting against the curb, or edge of the street, with the lid opening towards the street and the lid hinge facing away from the street.
- (e) Containers shall be placed a minimum of four (4) feet away from any mailbox, vehicle, container, or another obstacle.
- (f) Bulk items, kraft bags, pay bags, brush, or yard waste must also be placed at least four (4) feet away from any mailbox, vehicle, container, or another obstacle.
- (g) Only garbage, yard waste, or recyclable materials container(s) authorized by the City will be serviced by the City. No other containers, boxes, or bags placed at the collection site will be collected except as defined by the City.
- (h) All garbage, yard waste, and recyclable materials containers shall securely contain, with lids closed, all contents and must be capable of being collected without spillage. Residential garbage and recyclable materials determined by the City to not be properly contained shall not be collected.
- (i) Customers whose garbage or recyclables were not collected due to failure to comply with this chapter shall not be collected until the next regularly scheduled collection service.
- (j) Solid waste and recycling storage containers and any unaccepted waste or recyclables, Garbage, yard waste, or recyclable materials storage containers and residential garbage, yard waste, recyclables, or any other unaccepted materials not collected shall be removed from the curb or other designated collection point by the customer no later than 8:00 a.m. on the day following the scheduled collection day.
- ~~(b)~~(k) Upon removal from the curb, unaccepted materials, garbage, recycle, and yard waste containers shall be stored in as inconspicuous a location as possible, such as:
- (1) In a garage;
 - (2) In an outdoor storage building;
 - (3) On the side of a structure on the property; or
 - (4) At the back of a structure on the property.

At no point shall a ~~solid waste~~garbage, or recycling, or yard waste storage container or unaccepted waste or recyclables be stored in public view or remain in public view in the front yard, on the front porch, or in front of the main structure on the property, ~~except as~~unless otherwise approved by the Director, follows:

- (l) Customers may submit an application for special collection services to have their container(s) serviced at the point of container storage if the customer is unable to place the container at the collection point as required by this section.
- (m) The monthly rate for special collection services is the same rate charged to residential customers with similar-sized containers.
- (n) An application for special collection services must be signed by a healthcare provider.
- (o) Households that receive special service cannot contain a member that is physically able to place the containers at the collection point.
- (p) Applications for special service shall be subject to renewal every two (2) years from the date of special service initiation.
- (q) The Director may make reasonable exceptions to the foregoing location requirements, as needed, upon request of the customer, to accommodate unique circumstances.

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- ~~(1) A townhome with five (5) or more units per building.~~
- ~~(e) All solid waste and recycling storage containers shall securely contain all contents, and shall be capable of being handled without spillage. Refuse and recyclables determined by the city to not be properly contained shall not be collected.~~
- ~~(f) The general manager of solid waste services or designee may make reasonable exceptions to the foregoing location requirements, as needed, upon request of the customer, to accommodate unique circumstances.~~
- ~~(Ord. No. 2005-256, § 1, 9-20-05; Ord. No. 2007-193, § 14, 9-18-07; Ord. No. 2009-081, § 2, 4-7-09)~~

~~Sec. 24-44. Residential containerized collection service.~~

- ~~(a) Carts shall be placed at or near the curb line, a minimum of four (4) feet from any mailbox, vehicle, obstacle, or other container. The cart shall be placed in the street with its wheels against the curb. The director of solid waste or designee may make reasonable exceptions to the foregoing location requirements, as needed, upon request of the customer, to meet unique circumstances.~~
- ~~(b) Only authorized refuse and recycling container(s) (carts) provided by the city will be serviced. No other containers, boxes, or bags placed at the collection site will be collected, unless special refuse collection services have been requested.~~
- ~~(Ord. No. 2005-256, § 1, 9-20-05)~~

Sec. 24-44. – Weight limitations of residential containers.

The contents of any residential garbage, yard waste, or recycle container shall not exceed 250 pounds.

Secs. 24-45—24-65. Reserved.

ARTICLE III. COMMERCIAL COLLECTION SERVICE

Sec. 24-66. Commercial solid waste services required.

- (a) Every owner, occupant, tenant or lessee of any business, any commercial, industrial, or institutional property, or other property not entitled eligible to receive residential solid waste collection services shall arrange, by contract with the city, for commercial set up service for solid waste and recycling collection and disposal services from the City's solid waste department, except as otherwise specified expressly provided for in this chapter.
- (b) Solid waste must be scheduled for collection a minimum of once weekly.
- (c) Recyclables must be scheduled for collection a minimum of once every two weeks provided container volume is appropriate to support this level of service
- (d) Other commercial waste collection and disposal services not provided for in this chapter shall be provided only upon approval of the services by the Director.
- ~~(Ord. No. 2005-256, § 1, 9-20-05)~~

Sec. 24-67. Charges for commercial, ~~industrial, or institutional~~ service.

- (a) The charge for ~~collection and removal of municipal solid waste from premises used for business, industrial, or institutional purposes shall be based upon the size, type and number of containers in use at such establishments and the frequency with which such containers are scheduled to be serviced by city collection personnel. Such charge~~ commercial service shall be in an amount established ~~and as from time to time amended by ordinance as adopted by the~~ Utility Rate Ordinance city council; ~~the ordinance and amendments thereto to be kept on file with the city secretary and to be available for public inspection during regular business hours.~~
- (b) The service charge for other commercial waste ~~disposal and collection and disposal~~ services ~~shall not be in the amounts established in the~~ Utility Rate Ordinance. ~~otherwise provided for pursuant to this section may be provided upon approval of the director of solid waste at a cost not to exceed the actual cost plus administrative and overhead costs.~~

(Ord. No. 2005-256, § 1, 9-20-05)

~~Sec. 24-68. Containers furnished by city for commercial and industrial facilities.~~

- ~~(a) The director of solid waste may locate and place containers for use by commercial, industrial, and institutional facilities in accordance with the waste storage needs of the individual facility. All facilities for which containers are so provided by the city shall place all refuse and waste materials in such containers and shall not place waste in any containers except those designated by the director of solid waste. It shall be unlawful for any person using such containers to leave the lid open after placing refuse material therein.~~
- ~~(b) Where more than one (1) commercial establishment uses the same container, the charges shall be prorated according to use, but in no case shall be less than an amount established by the city council and on file in the office of the city secretary.~~

(Ord. No. 2005-256, § 1, 9-20-05)

Sec. 24-68. – General solid waste and recycling service responsibilities.

- (a) All persons utilizing City containers at commercial facilities shall provide, at their expense, an enclosure of adequate size and materials as specified in the Denton Development Code section 7.12.
- (b) Any other items stored within solid waste or recycling enclosures must not obstruct, impair or otherwise interfere with the City's ability to service City-provided containers therein.
- (c) If a container is unable to be serviced due to being contaminated, overfilled, blocked, or otherwise obstructed, an inaccessible fee may be assessed consistent with the published Utility Rate Ordinance.
- (d) The customer is required to remove any and all contamination, overflowing material, or obstructing items and call to request return service, at a rate established by the Utility ate Ordinance, or wait until their next scheduled service to be emptied. If this is a municipal solid waste container the follow-up collection must occur within one (1) week.

Sec. 24-69. Annual permit required for special waste and recyclables haulers.

- ~~(a) No person shall collect or remove for compensation from any property within the city any special waste or recyclables without first obtaining a special waste hauler's permit from the city.~~
 - ~~(b) The person applying for a special waste hauler's permit shall make application to the city on forms provided for that purpose, and pay the required fee. The application shall require the following information:
 - ~~(1) The name and business address of the applicant.~~
 - ~~(2) The name of the owner of the property and the address where the special waste and recyclables will be collected.~~
 - ~~(3) A description of the special waste and recyclables to be collected.~~
 - ~~(4) The location where the special waste and recyclables will be disposed, including proof, when required by the director of solid waste, that the applicant is legally authorized to dispose at the specified location.~~
 - ~~(5) A description and the license number of the motor vehicles to be used in collecting and transporting the special waste and recyclables within the city.~~
 - ~~(6) Any other information which is reasonably necessary to administer this section.~~~~
 - ~~(c) The director of solid waste shall issue the special waste and recyclables hauler's permit to the applicant if:
 - ~~(1) Proper application has been made and the fee paid.~~
 - ~~(2) The applicant will only be collecting special waste or recyclables as defined in this chapter.~~
 - ~~(3) The applicant is authorized to use the specified disposal site and the manner and place of disposal does not appear to violate any state or federal law or regulation or city ordinance.~~~~
 - ~~(d) The special waste and recyclables hauler's permit shall be valid for one year.~~
- ~~(Ord. No. 2005-256, § 1, 9-20-05)~~

Sec. 24-69. – Containers furnished by the City for commercial use.

- (a) The Director may locate and place solid waste containers for use by commercial facilities in accordance with the waste storage needs of the individual facility. All facilities for which containers are so provided by the City shall place all garbage and waste materials in such container(s) and shall not place waste in any containers except those designated by the Director. It shall be unlawful for any person using such containers to leave the lid open after placing refuse material therein.
- (b) Where more than one (1) commercial establishment uses the same container, the charges shall be prorated according to use, but in no case shall the total be less than an amount established by the City Council and on file in the office of the City Secretary.
- (c) Only City issued containers will be serviced unless otherwise provided for in this chapter.

Sec 24-70. – Compactor service.

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- (a) Customers may provide their own compactor provided it meets the criteria set forth in the Denton Development Code and is compatible with the City's collection vehicles.
 - (b) Customers requesting any new compactor service shall first request a site visit from the City of Denton Solid Waste and Recycling Department to verify serviceability and adherence to the design criteria set forth in the Denton Development Code section 7.12.
 - (c) Any compactor used for municipal solid waste must be scheduled for collection at a minimum of once per week.
 - (d) If a compactor is unable to be serviced due to being overfilled, blocked or any other obstruction, an inaccessible fee may be assessed consistent with the Utility Rate Ordinance. The customer is required to remove the excess waste or other obstructions prior to requesting return service.
 - (e) The rate for such service in the Utility Rate Ordinance shall apply.
 - (f) The customer may wait until the next scheduled service for collection, except the collection of a container having any municipal solid waste must occur within one (1) week of the previous collection.
 - (g) The customer is responsible for all maintenance and repair of customer-owned compactors. Required repairs must be made in a timely manner. If the Director determines that either a compactor or its power unit are not functioning in a safe manner, the customer may be required to retain an alternate container, at the customer's expense, to handle waste material until the compactor is repaired.

Sec. 24-71. – Valet service.

- (a) Valet service shall be provided to areas of the City as identified by the Director. Customers in designated areas may not opt out of valet service.
- (b) Valet service level tiers will be set by the Director.
- (c) The rate for valet service in the Utility Rate Ordinance shall apply.
- (d) Large or bulky items must be called in for collection.
- (e) Contaminated containers will not be collected. The contaminating items shall be removed for the container to be serviced.

Sec. 24-72. – Annual permit required for special waste and recyclables haulers.

No person shall collect or remove for compensation any special waste or recyclables from any property within the City without first obtaining a special waste hauler or recyclable materials hauler's permit from the City in accordance with Articles V and VI of the chapter.

Secs. 24-7~~30~~—24-89. Reserved.

~~ARTICLE IV. RECYCLING AND PROCESSING SERVICES~~

~~Sec. 24-90. Recyclable materials.~~

- ~~(a) Nothing in this chapter shall prohibit a person from collecting, gathering, or transporting recyclable materials collected from property within the city.~~

~~(b) Any person who transports recyclable materials collected from any property inside the city to a point outside the city, more than three times per year shall register with the city on forms provided for that purpose.~~

~~(c) As used in this section, "recyclable materials" means glass, tin, aluminum, paper, newspaper or other discarded materials, which are not special waste and have been separated from other municipal solid waste at the point of collection for delivery to another location for processing for reuse.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

~~Sec. 24-91. Disposing of recyclable materials.~~

~~It shall be unlawful for a person to place any non-recyclable solid waste in any recycling receptacle or to leave any non-recyclable solid waste on a recycling site in the City of Denton, Texas.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

~~Secs. 24-92—24-99. Reserved.~~

~~ARTICLE V. POSSESSION OF OPEN GLASS CONTAINERS IN FRY STREET DISTRICT~~

~~Sec. 24-100. Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Fry Street District* refers to the area as described in Zoning Ordinance No. 2000-045 as the Fry Street District. The Fry Street District is generally bounded by Welch Street to the east, Oak Street to the North, Ave. B to the northwest, Ave. A to the southwest, Mulberry Street to the southeast, and Hickory Street to the southwest, which is depicted in Exhibit A* attached to Ordinance No. 2005-256 and made a part hereof by reference.~~

~~*Glass container* means any glass bottle or receptacle, closed or capable of being closed.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

~~Note(s)—*A copy of Exhibit A can be found in the city offices.~~

~~Sec. 24-101. Prohibition of open glass containers.~~

~~(a) *Prohibitions.* No person shall possess within the Fry Street District upon or immediately adjacent to any right-of-way, street, sidewalk, pedestrian way, or parking area, any glass container which is open or has been previously opened except for use on the premises where the glass containers are acquired.~~

~~(b) *Exemptions.* Notwithstanding any other provision of this section, nothing in this section shall prohibit the possession of the following glass containers in the Fry Street District:~~

~~(1) Baby bottles containing products for consumption by babies;~~

~~(2) Glass drug containers containing prescription drugs;~~

~~(3) Glass containers that are being transported in a trash bag directly to a trash or recycling container for disposal or recycling purposes;~~

~~(4) Glass lined vacuum picnic containers or thermos bottles, and~~

~~(5) Any container as permitted by Texas Alcoholic Beverage Code Ann. 28.10(b).~~
~~(Ord. No. 2005-256, § 1, 9-20-05)~~

~~Sec. 24-102. Discretion of police officer.~~

~~Whenever any police officer shall, in the exercise of reasonable judgment, decide that the presence of any person in any public place is causing or is likely to cause any of the conditions enumerated in subsection 24-101(a), he may, if he deems it necessary for the preservation of public peace and safety, order that person to leave that place and surrender the open glass container. Any person who shall refuse to leave or surrender an open glass container after being ordered to do so by a police officer shall be in violation of this section.~~

~~(Ord. No. 2005-256, § 1, 9-20-05)~~

ARTICLE IV– COMMERCIAL DIVERSIONARY PRACTICES

Sec. 24-90. – Applicability.

This article applies to all commercial properties in the City’s zoning jurisdiction.

Sec. 24-91. – Services required.

- (c) The owner of any commercial/multi-family property (commercial properties) in the City must actively engage in on-site recycling material diversion program. Commercial properties must, at a minimum, provide availability to the residents and employees of these properties the ability to recycle paper, cardboard, glass, aluminum and steel cans, and plastics. The nature of the recycling or diversion practiced must be reported in a “Diversion Plan” as described in this chapter. Commercial recycling and organics services must be provided by a permitted hauler (see Article VI of this chapter) or the City of Denton Solid Waste and Recycling Department.
- (d) The owner for a premises of which all or part is used for multi-family use shall ensure that tenants and employees have access to on-site recycling services described under this Section, for any portion of the premises that is used for multi-family, effective January 1, 2024.
- (e) The owner or manager for a premises of which all or part is used for office, medical office, medical facilities, religious assembly, or private educational facilities, shall ensure that employees have access to on-site recycling described under this article, for any portion of the premises that has one or more of uses described in this subsection (c), effective April 1, 2024.
- (f) The owner or manager of a premises of which all or part is used for non-residential use including but not limited to those uses described in subsection (c) of this section and also including hotels and lodging, grocery stores, and commercial businesses, shall ensure that guests, invitees, tenants, and employees have access to on-site recycling services described under this article effective June 1, 2024.

Sec. 24-92. – Reporting requirements.

- (a) The owner of every commercial property shall submit a Diversion Plan to the City that complies with this Section no later than the close of business of the first business day of October of each year in a form required by the City.

(b) No new certificate or occupancy shall be issued without the submission of a Diversion Plan that complies with this Section.

(c) A Diversion Plan must:

- i. Be in a form prescribed by the Director;
- ii. List materials to be diverted;
- iii. State the name and contact information of the individual responsible for the Diversion Plan;
- iv. State the name and contact information for any diversionary service(s) being utilized;
- v. State the size and description of the diversionary container(s);
- vi. State the frequency of the collection of the container(s);
- vii. Plans to educate tenants or employees regarding the Diversionary Plan and how to participate including the following information:
 - a. Location of diversionary containers;
 - b. Types of materials accepted;
 - c. Information related to the use of proper recycling practices that will be implemented, such as emptying and rinsing plastic bottles, ensuring paper and cardboard products are not wet, and that cardboard boxes are broken down before being placed in the recycling container;
 - d. Onsite contact information to report overflowing recycling containers or contamination;
 - e. Provide information to individual participants such as employees or tenants on how to report waste or recycling problems to the City of Denton;
- viii. The owner must include additional information or documentation as required by the Director at the time of submission of the Diversion Plan to verify compliance with this Section.

Sec. 24-93. – Notice of change.

- (a) The owner of a commercial property shall notify the Director of any change in the Diversion Plan.
- (b) The owner of a commercial property shall notify the Director of any change in service provider for the collection of diversionary materials.

Sec. 24-94. – Education.

- (a) The individual named in (c)(3) of Section 24-92 of this Chapter shall provide recycling/diversion information and instructions in accordance with the rules adopted by the Director to:
 - (1) All tenants and employees on site of the premises annually;
 - (2) A new employee or tenant no later than the 30th day after the tenant occupies or the employee begins work at the premises; and
 - (3) All employees or tenants within 30 days after a substantive change in the diversionary service offered at the premises.
- (b) All information and documentation, including signage, required to be provided to persons or posted as public information under this article shall be written in English and Spanish and include universal symbols as adopted by the Director.
- (c) Each container designated or used for collection or transport of recyclable or organic materials shall be affixed with a sign that includes:

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- (2) The type of materials accepted written in English and Spanish; and
 - (3) The term “Recycling” or “Compostables” or “Organics”, as appropriate.

Sec. 24-95. – 24-99. – Reserved.

Article V. – SPECIAL WASTE COLLECTION AND TRANSPORTATION SERVICES
PERMIT

Sec. 24-100. – Permit required.

Any person engaged in the collection and transport of special waste within the City must possess a current and valid permit issued by the City prior to providing collection and transportation services for special waste.

Sec. 24-101. – Exemptions.

- (a) The following are exempt from the permit requirements in Section 24-100.
 - (1) Any person living within the City and hauling personal materials, wastes, or other materials from their primary residence is exempt from the permitting requirements of this section.
 - (2) Any person who transports special waste no more than three (3) times per any year period.
 - (3) Any Liquid Waste Transporter permitted under the City of Denton - Code of Ordinances, Chapter 26, Division 3.
- (b) The Director may request documentation (i.e. trip tickets, bills of lading, etc.) to ensure compliance with this section.

Sec. 24-102. – Permit application.

- (a) Any person engaged in the collection and transportation of special waste that is required to obtain a permit per Section 24-100 shall apply for a permit from the City in a manner required by the City and pay the required fee.
- (b) The application will include:
 - (1) The name and business address of the applicant;
 - (2) The name of the owner of all collection and transportation vehicles that will be used in special waste collection services located within the City;
 - (3) A description of the special waste that will be hauled by the applicant;
 - (4) The location where the special waste will be disposed of, including documentation sufficient to show the applicant is legally authorized to dispose at the specified location(s);
 - (5) A description and the license number of all vehicles to be used in collecting and transporting the special waste within the City; and
 - (6) Any other information which is reasonably necessary to administer this section as determined by the City.
- (c) By acceptance of the permit, the permittee agrees to comply with all requirements of the service agreement, carry specific types and amounts of insurance, submit reports, and pay necessary fees by the specified due dates.

Sec. 24-103. – Permitting fees.

- (a) Application fees shall be paid at the time the application is submitted to the City.
- (b) Vehicle service fees established in the Utility Rate Ordinance shall be paid no later than the due date on the invoice sent by the City.
- (c) Vehicle service fees are non-transferable between vehicles.
- (d) All fees are non-refundable, including in the event no permit is obtained.

Sec. 24-104. – Granting of permit.

- (a) A permit provided for in Section 24-100 shall be granted only where the applicant has completed the following:
 - (1) A service agreement form has been completed in full;
 - (2) The applicant has no unresolved violations of this Chapter 24, Texas Commission on Environmental Quality or U.S. Environmental Protection Agency.
- (b) The City reserves the right to revoke a granted permit at any time.
- (c) Any person whose permit is denied may:
 - (1) Resubmit a fully completed service agreement;
 - (2) Submit evidence that any violation with this Chapter 24, Texas Commission on Environmental Quality or U.S. Environmental Protection Agency has been resolved; or
 - (3) Make an appeal to the Director.

Sec. 24-105. – Vehicle service permit compliance requirements.

- (a) Special waste haulers must maintain a valid permit.
- (b) Permitted special waste service providers must submit quarterly reports:
 - (1) Reports are to be submitted quarterly on the first business days of October, January, April, and July;
 - (2) Reports should be provided by physical or electronic submission to the Director;
 - (3) Reports shall contain:
 - i. _____ Hauler name, address, date, and quantity of material sent for diversion/disposal
 - ii. _____ Name of facility where material was sent
 - (4) To be timely submitted, the report must be received by the City within twenty (20) calendar days of the end of the quarter.
 - (5) Incomplete reports will not be accepted for filing and will be returned. Such reports will be considered untimely if not completed and returned within the deadline specified in subsection (4).
- (c) Decals:
 - (1) Decals issued by the City shall be placed in a visible location by the permittee(s) upon each collection and transportation vehicle operating within the City;
 - (2) Decals shall be current pursuant to the schedule in Section 24-107 and valid in accordance with the requirements of this subsection;
 - (3) Decals must be clearly legible.

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- (d) Waste manifests. For permitted haulers requiring waste manifests, the maintenance of these manifests by the permittee is a condition of compliance. All records may be reviewed by the City at the request of the Director for a duration of up to three (3) years.

Sec. 24-106. – Permitting effective date and renewal.

- (a) Permits are issued and renewed annually beginning December 1 preceding the next calendar year during which the permit will be effective.
- (b) The permit's effective period is January 1 through December 31 of the same calendar year.
- (c) Permit fees are not prorated.
- (d) All permits, regardless of the date of issuance, will expire on December 31 of the year in which the permit became effective.
- (e) The application process shall be initiated, and fees shall be paid by November 15 for the upcoming calendar year so that adequate time is available for review and processing of the application.
- (f) Permittees currently permitted and choosing to reapply for a permit shall renew permits for the upcoming calendar year by submitting a renewal application by November 15.
- (g) All fees shall be paid with the submission of a renewal application.
- (h) The timely submission of a complete renewal application and the relevant fees will suffice to authorize the continuance of operations beyond December 31 until such time that the City makes a final determination on the approval of a permit renewal application.

Sec. 24-107. – Reissuance of lost and damaged decals.

- (a) In order to have a duplicate decal issued, the original applicant for a permit must provide all information required in Section 24-102(b).
- (b) Any applicant for a duplicate decal shall submit sufficient evidence of the damage to the decal.
- (c) No fees will be imposed for a duplicate decal.

Sec. 24-108. – Violations.

- (a) The City may issue a "No Operations" declaration and assess all applicable permit violation fees from the service provider if a service provider:
- (1) Performs collections or transports special waste in a vehicle within the City which has not been permitted;
 - (2) Performs collections or transports special waste in any vehicle with an expired permit;
 - (3) Performs some other permit violation; or
 - (4) Does not make payment of the appropriate fees in a timely manner.
- (b) Once a service provider has been issued a "No Operations" declaration from the City, all services to be provided within the City are required to cease.
- (c) Each day and act of illegal operations during a "No Operations" period is a separate violation; any person, entity, or business engaged in the collection and transport of waste who violates the "No Operations" requirement prior to receipt of a permit or during any suspension of a permit period may be charged by the City an amount as established in the Utility Rate Ordinance per day for each day and act of violation of this ordinance.
- (d) Following the receipt of a "No Operations" declaration and prior to a service provider being reinstated to legally operate within the jurisdiction of the City, the service provider must meet with the City staff to update its application and service agreement. Once updated, the status of the permit will be determined.

The City may reinstate, decline to renew, or revoke the permit. If the City agrees to reinstate the permit, the service provider must make payment of all monies owed to the City before the permit will be reinstated.

Sec. 24-109. – 24-199. – Reserved.

**Article VI. – COMMERCIAL RECYCLABLE MATERIALS COLLECTION AND
TRANSPORTATION SERVICES PERMIT**

Sec. 24-200. – Permit required.

- (a) Any service provider engaged in the collection and transport of recyclable materials from commercial entities and operating within the City must possess a current and valid permit issued by the City prior to providing waste collection and transportation services.
- (b) Permits for collection and transportation services are required for recyclable materials and other materials collected for purposes of recycling, including construction and demolition (C&D) debris separated at the point of collection for delivery to another location for processing for recycling.

Sec. 24-201. – Exemptions.

- (a) Any person living within the City and hauling personal recyclable materials to a recycling facility from their primary living residence is exempt from the permitting requirements of this section.
- (b) Any person who collects for transportation recyclable materials no more than three (3) times per any year period is exempt from the permitting requirements of this section but must register as exempt with the permitting authority.
- (c) The City is exempt from these permitting requirements when engaged in hauling recyclable materials pursuant to Sec. 24-3 and 24-202.

Sec. 24-202. – Reclassification and disposal of recyclable materials.

- (a) Recyclable materials containers containing a significant amount of contamination, as determined by the City, will be considered municipal solid waste, and its collection may be considered a violation and subject to the actions and penalties provided for in Sec. 24-209 of this chapter. The Director will make the final determination of whether stored recyclable materials contain excessive contamination, which at the City's determination, shall cause the reclassification of these materials from recyclable materials to solid waste, thereby negating the ability of a service provider to transport this material within the City's jurisdiction under its recycling vehicle service permit.
- (b) The City has the authority to inspect the contents of any container located within the City's jurisdiction in order to determine the material contents of the container, so as to ensure compliance with the contamination requirements.

Sec. 24-203. Permit application.

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- (a) Any person engaged in the collection and transport of recyclable material from commercial operations that is required to obtain a permit per Section 24-200 shall apply for a recyclable materials service permit from the City.
 - (b) A person, entity, or business engaged in the collection and transport of recyclable material from commercial entities shall make application to the City on forms provided for that purpose and pay the fee required by Sec. 24-204. The application shall include the following information:
 - (1) The name and address of the applicant.
 - (2) The name of the owner of the collection and transportation vehicle for use in recyclable materials collection services located within the City.
 - (3) A description of the recyclable material to be transported.
 - (4) The location of the recycling facility to which the recyclable material will be transported, including proof, when required by the Director that the applicant is legally authorized to dispose of at the specified location.
 - (5) A description and the license number of any vehicles to be used in collecting and transporting the recyclable material within the City.
 - (6) Any other information which is reasonably necessary to administer this section as determined by the City.
 - (c) By acceptance of the permit, the permittee agrees to execute and comply with all requirements of the vehicle service agreement, carry specific types and amounts of insurance, submit reports, and pay the necessary fees by the specified due date.

Sec. 24-204. – Permitting fees.

- (a) Application fees and vehicle service fees shall be paid at the time of submittal of the permit application. The vehicle service fee schedule is found in the Utility Rate Ordinance.
- (b) Vehicle service fees are non-transferable between vehicles and containers.
- (c) All fees paid are non-refundable.
- (d) The permit applicant must pay the required fees and meet all permit requirements prior to the issuance of a permit.

Sec. 24-205. – Granting of permit.

- (a) A permit provided for in Section 24-200 shall be granted only where the applicant has completed the following:
 - (1) A service agreement form has been completed in full;
 - (2) The applicant has no unresolved violations of this Chapter 24, Texas Commission on Environmental Quality or U.S. Environmental Protection Agency.
- (b) The City reserves the right to revoke a granted permit at any time.
- (c) Any person whose permit is denied may:
 - (1) Resubmit a fully completed service agreement;
 - (2) Submit evidence that any violation with this Chapter 24, Texas Commission on Environmental Quality or U.S. Environmental Protection Agency has been resolved; or
 - (3) Make an appeal to the Director.

Sec. 24-206. – Permit compliance requirements.

- (a) Recyclables service providers must maintain a valid permit.
- (b) Service providers must submit quarterly reports
 - (1) Reports are submitted by calendar quarter.
 - (2) Reports should be provided by physical or electronic submission to the Director.
 - (3) Reports shall contain:
 - i. Service provider's name, address, date, and quantity (weight/volume) of material sent for diversion/disposal
 - ii. Name of facility where material was sent
 - iii. Name of facility where residuals were sent
- (c) Incomplete reports will not be accepted for filing and will be returned. Such reports will be considered untimely if not completed and returned within the deadline specified in subsection (4).
- (d) Decals:
 - 1. Decals issued by the City shall be placed in a visible location by the permittee(s) upon all collection and transportation vehicles operating within the City.
 - 2. Decals shall be current pursuant to the schedule in Section 24-208 and valid in accordance with the requirements of this subsection.
 - 3. Decals must be clearly legible.

Sec. 24-207. – Permitting effective date and renewal.

- (a) Permits are issued and renewed annually beginning December 1 preceding the next calendar year during which the permit will be effective.
- (b) The permit's effective period is January 1 through December 31 of the same calendar year.
- (c) Permit fees are not prorated.
- (d) All permits, regardless of the date of issuance, will expire on December 31 of the year in which the permit became effective.
- (e) The application process shall be initiated, and fees shall be paid by November 15 for the upcoming calendar year so that adequate time is available for review and processing of the application.
- (f) Permittees currently permitted and choosing to reapply for a permit shall renew permits for the upcoming calendar year by submitting a renewal application by November 15.
- (g) All fees shall be paid with the renewal application.
- (h) The timely submission of a complete renewal application and the relevant fees will suffice to authorize the continuance of operations beyond December 31 until such time that the City makes a final determination on the approval of a permit renewal application.

Sec. 24-107. - Reissuance of lost and damaged decals.

- (a) In order to have a duplicate decal issued, the original applicant for a permit must provide all information required in Section 24-203(b).
- (b) Any applicant seeking a duplicate decal shall submit sufficient evidence of the damage to the decal.

(c) No fee will be imposed for a duplicate decal.

Sec. 24-108. – Violations.

- (a) The City may issue a “No Operations” declaration and assess all applicable permit violation fees from the service provider if a service provider:
- (1) Operates a vehicle within the City which has not been permitted;
 - (2) Operates any piece of equipment with an expired permit;
 - (3) Performs some other permit violation; or
 - (4) Does not make payment of the appropriate fees in a timely manner.
- (b) Once a service provider has been issued a “No Operations” declaration from the City, all services to be provided within the City are required to cease.
- (c) Each day and act of illegal operations during a “No Operations” period is a separate violation; any person, entity, or business engaged in the collection and transport of waste who violates the “No Operations” requirement prior to receipt of a permit or during any suspension of a permit period may be charged by the City an amount as established in the Utility Rate Ordinance per day for each day and act of violation of this ordinance.
- (d) Following the receipt of a “No Operations” declaration and prior to a service provider being reinstated to legally operate within the jurisdiction of the City, the service provider must meet with the City staff to update its application and service agreement. Once updated, the status of the permit will be determined. The City may reinstate, decline to renew, or revoke the permit. If the City agrees to reinstate the permit, the service provider must make payment of all monies owed to the City before the permit will be reinstated.

Sec. 24-210. – 24-299. – Reserved.

Article VII. POSSESSION OF OPEN GLASS CONTAINERS IN FRY STREET DISTRICT

Sec. 24-~~100~~300. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fry Street District refers to the area as described in Zoning Ordinance No. 2000-045 as the Fry Street District. The Fry Street District is generally bounded by Welch Street to the east, Oak Street to the North, Ave. B to the northwest, Ave. A to the southwest, Mulberry Street to the southeast, and Hickory Street to the southwest, which is depicted in Exhibit A* attached to Ordinance No. 2005-256 and made a part hereof by reference.

Glass container means any glass bottle or receptacle, closed or capable of being closed.

~~(Ord. No. 205-256, 5-1, 9-20-05)~~

~~Note(s) *A copy of Exhibit A can be found in the city offices.~~

Sec. 24-~~101~~301. Prohibition of open glass containers.

- (a) *Prohibitions.* No person shall possess within the Fry Street District upon or immediately adjacent to any right-of-way, street, sidewalk, pedestrian way, or parking area, any glass container which is open or has been previously opened except for use on the premises where the glass containers are acquired.
- (b) *Exemptions.* Notwithstanding any other provision of this section, nothing in this section shall prohibit the possession of the following glass containers in the Fry Street District:
 - (1) Baby bottles containing products for consumption by babies;
 - (2) Glass drug containers containing prescription drugs;
 - (3) Glass containers that are being transported in a trash bag directly to a trash or recycling container for disposal or recycling purposes;
 - (4) Glass lined vacuum picnic containers or thermos bottles, and
 - (5) Any container as permitted by Texas Alcoholic Beverage Code Ann. 28.10(b).

~~(Ord. No. 2005-256, 5-1,9-20-05)~~

Sec. 24-302. Discretion of police officer.

Whenever any police officer shall, in the exercise of reasonable judgment, decide that the presence of any person in any public place is causing or is likely to cause any of the conditions enumerated in subsection 24-101(a), he may, if he deems it necessary for the preservation of public peace and safety, order that person to leave that place and surrender the open glass container. Any person who shall refuse to leave or surrender an open glass container after being ordered to do so by a police officer shall be in violation of this section.

~~(Ord. No. 2005-256, 5-1,9-20-05)~~

Chapter 24 SOLID WASTE¹

ARTICLE I. IN GENERAL

Sec. 24-1. Purpose.

Sec. 24-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Appliance a device or pieces of equipment designed to perform a task, typically a domestic one such as an oven, refrigerator, etc.

Brush shrubs, tree limbs, and branches.

Bulky items any non-putrescible household item that will not fit inside a solid waste container when the lid on the solid waste container is closed. Only items consistent with residential use, such as household furniture and appliances, shall be considered bulky items. This term includes material that is part of routine household maintenance but does not include construction, demolition, or remodeling materials or debris (see Construction and demolition debris definition).

The City the City of Denton.

Commercial means any structure or building other than residential, including business structures, hotels, motels, rooming houses or boardinghouses and structures containing five (5) or more dwelling units.

Construction and Demolition Debris or C&D waste resulting from construction or demolition projects, regardless of the point of origin. This term includes all materials that are directly or indirectly by-products of

¹Editor's note(s)—Ord. No. 2005-256, § 1, adopted September 20, 2005, amended chapter 24 in its entirety to read as herein set out. Former chapter 24, §§ 24-1—24-13, 24-41, 24-42, 24-66—24-71, 24-72—24-74, pertained to similar provisions, and derived from §§ 12-1, 12-2, 12-4—12-6, 12-8, 12-9(b), (c), 12-10, 12-12, 12-14(a)—(d), 12-15, 12-16(b), (c), 12-17(c), 12-17(e), (f), 12-18(a), (b), 12-19—12-23 of the 1966 Code; Ord. No. 89-032, § I, 2-21-89; Ord. No. 90-003, § I, 1-2-90; Ord. No. 91-066, § I, III, V—VIII, 4-30-91; Ord. No. 98-299, § I—IV, 9-15-98; Ord. No. 00-042, § 1, 2, 2-1-00; Ord. No. 00-045, §§ 1, 3, 2-1-99.

Cross reference(s)—Disposal of manure, § 6-15; housing generally, Ch. 15; junk dealers and dealers in secondhand merchandise, § 16-26 et seq.; automotive wrecking and salvage yards, § 16-126 et seq.; grass and weeds creating nuisances, § 20-71 et seq.; littering generally, § 21-5; construction and building debris on streets, § 25-8; refuse and garbage handling in mobile home or recreational vehicle parks, § 32-90; insect and rodent control in mobile home and recreational vehicle parks, § 32-91.

construction work, including remodeling, or that result from the demolition of any structures and may include, but are not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

Container any receptacle designed for the specific purpose to hold solid waste or recyclable materials, which can be lifted or emptied manually or by use of a special vehicle.

Contamination non-program materials in any container set for recycling and/or diversion from ultimate disposal.

Decals an adhesive permit issued by the City and to be affixed to a vehicle for use in special waste and recyclable materials collection and transportation services.

Director The City of Denton's Solid Waste Director who is the City official responsible for managing the permitting and regulation of all waste and recycling services provided within the City. This definition includes the director's authorized designee(s).

Excess accumulations any accumulation of MSW or recyclables/divertible material outside of the container. This does not include residential yard waste, bulky items, or other waste specifically identified for unique placement outside a traditional residential garbage or recycling container.

Hazardous waste as defined in the federal Solid Waste Disposal Act 42 U.S.C. 6901.

Municipal Solid Waste (MSW) solid waste resulting from or incidental to residential, municipal, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, construction and demolition materials, not separated at the point of collection for delivery to another location for processing for reuse, and all other solid waste other than special wastes and recyclable materials. *Owner* any person or entity shown as the property owner on the latest property tax assessment rolls or any person having any legal or equitable interest in the property, including any agent who is responsible for managing, leasing, or operating the property including any tenant.

Pay bag a bag sold by the City or its designee to customers for additional material to be collected outside of their normal carted collection. A pre-paid additional waste solution.

Private containers are containers used, or intended for use, in disposal or collection of MSW or recyclable materials and that are not issued by the City or permitted consistent with Section **24-72. – Annual permit required for special waste and recyclables haulers** and include, but are not limited to, roll-off containers and self-contained compactors.

Putrescible waste waste that is capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions, and include materials such as food wastes, offal, and dead animals.

Program materials recyclable materials as defined in this Chapter.

Recyclable materials materials defined by the contract between the City of Denton and any contracted recycling processor that are not special waste and have been separated from other waste at the point of collection for delivery to another location for processing and reuse. These materials include paper, cardboard, plastics containers displaying a resin identification number (RIN) of 1 through 7, steel and aluminum cans, and glass bottles.

Residential means a structure, house or building occupied as a dwelling only, and which contains no more than four (4) dwelling units.

Residential garbage consists of all normal household waste that fits in the garbage containers issued to said customer.

Solid waste consistent with 30 TAC 330.3, garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid,

liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities.

Special waste as defined in 30 TAC 330.3.

Utility Rate Ordinance the ordinance adopted annually by the City Council that establishes the utility rate schedule.

Unsafe materials Any material or matter deemed by the Texas Commission of Environmental Quality (TCEQ), the Environmental Protection Agency (EPA), the State Department of Health, or any other federal, state, or local governmental agency to be unsuitable or detrimental to the environment or human health when disposed of in the type of sanitary landfill operated by the City.

Unauthorized container a container used or intended for use in the disposal or collection of MSW or recyclable materials that is not issued by the City of Denton Solid Waste Department or one that has not been permitted for use within the City limits.

Valet Service special, specific, collection service provided to areas with limited space for standard dumpster collection service as identified by the Director.

Vehicle any wheeled device designed mainly for the conveyance or transportation of persons or property. This definition includes cars, trucks, tractors, and trailers.

Vehicle service fee the fee associated with permitting each vehicle for use in the collection and transportation of special waste or recyclable materials.

Vehicle service permit the permit required by the City for vehicles for use in special waste and recyclable materials collection and transportation services.

Waste manifest a document wherein the service provider must record collection points and the location of disposal of special waste, recyclable materials, and other waste as required by state and federal law and as defined by the City from time to time, such as a bill of lading.

Yard waste vegetative or organic material produced from the care and maintenance of landscaped areas, gardens, and lawns. This includes weeds, leaves, grass clippings, dead flowers and plants, brush, pruned branches and stems, roots, or wood shavings that can be bagged in brown paper (kraft) bags or in a City designated yard waste container.

(Ord. No. 2005-256, § 1, 9-20-05)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 24-3. The City is the exclusive provider for municipal solid waste services.

The City's solid waste department shall be the exclusive provider of municipal solid waste collection and disposal services for all premises within the City. It shall be unlawful for any person or entity to provide municipal solid waste collection or disposal services to any person or entity for compensation within the City, or to make use of the public streets for that purpose, except as provided in this chapter.

(Ord. No. 2005-256, § 1, 9-20-05)

Sec. 24.4. – Administration and Enforcement.

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- (a) All officials duly authorized, including but not limited to peace officers of the State, and those authorized by statute to issue citations for Class C criminal misdemeanors, may assist the City in enforcement of this chapter.
 - (b) Additionally, the Director, at his discretion, may designate trained personnel to issue notices of violation and to make accompanying affidavits to support prosecution as part of the City's ongoing efforts to regulate and manage wastes for the benefit of the public health, safety and welfare, in coordination with the office of the City Attorney, the municipal courts, the police department, the Texas Commission on Environmental Quality and any agencies with jurisdictional interest in solid waste regulation and management.

Sec. 24.5. – Landfill Use

The amounts to be paid for the use of the City's landfill site shall be the amounts established in the Utility Rate Ordinance or a City Council approved contract.

All persons using the landfill will abide by the posted landfill rules, follow any directions given by landfill staff, and conduct themselves in a safe and professional manner.

(1) Rules shall be posted at the landfill as follows:

"City of Denton Landfill Facility Rules

All vehicles that enter the City of Denton landfill **must** obey the following rules and procedures. These rules are in place to provide a safe and efficient environment for our employees and our customers.

1. All vehicles enter the landfill at their own risk.
2. Scavenging material is strictly prohibited.
3. **No Smoking** on Landfill property.
4. Customers must present a valid, government-issued ID at the weigh station.
5. The minimum charge applies to each individual load of chargeable waste material crossing the scales.
6. All loads entering landfill property, consistent with State and local laws, **must be secured** with a tarpaulin (tarp), net, or other means to properly secure the load and prevent litter. Unsecured or improperly secured loads will be subject to a surcharge.
7. All coverings shall remain in place and secure, including turnbuckles on commercial vehicles, until the vehicle has arrived at the unloading area. (coverings may be requested to be removed at another area for inspection).
9. Posted speed limits must be followed at all times. **The Maximum Landfill Speed Limit is 15 MPH** Incoming loads may be inspected on a random basis. Landfill staff will determine if prohibited items/materials are present. The unloading of unauthorized wastes is prohibited by State law. Landfill personnel shall have the authority to reject unauthorized loads and have unauthorized material removed by the transporter and/or assess appropriate surcharges.
10. Vehicles entering the landfill weighing over 14,000 lbs. must have tow hooks, cables, or an accessible fixed point available to pull the vehicle if needed.
11. All pets must remain inside the vehicle at all times.
12. Children under the age of 12 must remain inside the vehicle at all times.
12. **Yield the right-of-way to all landfill equipment.**
13. Users of the landfill are required to **follow all directions given by landfill staff.**
14. Customers must always stay within ten (10) feet of their vehicle while in the unloading zone.
15. Drivers must unload at the location identified by working face personnel and follow the posted separation distances between trucks when backing into their spot.

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16. There will be no horseplay, fighting, or verbal attacks/abuse allowed at the City of Denton Landfill. Report any issues to the site management."

The Director reserves the right to refuse service or revoke landfill use privileges for any person that endangers other customers or employees, engages in physical or verbal abuse, or knowingly disposes of materials in the incorrect disposal area.

Sec. 24.6. – Disposal of garbage, trash, or rubbish only in authorized locations.

- (a) Garbage, trash, and rubbish must be placed and disposed of as provided in this chapter or as otherwise expressly authorized by the City.
- (b) No person shall place any solid waste, bulky items, or any other material in, on, or next to the solid waste container of another, unless authorized to do so by the person or persons who pay the charge for the solid waste collection service.

Sec. 24.7. – Containers for municipal solid waste and recyclable materials.

- (a) Every owner must obtain containers of sufficient size and number from the City to hold the municipal solid waste and recyclable materials which accumulate on the premises, commercial accounts may retain non-City recycling/diversion services provided they conform to the other provisions of this chapter. The City may require certain levels of service to be provided based upon historical documentation from similar developments or on actual volumes of MSW and recyclables. Any property in the City that has any active residential utility service, or commercial utility service and issued a certificate of occupancy must also have solid waste service, as well.
- (b) Customers are responsible for maintaining the cleanliness of their issued containers.
- (c) All commercial containers and enclosures shall comply with the Denton Development Code section 7.12.
- (d) All solid waste must be placed in a manner that allows the lid of the solid waste or recycling container to be and remain completely closed with all the material contained completely within the container.
- (e) The contents of municipal solid waste receptacles shall be secured in a manner to prevent trash or any other material from escaping the receptacle, including by being blown or spilled due to exposure from weather elements or animals.
- (f) The contents of the recyclable materials container shall be secured in a manner to prevent recyclables or any other material from escaping the receptacle, including by being blown or spilled due to exposure from weather elements or animals.
- (g) Recyclable materials shall be placed directly in the recyclable materials container without bagging the materials when a City of Denton container is used.
- (h) Only program materials shall be placed in the recyclable material container when a City of Denton container is used.
- (i) The City may refuse to collect a container set out for collection that the City determines does not comply with this section.

Sec. 24-8. – Prohibited materials and regulations.

- (a) Unsafe material is prohibited in the City landfill.
- (b) Unsafe material shall be disposed of in the manner provided for by law or agency regulation.
- (c) The owner and the party or parties generating unsafe material are responsible, including for the costs, for the collection, transportation, and disposal of the unsafe material.
- (d) Unsafe material may not be placed for collection by the City.
- (e) Unsafe material shall not be delivered to or disposed of at the City of Denton's landfill.
- (f) No person shall deposit into any container serviced by the solid waste and recycling department any special waste. The solid waste and recycling department shall refuse to collect, transport or dispose of special or hazardous waste or any other garbage, rubbish, trash, or other solid waste that does not comply with this chapter.
- (g) Only program materials shall be deposited in containers at City recycling drop sites.
- (h) Special waste shall be collected, removed, and disposed of only by an authorized private hauler.
- (i) Municipal Solid Waste (MSW) containing putrescibles shall be collected, at a minimum of, once weekly.
- (j) Any person collecting, transporting, or disposing of special or hazardous waste must obtain a permit issued pursuant to Article V of this chapter prior to such collection, transport, or disposal.

Sec. 24-9. – Municipal solid waste to be drained.

- (a) All municipal solid waste mixed with water or other liquids shall be drained before being placed in the receptacle.
- (b) The resultant liquids shall be disposed of in an acceptable manner.

Sec. 24-10. – Preparation of yard waste, tree limbs and cuttings.

- (a) Tree limbs, shrubs, and hedge cuttings shall:
 - (1) Not exceed four (4) feet in length
 - (2) Be stacked neatly
 - (3) Be placed so that one (1) cut end faces toward the street at the curb line

Limbs, shrubs, and hedge cuttings shall also be placed in a manner
that will not block or otherwise impede the sidewalk.

- (4) No single piece shall weigh more than fifty (50) pounds.
- (b) Yard waste consisting of small pieces, small cuttings, and small loose material placed for collection shall be placed in approved kraft bags or City-issued container(s).
- (c) The City may refuse to collect brush or yard waste not placed for collection as provided in this section.
- (d) Charges for the collection of brush and yard waste shall be provided in the published Utility Rate Ordinance.

Sec. 24-11. – Heavy or unusual accumulations.

Bulk or large quantities of MSW or construction and demolition debris in excess of four (4) cubic yards will not be collected via weekly curbside collection. Individuals needing collection of MSW or construction and demolition debris may contract with the City of Denton to provide a temporary container to dispose of the materials in an alternate manner.

Secs. 24-12—24-40. Reserved.

ARTICLE II. RESIDENTIAL COLLECTION SERVICE

Sec. 24-41. Residential solid waste services required.

Any owner of any residential premises in the City is required to sign up for and maintain bundled solid waste and recycling service from the City of Denton and must have their municipal solid waste regularly removed by the City. If any utility service is active at a premises, then solid waste service must also be active regardless of occupancy status.

Sec. 24-42. Charges for residential service.

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The charge for collecting municipal solid waste from each residential dwelling unit shall be provided in the Utility Rate Ordinance, as amended.

Sec. 24-43. Residential collection service.

- (a) All residential containers must be placed at the curbside at a time and in a manner specified by the Director.
- (b) Residential garbage, recyclable materials, pay bags, bulk items, brush, or yard waste may not be placed at the curb earlier than 6:00 p.m. on the day prior to the scheduled collection day.
- (c) Containers must be placed for collection prior to 7:00 a.m. on the scheduled collection day.
- (d) Containers shall be placed in the street with the wheels resting against the curb, or edge of the street, with the lid opening towards the street and the lid hinge facing away from the street.
- (e) Containers shall be placed a minimum of four (4) feet away from any mailbox, vehicle, container, or another obstacle.
- (f) Bulk items, kraft bags, pay bags, brush, or yard waste must also be placed at least four (4) feet away from any mailbox, vehicle, container, or another obstacle.
- (g) Only garbage, yard waste, or recyclable materials container(s) authorized by the City will be serviced by the City. No other containers, boxes, or bags placed at the collection site will be collected except as defined by the City.
- (h) All garbage, yard waste, and recyclable materials containers shall securely contain, with lids closed, all contents and must be capable of being collected without spillage. Residential garbage and recyclable materials determined by the City to not be properly contained shall not be collected.

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- (i) Customers whose garbage or recyclables were not collected due to failure to comply with this chapter shall not be collected until the next regularly scheduled collection service.
 - (j) Garbage, yard waste or recyclable materials storage containers and residential garbage, yard waste, recyclables, or any other unaccepted materials not collected shall be removed from the collection point by the customer no later than 8:00 a.m. on the day following the scheduled collection day.
 - (k) Upon removal from the curb, unaccepted materials, garbage, recycle, and yard waste containers shall be stored in as inconspicuous location as possible, such as:
 - (1) In a garage;
 - (2) In an outdoor storage building;
 - (3) On the side of a structure on the property; or
 - (4) At the back of a structure on the property.

At no point shall a garbage, recycling, or yard waste storage container or unaccepted waste or recyclables be stored in public view or remain in public view in the front yard, on the front porch or in front of the main structure on the property, unless otherwise approved by the Director.

- (l) Customers may submit an application for special collection services to have their container(s) serviced at the point of container storage if the customer is unable to place the container at the collection point as required by this section.
- (m) The monthly rate for special collection services is the same rate charged to residential customers with similar-sized containers.
- (n) An application for special collection services must be signed by a healthcare provider.
- (o) Households that receive special service cannot contain a member that is physically able to place the containers at the collection point.
- (p) Applications for special service shall be subject to renewal every two (2) years from the date of special service initiation.
- (q) The Director may make reasonable exceptions to the foregoing location requirements, as needed, upon request of the customer, to accommodate unique circumstances.

Sec. 24-44. – Weight limitations of residential containers.

The contents of any residential garbage, yard waste, or recycle container shall not exceed 250 pounds.

Secs. 24-45—24-65. Reserved.

ARTICLE III. COMMERCIAL COLLECTION SERVICE

Sec. 24-66. Commercial solid waste services required.

- (a) Every owner of any commercial property not eligible to receive residential solid waste collection services shall set up service for solid waste and recycling collection from the City, except as otherwise expressly provided for in this chapter.

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- (b) Solid waste must be scheduled for collection a minimum of once weekly.
 - (c) Recyclables must be scheduled for collection a minimum of once every two weeks provided container volume is appropriate to support this level of service.
 - (d) Other commercial waste collection and disposal services not provided for in this chapter shall be provided only upon approval of the services by the Director.

Sec. 24-67. – Charges for commercial service.

- (a) The charge for commercial service shall be in an amount established by the Utility Rate Ordinance.
- (b) The service charge for other commercial waste collection and disposal services shall be in the amounts established in the Utility Rate Ordinance.

Sec. 24-68. – General solid waste and recycling service responsibilities.

- (a) All persons utilizing City containers at commercial facilities shall provide, at their expense, an enclosure of adequate size and materials as specified in the Denton Development Code section 7.12.
- (b) Any other items stored within solid waste or recycling enclosures must not obstruct, impair or otherwise interfere with the City's ability to service City-provided containers therein.
- (c) If a container is unable to be serviced due to being contaminated, overfilled, blocked, or otherwise obstructed, an inaccessible fee may be assessed consistent with the published Utility Rate Ordinance.
- (d) The customer is required to remove any and all contamination, overflowing material, or obstructing items and call to request return service, at a rate established by the Utility Rate Ordinance, or wait until their next scheduled service to be emptied. If this is a municipal solid waste container the follow-up collection must occur within one (1) week.

Sec. 24-69. – Containers furnished by the City for commercial use.

- (a) The Director may locate and place solid waste containers for use by commercial facilities in accordance with the waste storage needs of the individual facility. All facilities for which containers are so provided by the City shall place all garbage and waste materials in such container(s) and shall not place waste in any containers except those designated by the Director. It shall be unlawful for any person using such containers to leave the lid open after placing refuse material therein.
- (b) Where more than one (1) commercial establishment uses the same container, the charges shall be prorated according to use, but in no case shall the total be less than an amount established by the City Council and on file in the office of the City Secretary.
- (c) Only City issued containers will be serviced unless otherwise provided for in this chapter.

Sec 24-70. – Compactor service.

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- (a) Customers may provide their own compactor provided it meets the criteria set forth in the Denton Development Code and is compatible with the City's collection vehicles.
 - (b) Customers requesting any new compactor service shall first request a site visit from the City of Denton Solid Waste and Recycling Department to verify serviceability and adherence to the design criteria set forth in the Denton Development Code section 7.12.
 - (c) Any compactor used for municipal solid waste must be scheduled for collection at a minimum of once per week.
 - (d) If a compactor is unable to be serviced due to being overfilled, blocked or any other obstruction, an inaccessible fee may be assessed consistent with the Utility Rate Ordinance. The customer is required to remove the excess waste or other obstructions prior to requesting return service.
 - (e) The rate for such service in the Utility Rate Ordinance shall apply.
 - (f) The customer may wait until the next scheduled service for collection, except the collection of a container having any municipal solid waste must occur within one (1) week of the previous collection.
 - (g) The customer is responsible for all maintenance and repair of customer-owned compactors. Required repairs must be made in a timely manner. If the Director determines that either a compactor or its power unit are not functioning in a safe manner, the customer may be required to retain an alternate container, at the customer's expense, to handle waste material until the compactor is repaired.

Sec. 24-71. – Valet service.

- (a) Valet service shall be provided to areas of the City as identified by the Director. Customers in designated areas may not opt out of valet service.
- (b) Valet service level tiers will be set by the Director.
- (c) The rate for valet service in the Utility Rate Ordinance shall apply.
- (d) Large or bulky items must be called in for collection.
- (e) Contaminated containers will not be collected. The contaminating items shall be removed for the container to be serviced.

Sec. 24-72. – Annual permit required for special waste and recyclables haulers.

No person shall collect or remove for compensation any special waste or recyclables from any property within the City without first obtaining a special waste hauler or recyclable materials hauler's permit from the City in accordance with Articles V and VI of the chapter.

Secs. 24-73—24-89. Reserved.

ARTICLE IV— COMMERCIAL DIVERSIONARY PRACTICES

Sec. 24-90. – Applicability.

This article applies to all commercial properties in the City's zoning jurisdiction.

Sec. 24-91. – Services required.

- (a) The owner of any commercial/multi-family property (commercial properties) in the City must actively engage in on-site recycling material diversion program. Commercial properties must, at a minimum, provide availability to the residents and employees of these properties the ability to recycle paper, cardboard, glass, aluminum and steel cans, and plastics. The nature of the recycling or diversion practiced must be reported in a "Diversion Plan" as described in this chapter. Commercial recycling and organics services must be provided by a permitted hauler (see Article VI of this chapter) or the City of Denton Solid Waste and Recycling Department.
- (b) The owner for a premises of which all or part is used for multi-family use shall ensure that tenants and employees have access to on-site recycling services described under this Section, for any portion of the premises that is used for multi-family, effective January 1, 2024.
- (c) The owner or manager for a premises of which all or part is used for office, medical office, medical facilities, religious assembly, or private educational facilities, shall ensure that employees have access to on-site recycling described under this article, for any portion of the premises that has one or more of uses described in this subsection (c), effective April 1, 2024.
- (d) The owner or manager of a premises of which all or part is used for non-residential use including but not limited to those uses described in subsection (c) of this section and also including hotels and lodging, grocery stores, and commercial businesses, shall ensure that guests, invitees, tenants, and employees have access to on-site recycling services described under this article effective June 1, 2024.

Sec. 24-92. – Reporting requirements.

- (a) The owner of every commercial property shall submit a Diversion Plan to the City that complies with this Section no later than the close of business of the first business day of October of each year in a form required by the City.
- (b) No new certificate or occupancy shall be issued without the submission of a Diversion Plan that complies with this Section.
- (c) A Diversion Plan must:
 - i. Be in a form prescribed by the Director;
 - ii. List materials to be diverted;
 - iii. State the name and contact information of the individual responsible for the Diversion Plan;
 - iv. State the name and contact information for any diversionary service(s) being utilized;
 - v. State the size and description of the diversionary container(s);
 - vi. State the frequency of the collection of the container(s);
 - vii. Plans to educate tenants or employees regarding the Diversionary Plan and how to participate including the following information:
 - a. Location of diversionary containers;
 - b. Types of materials accepted;
 - c. Information related to the use of proper recycling practices that will be implemented, such as emptying and rinsing plastic bottles, ensuring paper and cardboard products are not wet, and that cardboard boxes are broken down before being placed in the recycling container;

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- d. Onsite contact information to report overflowing recycling containers or contamination;
 - e. Provide information to individual participants such as employees or tenants on how to report waste or recycling problems to the City of Denton;
 - viii. The owner must include additional information or documentation as required by the Director at the time of submission of the Diversion Plan to verify compliance with this Section.

Sec. 24-93. – Notice of change.

- (a) The owner of a commercial property shall notify the Director of any change in the Diversion Plan.
- (b) The owner of a commercial property shall notify the Director of any change in service provider for the collection of diversionary materials.

Sec. 24-94. – Education.

- (a) The individual named in (c)(3) of Section 24-92 of this Chapter shall provide recycling/diversion information and instructions in accordance with the rules adopted by the Director to:
 - (1) All tenants and employees on site of the premises annually;
 - (2) A new employee or tenant no later than the 30th day after the tenant occupies or the employee begins work at the premises; and
 - (3) All employees or tenants within 30 days after a substantive change in the diversionary service offered at the premises.
- (b) All information and documentation, including signage, required to be provided to persons or posted as public information under this article shall be written in English and Spanish and include universal symbols as adopted by the Director.
- (c) Each container designated or used for collection or transport of recyclable or organic materials shall be affixed with a sign that includes:
 - (2) The type of materials accepted written in English and Spanish; and
 - (3) The term “Recycling” or “Compostables” or “Organics”, as appropriate.

Sec. 24-95. – 24-99. – Reserved.

Article V. – SPECIAL WASTE COLLECTION AND TRANSPORTATION SERVICES PERMIT

Sec. 24-100. – Permit required.

Any person engaged in the collection and transport of special waste within the City must possess a current and valid permit issued by the City prior to providing collection and transportation services for special waste.

Sec. 24-101. – Exemptions.

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- (a) The following are exempt from the permit requirements in Section 24-100.
 - (1) Any person living within the City and hauling personal materials, wastes, or other materials from their primary residence is exempt from the permitting requirements of this section.
 - (2) Any person who transports special waste no more than three (3) times per any year period.
 - (3) Any Liquid Waste Transporter permitted under the City of Denton - Code of Ordinances, Chapter 26, Division 3.
 - (b) The Director may request documentation (i.e. trip tickets, bills of lading, etc.) to ensure compliance with this section.

Sec. 24-102. – Permit application.

- (a) Any person engaged in the collection and transportation of special waste that is required to obtain a permit per Section 24-100 shall apply for a permit from the City in a manner required by the City and pay the required fee.
- (b) The application will include:
 - (1) The name and business address of the applicant;
 - (2) The name of the owner of all collection and transportation vehicles that will be used in special waste collection services located within the City;
 - (3) A description of the special waste that will be hauled by the applicant;
 - (4) The location where the special waste will be disposed of, including documentation sufficient to show the applicant is legally authorized to dispose at the specified location(s);
 - (5) A description and the license number of all vehicles to be used in collecting and transporting the special waste within the City; and
 - (6) Any other information which is reasonably necessary to administer this section as determined by the City.
- (c) By acceptance of the permit, the permittee agrees to comply with all requirements of the service agreement, carry specific types and amounts of insurance, submit reports, and pay necessary fees by the specified due dates.

Sec. 24-103. – Permitting fees.

- (a) Application fees shall be paid at the time the application is submitted to the City.
- (b) Vehicle service fees established in the Utility Rate Ordinance shall be paid no later than the due date on the invoice sent by the City.
- (c) Vehicle service fees are non-transferable between vehicles.
- (d) All fees are non-refundable, including in the event no permit is obtained.

Sec. 24-104. – Granting of permit.

- (a) A permit provided for in Section 24-100 shall be granted only where the applicant has completed the following:
 - (1) A service agreement form has been completed in full;
 - (2) The applicant has no unresolved violations of this Chapter 24, Texas Commission on Environmental Quality or U.S. Environmental Protection Agency.
- (b) The City reserves the right to revoke a granted permit at any time.
- (c) Any person whose permit is denied may:

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- (1) Resubmit a fully completed service agreement;
 - (2) Submit evidence that any violation with this Chapter 24, Texas Commission on Environmental Quality or U.S. Environmental Protection Agency has been resolved; or
 - (3) Make an appeal to the Director.

Sec. 24-105. – Vehicle service permit compliance requirements.

- (a) Special waste haulers must maintain a valid permit.
- (b) Permitted special waste service providers must submit quarterly reports:
 - (1) Reports are to be submitted quarterly on the first business days of October, January, April, and July;
 - (2) Reports should be provided by physical or electronic submission to the Director;
 - (3) Reports shall contain:
 - i. Hauler name, address, date, and quantity of material sent for diversion/disposal
 - ii. Name of facility where material was sent
 - (4) To be timely submitted, the report must be received by the City within twenty (20) calendar days of the end of the quarter.
 - (5) Incomplete reports will not be accepted for filing and will be returned. Such reports will be considered untimely if not completed and returned within the deadline specified in subsection (4).
- (c) Decals:
 - (1) Decals issued by the City shall be placed in a visible location by the permittee(s) upon each collection and transportation vehicle operating within the City;
 - (2) Decals shall be current pursuant to the schedule in Section 24-107 and valid in accordance with the requirements of this subsection;
 - (3) Decals must be clearly legible.
- (d) Waste manifests. For permitted haulers requiring waste manifests, the maintenance of these manifests by the permittee is a condition of compliance. All records may be reviewed by the City at the request of the Director for a duration of up to three (3) years.

Sec. 24-106. – Permitting effective date and renewal.

- (a) Permits are issued and renewed annually beginning December 1 preceding the next calendar year during which the permit will be effective.
- (b) The permit's effective period is January 1 through December 31 of the same calendar year.
- (c) Permit fees are not prorated.
- (d) All permits, regardless of the date of issuance, will expire on December 31 of the year in which the permit became effective.
- (e) The application process shall be initiated, and fees shall be paid by November 15 for the upcoming calendar year so that adequate time is available for review and processing of the application.
- (f) Permittees currently permitted and choosing to reapply for a permit shall renew permits for the upcoming calendar year by submitting a renewal application by November 15.
- (g) All fees shall be paid with the submission of a renewal application.
- (h) The timely submission of a complete renewal application and the relevant fees will suffice to authorize the continuance of operations beyond December 31 until such time that the City makes a final determination on the approval of a permit renewal application.

Sec. 24-107. – Reissuance of lost and damaged decals.

- (a) In order to have a duplicate decal issued, the original applicant for a permit must provide all information required in Section 24-102(b).
- (b) Any applicant for a duplicate decal shall submit sufficient evidence of the damage to the decal.
- (c) No fees will be imposed for a duplicate decal.

Sec. 24-108. – Violations.

- (a) The City may issue a “No Operations” declaration and assess all applicable permit violation fees from the service provider if a service provider:
 - (1) Performs collections or transports special waste in a vehicle within the City which has not been permitted;
 - (2) Performs collections or transports special waste in any vehicle with an expired permit;
 - (3) Performs some other permit violation; or
 - (4) Does not make payment of the appropriate fees in a timely manner.
- (b) Once a service provider has been issued a “No Operations” declaration from the City, all services to be provided within the City are required to cease.
- (c) Each day and act of illegal operations during a “No Operations” period is a separate violation; any person, entity, or business engaged in the collection and transport of waste who violates the “No Operations” requirement prior to receipt of a permit or during any suspension of a permit period may be charged by the City an amount as established in the Utility Rate Ordinance per day for each day and act of violation of this ordinance.
- (d) Following the receipt of a “No Operations” declaration and prior to a service provider being reinstated to legally operate within the jurisdiction of the City, the service provider must meet with the City staff to update its application and service agreement. Once updated, the status of the permit will be determined. The City may reinstate, decline to renew, or revoke the permit. If the City agrees to reinstate the permit, the service provider must make payment of all monies owed to the City before the permit will be reinstated.

Sec. 24-109. – 24-199. – Reserved.

Article VI. – COMMERCIAL RECYCLABLE MATERIALS COLLECTION AND TRANSPORTATION SERVICES PERMIT

Sec. 24-200. – Permit required.

- (a) Any service provider engaged in the collection and transport of recyclable materials from commercial entities and operating within the City must possess a current and valid permit issued by the City prior to providing waste collection and transportation services.
- (b) Permits for collection and transportation services are required for recyclable materials and other materials collected for purposes of recycling, including construction and demolition (C&D) debris separated at the point of collection for delivery to another location for processing for recycling.

Sec. 24-201. – Exemptions.

- (a) Any person living within the City and hauling personal recyclable materials to a recycling facility from their primary living residence is exempt from the permitting requirements of this section.
- (b) Any person who collects for transportation recyclable materials no more than three (3) times per any year period is exempt from the permitting requirements of this section but must register as exempt with the permitting authority.
- (c) The City is exempt from these permitting requirements when engaged in hauling recyclable materials pursuant to Sec. 24-3 and 24-202.

Sec. 24-202. – Reclassification and disposal of recyclable materials.

- (a) Recyclable materials containers containing a significant amount of contamination, as determined by the City, will be considered municipal solid waste, and its collection may be considered a violation and subject to the actions and penalties provided for in Sec. 24-209 of this chapter. The Director will make the final determination of whether stored recyclable materials contain excessive contamination, which at the City's determination, shall cause the reclassification of these materials from recyclable materials to solid waste, thereby negating the ability of a service provider to transport this material within the City's jurisdiction under its recycling vehicle service permit.
- (b) The City has the authority to inspect the contents of any container located within the City's jurisdiction in order to determine the material contents of the container, so as to ensure compliance with the contamination requirements.

Sec. 24-203. Permit application.

- (a) Any person engaged in the collection and transport of recyclable material from commercial operations that is required to obtain a permit per Section 24-200 shall apply for a recyclable materials service permit from the City.
- (b) A person, entity, or business engaged in the collection and transport of recyclable material from commercial entities shall make application to the City on forms provided for that purpose and pay the fee required by Sec. 24-204. The application shall include the following information:
 - (1) The name and address of the applicant.
 - (2) The name of the owner of the collection and transportation vehicle for use in recyclable materials collection services located within the City.
 - (3) A description of the recyclable material to be transported.
 - (4) The location of the recycling facility to which the recyclable material will be transported, including proof, when required by the Director that the applicant is legally authorized to dispose of at the specified location.
 - (5) A description and the license number of any vehicles to be used in collecting and transporting the recyclable material within the City.
 - (6) Any other information which is reasonably necessary to administer this section as determined by the City.
- (c) By acceptance of the permit, the permittee agrees to execute and comply with all requirements of the vehicle service agreement, carry specific types and amounts of insurance, submit reports, and pay the necessary fees by the specified due date.

Sec. 24-204. – Permitting fees.

- (a) Application fees and vehicle service fees shall be paid at the time of submittal of the permit application. The vehicle service fee schedule is found in the Utility Rate Ordinance.
- (b) Vehicle service fees are non-transferable between vehicles and containers.
- (c) All fees paid are non-refundable.
- (d) The permit applicant must pay the required fees and meet all permit requirements prior to the issuance of a permit.

Sec. 24-205. – Granting of permit.

- (a) A permit provided for in Section 24-200 shall be granted only where the applicant has completed the following:
 - (1) A service agreement form has been completed in full;
 - (2) The applicant has no unresolved violations of this Chapter 24, Texas Commission on Environmental Quality or U.S. Environmental Protection Agency.
- (b) The City reserves the right to revoke a granted permit at any time.
- (c) Any person whose permit is denied may:
 - (1) Resubmit a fully completed service agreement;
 - (2) Submit evidence that any violation with this Chapter 24, Texas Commission on Environmental Quality or U.S. Environmental Protection Agency has been resolved; or
 - (3) Make an appeal to the Director.

Sec. 24-206. – Permit compliance requirements.

- (a) Recyclables service providers must maintain a valid permit.
- (b) Service providers must submit quarterly reports
 - (1) Reports are submitted by calendar quarter.
 - (2) Reports should be provided by physical or electronic submission to the Director.
 - (3) Reports shall contain:
 - i. Service provider's name, address, date, and quantity (weight/volume) of material sent for diversion/disposal
 - ii. Name of facility where material was sent
 - iii. Name of facility where residuals were sent
- (c) Incomplete reports will not be accepted for filing and will be returned. Such reports will be considered untimely if not completed and returned within the deadline specified in subsection (4).
- (d) Decals:
 - (1) Decals issued by the City shall be placed in a visible location by the permittee(s) upon all collection and transportation vehicles operating within the City.
 - (2) Decals shall be current pursuant to the schedule in Section 24-208 and valid in accordance with the requirements of this subsection.

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- (3) Decals must be clearly legible.

Sec. 24-207. – Permitting effective date and renewal.

- (a) Permits are issued and renewed annually beginning December 1 preceding the next calendar year during which the permit will be effective.
- (b) The permit's effective period is January 1 through December 31 of the same calendar year.
- (c) Permit fees are not prorated.
- (d) All permits, regardless of the date of issuance, will expire on December 31 of the year in which the permit became effective.
- (e) The application process shall be initiated, and fees shall be paid by November 15 for the upcoming calendar year so that adequate time is available for review and processing of the application.
- (f) Permittees currently permitted and choosing to reapply for a permit shall renew permits for the upcoming calendar year by submitting a renewal application by November 15.
- (g) All fees shall be paid with the renewal application.
- (h) The timely submission of a complete renewal application and the relevant fees will suffice to authorize the continuance of operations beyond December 31 until such time that the City makes a final determination on the approval of a permit renewal application.

Sec. 24-107. - Reissuance of lost and damaged decals.

- (a) In order to have a duplicate decal issued, the original applicant for a permit must provide all information required in Section 24-203(b).
- (b) Any applicant seeking a duplicate decal shall submit sufficient evidence of the damage to the decal.
- (c) No fee will be imposed for a duplicate decal.

Sec. 24-108. – Violations.

- (a) The City may issue a "No Operations" declaration and assess all applicable permit violation fees from the service provider if a service provider:
 - (1) Operates a vehicle within the City which has not been permitted;
 - (2) Operates any piece of equipment with an expired permit;
 - (3) Performs some other permit violation; or
 - (4) Does not make payment of the appropriate fees in a timely manner.
- (b) Once a service provider has been issued a "No Operations" declaration from the City, all services to be provided within the City are required to cease.
- (c) Each day and act of illegal operations during a "No Operations" period is a separate violation; any person, entity, or business engaged in the collection and transport of waste who violates the "No Operations" requirement prior to receipt of a permit or during any suspension of a permit period may be charged by the City an amount as established in the Utility Rate Ordinance per day for each day and act of violation of this ordinance.
- (d) Following the receipt of a "No Operations" declaration and prior to a service provider being reinstated to legally operate within the jurisdiction of the City, the service provider must meet with the City staff to update its application and service agreement. Once updated, the status of the permit will be determined. The City may reinstate, decline to renew, or revoke the permit. If the City agrees to reinstate the permit,

the service provider must make payment of all monies owed to the City before the permit will be reinstated.

Sec. 24-210. – 24-299. – Reserved.

Article VII. POSSESSION OF OPEN GLASS CONTAINERS IN FRY STREET DISTRICT

Sec. 24-300. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fry Street District refers to the area as described in Zoning Ordinance No. 2000-045 as the Fry Street District. The Fry Street District is generally bounded by Welch Street to the east, Oak Street to the North, Ave. B to the northwest, Ave. A to the southwest, Mulberry Street to the southeast, and Hickory Street to the southwest, which is depicted in Exhibit A* attached to Ordinance No. 2005-256 and made a part hereof by reference.

Glass container means any glass bottle or receptacle, closed or capable of being closed.

Sec. 24-301. Prohibition of open glass containers.

- (a) *Prohibitions.* No person shall possess within the Fry Street District upon or immediately adjacent to any right-of-way, street, sidewalk, pedestrian way, or parking area, any glass container which is open or has been previously opened except for use on the premises where the glass containers are acquired.
- (b) *Exemptions.* Notwithstanding any other provision of this section, nothing in this section shall prohibit the possession of the following glass containers in the Fry Street District:
 - (1) Baby bottles containing products for consumption by babies;
 - (2) Glass drug containers containing prescription drugs;
 - (3) Glass containers that are being transported in a trash bag directly to a trash or recycling container for disposal or recycling purposes;
 - (4) Glass lined vacuum picnic containers or thermos bottles, and
 - (5) Any container as permitted by Texas Alcoholic Beverage Code Ann. 28.10(b).

Sec. 24-302. Discretion of police officer.

Whenever any police officer shall, in the exercise of reasonable judgment, decide that the presence of any person in any public place is causing or is likely to cause any of the conditions enumerated in subsection 24-101(a), he may, if he deems it necessary for the preservation of public peace and safety, order that person to leave that place and surrender the open glass container. Any person who shall refuse to leave or surrender an open glass container after being ordered to do so by a police officer shall be in violation of this section.



City of Denton Proposed Solid Waste Ordinance Update to Include Commercial Diversion

**Tammy Clausing
Assistant Director
Solid Waste and Recycling Department**

March 27, 2023



Agenda

- Background
- Metrics/Trends/Problems
- Components of the Commercial Diversion Article
- Public Engagement Opportunities
- Public Meeting Feed Back
- Solid Waste Ordinance Updates
- Next Steps
- Request for Direction



Background

- July 2022 - Adopted Comprehensive Solid Waste Management Strategy
 - Alignment with Council's Key Focus Area of Promoting Sustainability and the Environment
- November 2022 - Council Work Session on introduction Comprehensive Diversion Ordinance (CDO)



Metrics/Trends/Problems

- Current Commercial Diversion Rate is 3% equaling 2,448 tons
- Current Commercial Recycling Participation Rate is 17% equaling 483 customers
- 2020 Waste Characterization Study showed that 42%-55% Commercial trash comprised of programmatic materials
- Donation Box concerns
- Northlakes Recycling Center Update
- Solid Waste Ordinance inadequacies
 - Limited enforcement capability for illegal containers, overflowing materials, and contamination
 - The Service Assistance (Porch Collection) Program and Valet Services are not considered
 - Outdated 3rd Party Permitting and Yard Waste articles
 - Commercial Recycling/Diversion is not required



Components of the Commercial Diversion Article

- Require **ALL** entities to implement a diversion/recycling program
- Requirements from Customers
 - Submit a diversion plan annually
 - The choices for diversion of Programmatic Materials will be contract with the City of Denton or a 3rd Party
 - The choices for Non-Programmatic Materials will be contract with a 3rd Party or perform in-house
- Requirements from 3rd Party Diversion Vendors or In-House programs
 - Obtain Permit with City (currently implemented)
 - Send quarterly diversion tonnages to the City



Public Engagement Opportunities

- Mailings to commercial/multifamily customers informing them of the Commercial Diversion Article and opportunities to comment
- Made online public comment available starting Feb. 3
- Held Public Meeting at the Civic Center on Feb. 16
- Posted Redline and Clean versions of revised the Solid Waste Ordinance on Feb. 28 thru April 4th for continued public comment



Public Feedback

- Concerns with legal non-conforming/grandfathered properties, unique layouts, and enough room for another container
 - Assured meeting attendees that we would handle unique situations and layouts individually and create a plan/solution that fit their business
- Asked for clearer wording on what type of diversion would be acceptable
 - In our letter to commercial businesses and online Diversion Plan portal for implementation of Commercial Diversion Article we would outline acceptable diversionary materials. For example used motor oil, plastic film, textiles, scrap metal all are non-programmatic materials that are acceptable for a diversion plan.

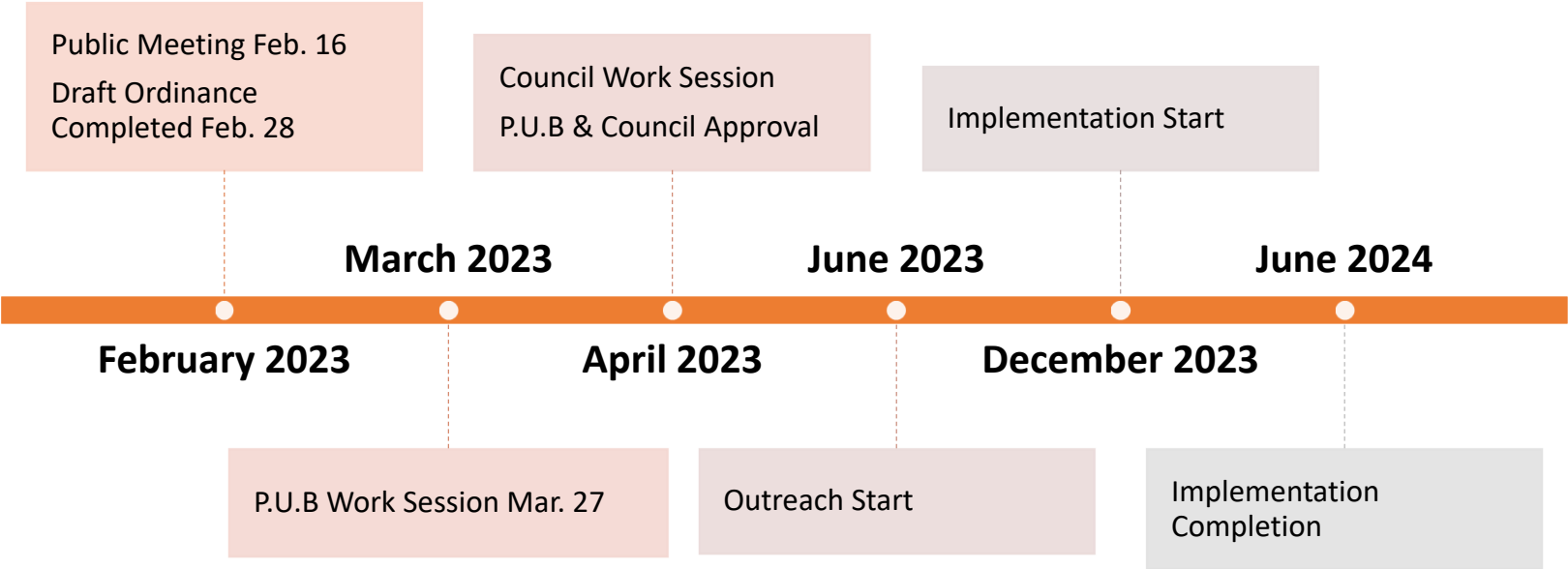


Ordinance Updates

- The City will remain sole provider of residential trash and recycling of programmatic materials and commercial trash
- Include Porch Collection Service, Valet Services, and Commercial Diversion
- Update 3rd Party Permitting and Yard Waste articles
- Updates for illegal containers, overflowing materials, and contamination
 - Which may lead to other ordinances updates to help with implementation



Status and Next Steps



What does implementation look like?

- Phases
 - There will be five groups made from the 2803 commercial customers
 - Each group will be phased by months over a five month period starting in June 2023
- Communications
 - A letter will be sent out as each group/phase comes online
 - Customers who are currently commercial recycling customers with the City of Denton will receive a letter stating the new ordinance and informing the customer that they don't need to do anything unless they change/update their diversion plan
 - Customers will be given a six month time frame to implement/submit their diversion plan
- Feedback and reporting
 - SWR team will be following up with customers as needed based on their grouping and diversion plan



Request for Direction

- To move forward with rewrite of Solid Waste Ordinance and include a Commercial Diversion Article
- Other Direction



Discussion and Questions

Tammy Clausing
Assistant Director
Solid Waste and Recycling Department

